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Consultation on the Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities

The proposed guidance below is intended to help registered charities and applicants for charitable registration carrying on activities outside Canada to comply with the sections of the *Income Tax Act* relating to charitable registration.

The Charities Directorate would like your opinion about whether this guidance covers all relevant issues, how easy it is to understand and apply, and any other aspects of the proposed guidance. In addition, we welcome questions that would help the Charities Directorate to develop a list of frequently asked questions related to this guidance.

Please feel free to forward this information to groups who may not be regular visitors to our site, but who may be interested in contributing their views.

Please note that advice on a registered charity's particular practices is not available through this consultation process. Charities with specific questions about their own situations or conduct can contact our Client Service Section at 1-800-267-2384 for information.

We will consider all of the comments that we receive by September 30, 2009.

Where to send your comments

Please send all comments in writing to the address or fax number below, or by email to: consultation-policy-politique@cra-arc.gc.ca

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Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities

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Summary

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1. Under the *Income Tax Act* (the Act), a charity can further its charitable purposes both inside and outside Canada in two ways: by making gifts to [qualified donees](#), and by carrying out its own activities.

Control of resources

2. The Act requires a charity to devote all its resources to charitable activities carried on by the charity itself [\[Footnote 1\]](#) (which includes making gifts to qualified donees [\[Footnote 2\]](#)). As confirmed by the courts, this means a charity must control all activities carried out on its behalf, [\[Footnote 3\]](#) and not act as a passive funding body for any other organization that is not a qualified donee.

3. A charity can carry on its activities through its staff (for example—volunteers, directors, and employees) or through intermediaries. In this guidance, an intermediary is defined as a person or non-qualified donee that is separate from the charity, but that the charity works with to carry out its own activities.

Recording and reporting

4. The Canada Revenue Agency (CRA) strongly recommends that a charity put a written agreement in place when carrying on activities through an intermediary.

5. Although a written agreement is an important first step in showing that a charity has direction and control over its resources, merely having an agreement in place is not, by itself, enough to show direction and control. A charity must be able to show that in fact, at all times, it is carrying out only its own activities through the intermediary, and that it directs and controls the use of any resources that further these activities. [\[Footnote 4\]](#)

6. For a charity to show that it is carrying on its own activities, it must be able to show

the CRA the following:

- a clear, complete, and detailed description of the activity, as well as detailed information on how, when, and where it is carried out;
- records demonstrating that clear, complete instructions and directions in relation to the activity are, or will be, provided to those who carry it on;
- records showing that it monitors and supervises the activity on an ongoing basis;
- documentary evidence that it deals with relevant issues related to the activity; and
- books and records that verify that the charity's funds have been spent on its own activities.

Introduction

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7. This guidance will update and replace Guide RC4106, *Registered Charities: Operating Outside Canada*, and any previous policies regarding transfers to non-qualified donees, after the consultation process is completed and the guidance finalized. It will help registered charities and applicants for charitable registration carrying on activities outside Canada to comply with the sections of the *Income Tax Act* [[Footnote 5](#)] (the Act) relating to charitable registration. To establish with certainty whether a particular activity is in compliance with the Act, the CRA will have to examine the facts of each situation.

8. In this document, the term [charity](#) means a Canadian charity that is registered under the Act. [Applicants for charitable status](#) that intend to carry on activities outside Canada are also subject to this guidance.

9. This guidance assumes that a charity working with an intermediary is doing so in order to carry on charitable activities outside of Canada. However, the requirements in this guidance also apply to all charitable activities carried out within Canada.

10. For information on registering a charity, you can refer to the Charities Directorate's Web page on [applying for registration](#). You can also [contact](#) the Charities Directorate for more information on registering a charity, or if you have questions about operating a registered charity, at the following telephone numbers:

- 613-954-0410 for local Ottawa calls (English)
- 613-954-6215 for local Ottawa calls (bilingual)
- 1-800-267-2384 for toll-free, long-distance calls (English)
- 1-888-892-5667 for toll-free, long-distance calls (bilingual)
- 1-800-665-0354 for toll-free service for hearing impaired persons

11. The Charities Directorate's fax number is 613-954-8037.

Carrying on activities outside Canada

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12. Canadian registered charities make important and valuable contributions throughout the world. However, carrying on activities outside Canada often presents significant challenges and requires substantial ongoing effort. Many charities have launched well intentioned international activities only to learn that they cannot maintain the effort needed to meet their objectives and fulfil their obligations under the Act.

13. Before carrying on activities outside Canada, the CRA recommends that a charity or applicant for registration consider working with existing charities or other [qualified donees](#) that have the experience and capacity to carry on activities in a way that meets the requirements set out in this guidance. You can search a list of all Canadian registered charities, by name, category code, and other keywords, by visiting the CRA's [Charities Listings](#).

14. The Canadian International Development Agency (CIDA) also provides a [list of voluntary sector organizations](#) that work in co-operation with CIDA on its Web site. Although charities may find it useful to support or partner with these organizations, not all of them are qualified donees. Since charities can only make gifts of money or other

resources to qualified donees, charities must take care in deciding which organization to support and how to provide that support.

15. After a disaster, the CRA often receives applications for charitable status by organizations that want to help those affected. For information on applications for charitable status to provide immediate disaster relief, please see [Appendix A](#).

Local laws

16. It is well established that when a charity operates within Canada, it must comply with Canadian laws, including the Act and the common law. [Footnote 6] However, a charity that carries on activities outside Canada may operate in areas where the legal framework and laws are very different.

17. Although the Act does not require that registered charities comply with laws in foreign jurisdictions, being registered in Canada does not exempt a charity from the laws in the jurisdiction where they operate.

18. The CRA strongly suggests that all charities make themselves aware of local laws, and how they are applied, before carrying out their charitable programs abroad. Being aware of local laws and their application will help make sure that the public benefit provided by a charity's activities is not offset by harm that may result to those carrying on the activities, to the charity's beneficiaries, or to anyone else.

19. For more information on public benefit, please see [CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test](#).

What is charitable in Canada and abroad?

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20. Most activities that are charitable in Canada are, as a matter of Canadian law, charitable abroad. However, the courts have stated that some activities may not be charitable when carried on in a different country. For example, reducing Canada's national debt is charitable, but reducing the national debt of another country may not be. [Footnote 7] Each case is assessed on its particular facts.

21. The courts have also established that a charity's purposes and activities must not violate officially declared and implemented Canadian public policy. [Footnote 8]

Canada's anti-terrorism legislation

22. Charities have obligations under Canada's anti-terrorism legislation. A charity has to make sure that it does not operate or associate with individuals or groups that are engaged in terrorist activities, or in activities that support terrorism.

23. Under the *Charities Registration (Security Information) Act*, [Footnote 9] a charity's status may be revoked if it operates in such a way as to make its resources available, either directly or indirectly, to an entity that is a [listed entity](#) (as defined in subsection 83.01(1) of the *Criminal Code of Canada* [Footnote 10]), or to any other entity (person, group, trust, partnership, fund, unincorporated association, or organization) that engages in terrorist activities or activities that support terrorism.

24. For more information about these provisions, please visit the Charities Directorate's Web page [Charities in the International Context](#).

How can a charity operate?

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25. The Act permits a charity to operate, both inside and outside Canada, in only two ways:

- A charity can make gifts [Footnote 11] to [qualified donees](#).

A charity can carry out its own charitable activities. Charities must always control all of their activities and resources.

Making gifts to qualified donees

26. A gift to a qualified donee is a transfer of money or any other property to a qualified donee.

Note

Charities that are constituted in or a resident of Ontario should contact the [Office of the Public Guardian and Trustee of Ontario](#) to see if they have any restrictions on which qualified donees they can gift their funds to.

27. Under the Act, qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them. Some examples of qualified donees include other registered Canadian charities, the Government of Canada, prescribed universities outside Canada, the United Nations and its agencies, and [certain charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift](#).

28. A charity may not make gifts to organizations that are not qualified donees (called non-qualified donees).

Carrying out charitable activities

29. Charitable activities are those that further a purpose recognized as charitable under Canadian common law, such as providing housing to the homeless, scholarships to students, or medical care to the sick.

30. A charity can use its staff (for example—volunteers, directors, or employees) to carry out its activities, or it can use intermediaries. For this guidance, an intermediary is defined as a person or non-qualified donee that is separate from the charity, but that the charity works with to carry out its activities. For example, a charity might hire a company to perform a service, or pool its resources with another organization to complete a project.

31. When working through an intermediary, a charity must always direct and control the use of its resources by the intermediary. [\[Footnote 12\]](#) A charity cannot simply act as a passive funding body for an intermediary's programs. A charity that does not carry out its own activities, or direct and control its resources, risks sanctions under the Act, including the loss of its charitable status.

32. A charity's resources include all physical, financial, and material resources (for example—buildings, money, or donated goods), as well as its staff. [\[Footnote 13\]](#)

33. For more information, you can visit the Charities Directorate Web page on [charitable activities](#). Also, for more information on charities that want to start capacity building activities, please see [Appendix B](#).

Federal Court of Appeal decisions

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34. The Federal Court of Appeal has made three decisions about charities using intermediaries to carry out foreign activities. Each case was an appeal of a revocation of charitable status by the CRA, and the Federal Court of Appeal dismissed each appeal.

35. In short, the Federal Court of Appeal's decisions each confirmed that a charity working with an intermediary must always maintain control of the charitable activities carried out on its behalf, and of the use of its resources. Charities or applicants for charitable status may find it useful to review these decisions, which are as follows:

- [The Canadian Committee for the Tel Aviv Foundation v. Canada \(2002 FCA 72\)](#).

2002-03-01

- [Canadian Magen David Adom for Israel v. Canada \(Minister of National Revenue\) \(2002 FCA 323\), 2002-09-13](#)
- [Bayit Lepletot v. Canada \(Minister of National Revenue\) \(2006 FCA 128\), 2006-03-28](#)

Intermediaries

36. A charity typically uses an intermediary when the charity cannot carry out an activity with its staff. The intermediary usually has resources that a charity needs to carry out its activities such as a particular skill, knowledge of a region, or specialized equipment.

Choosing an intermediary

37. A charity should be able to document that it has reasonable assurance that the intermediary, by virtue of its reputation, expertise, capacity, or experience, can carry out the tasks required by the charity. For more detail on investigating the status and activities of an intermediary, see the following section **Control and direction of resources**.

38. The type of intermediary that a charity needs to carry out an activity will depend on the facts of any given situation. The CRA does not recommend using one type of intermediary over another.

Agents

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39. Agents are individuals or organizations who are separate from a charity, but agree to carry out specific activities on its behalf. A charity often uses agents when it cannot send its employees or volunteers to a particular region to carry out an activity.

Example

A young man makes a presentation to various Canadian churches about an orphanage in Rwanda where he volunteers. The orphanage is not a qualified donee. One of the churches he visits, a charity, has, as one of its purposes, the relief of poverty among disadvantaged youth.

The church decides it would like to help the orphanage with buying school supplies, food, clothes, and so on. Since the orphanage is a non-qualified donee, the church cannot simply send it gifts of money. None of the church's members, volunteers, directors, employees, or other staff, is able to travel to Rwanda to help the orphanage.

Instead, the church could enter into a formal agreement with the young man for him to act as the church's agent in helping the orphanage. The church would authorize him to spend its funds on certain types of goods such as school supplies, food, or clothes, giving him limited and defined discretion to make appropriate decisions regarding the best interests of the orphans.

40. A charity working with an agent must always be able to show that the agent is carrying on the charity's own charitable works. [\[Footnote 14\]](#)

Joint venture participants

41. A joint venture participant is an organization that a charity works with to carry out a charitable activity. [\[Footnote 15\]](#) The charity and one or more joint venture participants pool their resources in order to accomplish their goal under the terms of a joint venture agreement.

42. A joint venture participant differs from an agent, in that the charity is not relying entirely on the joint venture participant to carry out activities on its behalf. Instead, the charity works directly with a joint venture participant to further the charitable activity as a whole.
43. Typically the charity would have members sit on the governing board for the entire project, allowing it to make decisions on the use of the charity's resources for the project. The actual structure of a joint venture varies from case to case.
44. The charity must be able to establish that its share of authority and responsibility over the joint venture as a whole is at least proportional to the level of resources it contributes. A charity that exercises limited decision-making authority over the venture as a whole may have difficulty establishing that it is carrying on its own activities.

Example

A Canadian church that is a charity joins with a foreign church (that is a non-qualified donee) to operate a joint missionary venture. The project's overall purpose is charitable according to Canadian law.

The Canadian church provides 40% of the funding for the project and its representation on the venture's governing board is about 40% of the voting rights. As long as the venture only uses the Canadian church's resources for activities that further its charitable purposes, its involvement should be acceptable.

However, with only 40% of the decision-making power, the Canadian church runs the risk that the venture as a whole could decide to use the Canadian church's resources to carry on non-charitable activities, or activities that are not those of the Canadian church. Therefore, the arrangement should include a provision that allows the Canadian church to discontinue devoting its resources to the venture.

45. The CRA will look at a venture as a whole, as well as a charity's participation in that venture, to ensure the charity is carrying out its own activities. If the overall purpose of the venture is not charitable, a charity's participation in that venture may not be acceptable. This could be the case even if the activities would normally be considered to be furthering charitable purposes when carried out on their own.
46. For a list of the factors that the CRA looks at when examining joint venture arrangements, please see [Appendix C](#).

Co-operative participants

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47. A co-operative participant is an organization that a charity works with, side by side, to complete a charitable activity. Rather than pooling their resources and sharing responsibility for the project as a whole, as in a joint venture, the charity and other organization(s) instead each take on responsibility only for parts of the project.
48. In this guidance, **co-operative participant** means an organization that a charity collaborates with to achieve a common, charitable purpose. It is not meant to create or imply any special legal status between the organizations.

Example

A charity registered to provide care for the sick joins with a non-qualified donee to build and operate a medical clinic in an isolated area. The charity agrees to provide qualified nursing staff at the clinic, but will not help with other parts of the project, such as construction of the building, buying medicine, and so on.

As long as the charity directs and controls its activities and the use of its resources

when hiring the staff, and is not giving its funds to the other organization working on the project, the charity should be considered to be furthering its charitable purposes.

Contractors

49. A contractor is an organization or individual that a charity hires to provide goods or services. For example, a charity might hire a for-profit company to dig a well for people lacking clean drinking water in a foreign country.

50. The CRA strongly advises charities to make sure that their contractors are reputable and able to deliver the goods or services required. A written contract should be put in place between a contractor and a charity, stating the goods or services to be provided, the fee to be paid by the charity, and arrangements for inspection and monitoring.

Carrying on a charity's own activities through an intermediary

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51. Whether a charity works through its staff or through intermediaries, the Act requires a charity to devote all of its resources to charitable activities carried on by the organization itself [[Footnote 16](#)] (which includes making gifts to qualified donees [[Footnote 17](#)]). This requirement is referred to as the **own activities** test.

52. To meet the own activities test when working through an intermediary, a charity must actually and in fact control the activities carried out on its behalf. [[Footnote 18](#)] For example, the charity (and not the intermediary) must be the body that decides, and exercises ongoing control over, how an activity will be carried out, its overall goals, where it is carried out, who benefits, which goods and services its money will buy, and when it will start and end.

53. A charity cannot act as a passive funding body for a non-qualified donee's activities, even if the non-qualified donee's activities are charitable under Canadian law. If a charity passively funds a non-qualified donee's programs, that charity is acting as a conduit.

54. In the context of this guidance, a conduit is an organization whose primary purpose is to raise funds in Canada for the benefit of a foreign non-qualified donee, and does not control all activities supposedly carried out on its behalf. Acting as a conduit violates the Act, and could jeopardize a charity's status.

55. Charities typically seek to act as conduits in order to accept donations from Canadians, issue tax deductible receipts, and then channel the funds to other organizations to which a Canadian taxpayer could not directly make a gift and acquire tax relief. [[Footnote 19](#)]

Example

A charity is registered to protect the environment. A foreign non-qualified donee approaches the charity, seeking funding for its activity of preserving the rainforest.

The charity approves of the non-qualified donee's activity, and agrees to provide funding. The two organizations put a written agreement in place, and the non-qualified donee commits to use the charity's resources only for purposes considered charitable in Canada.

However, the charity has no real say in where, when, or how the activity is carried out. The charity is simply funding the non-qualified donee's activities, and therefore, even though the activity itself is charitable, the charity is acting as a conduit.

To avoid acting as a conduit, the charity must have real and demonstrable control over all the elements of the activity, so that the carrying out of that activity by the

intermediary amounts to the charity carrying on the activity itself. The non-qualified donee is the instrument by which the charity accomplishes its goals.

56. The own activities test applies to charities that are offshoots of other non-qualified donees, such as a charity that is subordinate to a head body organization located outside Canada. Charities may not simply send payments to head bodies, affiliates, or other member organizations without receiving goods or services of equivalent value in return.

Control and direction of resources

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57. One part of a charity's own activities test is the control and direction of its resources. A charity must always be the body that determines how its money and other resources are used.

58. The surest and safest way to control and direct its resources is for a charity to use its staff to carry out its activities. That way, the staff can be sure the charity's resources are used only for its charitable purposes, such as by distributing food directly to the hungry, or by building housing for the homeless.

59. However, if a charity cannot use its staff to transfer its resources to those in need, it will likely have to rely on an intermediary. In these situations, a charity must be extremely careful to maintain direction and control over the use of its resources by the intermediary. If a charity transfers its resources to an intermediary, and that intermediary decides to use the resources for purposes that are not the charity's own, the charity will fail the own activities test and be in violation of the Act.

60. A charity should always have an agreement in place with any intermediary. An agreement will ensure direction and control over the use of a charity's resources, to make sure that they are only used to carry out the charity's own activities. The nature of the agreement will depend on the situation. In some cases the agreement may only require a verbal discussion of what will happen with the resources, while other situations will call for all of the measures of control discussed below in the following sections:

- [Written agreements](#)
- [Description of activities](#)
- [Monitoring and supervision](#)
- [Ongoing instruction](#)
- [Periodic transfers](#)
- [Separate activities and funds](#)

61. Generally speaking, an agreement will need the fewest measures of control when **both** of the following conditions are true:

- The resources transferred can, because of their nature, likely only be used for charitable purposes; and
- Based on an investigation into the status and activities of the intermediary, there is a reasonable expectation that the intermediary will use the resources only for charitable purposes. [[Footnote 20](#)]

62. Resources that can likely only be used for charitable purposes are those that can reasonably be expected to have only one charitable use. For example, insulin is likely only to be used to provide relief of the sick by treating diabetics, and bibles and other religious texts are likely only to be used to advance a religion.

63. Of course, many resources are of a more general nature and can have several potential uses, both charitable and non-charitable. For example, money can be used to buy almost anything, and emergency vehicles can be used to help civilians affected by armed conflict, or be used by a military force on one side of a conflict.

Note

If a charity intends to transfer money to an intermediary, the CRA strongly

recommends putting in place as many measures of control as possible.

64. Investigating the status and activities of an intermediary would typically include examining details such as the organization's stated goals and purposes, its history and reputation, and relevant media reports. A charity should examine these factors with the intent of not only protecting its assets from undue risk, but also its reputation. A charity that regularly works with an intermediary should be aware of all the intermediary's operations.

65. If either or both of the above conditions are not met, then a charity must structure its agreement so that it maintains direction and control over the use of its resources to make sure that they are used only to further its charitable purposes. [Footnote 21] In such a situation, the CRA recommends that a charity use as many measures of control as possible.

Example

A charity registered to provide disaster relief wants to help people coping with a natural disaster in a foreign country. The charity's staff collects donations, and buys food, blankets, and medical supplies, but none of the staff can travel to deliver the resources to the people in need.

The charity finds a foreign charity that is willing to act as its intermediary, and distribute the charity's resources to those in need. The charity investigates and finds that the foreign charity has been in operation for many years, has provided aid several times before, and is well known for co-operating successfully with other bodies in similar situations.

The food, blankets, and medical supplies can likely only be used for charitable purposes. Based on the charity's investigation, it has a reasonable expectation that the intermediary will use the resources only for charitable purposes. If the charity enters into a verbal agreement over the use of its resources, and then sends those resources to the intermediary for distribution, it will likely be considered to have kept sufficient direction and control over the use of its resources.

66. The facts of every situation will differ, and it is not possible to give precise guidelines to cover all situations in advance. If a charity is planning to start a program of transferring property to an intermediary, or has any questions about these types of transfers, the CRA strongly recommends contacting the Charities Directorate for advice.

67. Transferring ownership of real or capital property, such as land or buildings, is particularly complex. For more information, please see [Appendix D](#).

68. A charity cannot transfer or gift any kind of property if it knows, or ought to know, that the property will be used either for non charitable purposes, [Footnote 22] or to circumvent the provisions of the Act, such as by making resources directly or indirectly available to an organization that engages in terrorist activities.

Written agreements

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69. A written agreement is a document that helps establish the relationship between a charity and its intermediary. The agreement must provide the authority and the means for the charity to meet the own activities test, including maintaining direction and control over its resources, and over its intermediary's actions as they relate to the charity's activities. [Footnote 23]

70. The CRA recommends that a charity have a written agreement with each of its intermediaries. Although there is no legal requirement to have a written agreement, and the same result might be achieved by other means, [Footnote 24] a properly executed written agreement is an effective way to help meet the own activities test.

71. However, simply entering into an agreement is not enough to prove that a charity meets the own activities test. The charity must also be able to show to the CRA that the charity has a real, ongoing, active relationship with its intermediary, [\[Footnote 25\]](#) whereby it directs and controls the use of its resources by that intermediary.

72. Although entering into a written agreement and implementing the terms of that agreement is usually an effective way to meet the own activities test, the CRA also acknowledges that in situations where the amount of resources involved is relatively minor, and is a one-time activity, the complications of developing a full, formal written agreement may outweigh the benefits. In situations where the money spent on a one-time activity is about \$1,000 or less, other forms of communication might be used to show direction and control over the use of resources by intermediaries.

Example

A charity registered to relieve poverty decides it wants to support a food bank in India. The charity plans to send a one-time transfer of \$1,000 to the food bank to buy supplies.

In this situation, the importance of a full, formal, written, agency agreement is reduced. Although having a written agreement is still preferable, as long as the charity can show through other records that it carried on its own activities, and maintained direction and control over the use of its funds, it should be in compliance with the Act.

The charity could, for example, keep confirmation of delivery of faxed or written instructions to the food bank, records of bank transfers, and minutes of meetings showing decisions made and instructions sent. In turn, the food bank could send back receipts and invoices, written reports, photographs, confirmation it bought the food, and so on.

However, if the activity is expected to be repeated on an ongoing basis (for example—annually), the CRA recommends that a written agreement be in place for a clear understanding of the agreement over time.

73. If a charity has concerns or questions about the above type of arrangement, it should contact the CRA.

74. On occasion, applicants for charitable status intend to carry on activities through an intermediary. In these situations, a copy of a written agreement included with the application is often a good way to show to the CRA that the relationship the applicant will enter into with its intermediary will allow the applicant to meet all requirements for registration.

75. Although there is no established template for written agreements, acceptable agreements would normally contain the elements listed in the checklist in [Appendix E](#).

Description of activities

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76. To show it is carrying on an activity, a charity should be able to give a clear, complete, and detailed description of that activity. The charity should be able to document its exact nature, scope, and complexity.

77. Depending on the type, complexity, duration, and expense of an activity, the charity should be able to provide documentary evidence that shows:

- exactly what the activity involves, its purpose, and the charitable benefit it provides;
- who benefits from the activity;
- the precise location(s) where the activity is carried on;
- a comprehensive budget for the activity, including payment schedules;

- the expected start-up and completion dates for the activity, as well as other pertinent timelines;
- a description of the deliverables, milestones, and performance benchmarks that are measured and reported;
- how the charity monitors the activity, the use of its resources, and those who carry on the activity;
- the mechanisms that allow the charity to modify the nature or scope of the activity, including discontinuance of the activity if the charity so decides;
- the nature, amount, sources, and destination of income that the activity generates, if any (for example—tuition fees from operating a school, or sales from goods produced by poor artisans in third-world countries [[Footnote 26](#)]); and
- the contributions that other organizations or bodies are expected to make to the activity, if any.

Monitoring and supervision

78. One way of demonstrating that a charity has a real, ongoing relationship with its intermediary is through regular monitoring and supervision. The charity must be able to show that it receives timely and accurate reporting that allows it to control the use of its resources and meet the own activities test. [[Footnote 27](#)]

Example

A charity is using an agent to build a school in South America. According to their written agreement, the agent sends monthly progress reports (including photographs, receipts, and vouchers) and a written description of activities undertaken.

One of the charity's staff members also visits the site quarterly. On her return, the staff member presents a written report showing the project's progress. Under these circumstances, the charity will likely be able to show that it is receiving adequate reporting.

Ongoing instruction

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79. Before starting an activity, the charity and its intermediary should agree on a clear, complete, and detailed description of the activity. Then, based on the charity's monitoring and supervision, the charity should be able to provide any necessary additional instructions or directions to the intermediary.

80. Records of any ongoing instructions help to show that a charity is carrying out its charitable activities in accordance with the provisions of the Act. Minutes of meetings or other written records of decisions are one way to show that a charity has given instructions. The CRA recommends using written instructions to communicate with an intermediary whenever possible.

Example

A charity registered to relieve poverty wants to provide a well for water in a community outside Canada. It enters into a written agreement with an intermediary, outlining the activities in detail. After the work starts and regular reporting begins, the charity encounters other matters that need to be addressed, such as unexpected changes in the water quality, sudden breakdowns of equipment, and scheduling delays.

The charity's directors meet to solve each problem as it arises, and make written records of these meetings. After they have determined the best course of action, they pass along new instructions to their intermediary. Under these circumstances, the charity will likely be able to show that it is providing enough ongoing instruction.

81. Charities and organizations acting as intermediaries occasionally arrange to have a director/trustee, volunteer, or employee work for both bodies. Although this type of arrangement may make it easier to pass along reports and ongoing instructions, it may not be enough to show that the charity maintains direction and control over the use of its resources by the intermediary.

Periodic transfers

82. One way of making sure that direction and control is kept over activities and resources is by making periodic transfers of funds, based on demonstrated performance. A charity should keep the right to discontinue the transfer of funds and, when warranted, to have unused funds returned if it is not satisfied with the reporting, progress, or outcome of an activity. This will let the charity stop funding an activity if the charity's directions and instructions are not being followed, or for any other valid reason.

Separate activities and funds

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83. When carrying on an activity through an intermediary, a charity must make sure that it can distinguish its activity from those of the intermediary. [\[Footnote 28\]](#) A charity cannot simply pay the expenses an intermediary incurs to carry on the intermediary's own activity. Doing so draws into question whether the activity is that of the charity.

84. For certain types of arrangements (for example—an agency agreement), the charity's funds for the activity should be kept in a separate bank account, and used only after appropriate authorizations are made by the charity or performance benchmarks are met by the intermediary.

Funding from CIDA and other government programs

85. The Canadian International Development Agency (CIDA) and other government programs fund many activities outside Canada. Not all of these activities are charitable under common law. A charity must make sure that all activities it carries on further its charitable purposes, regardless of the source of funding.

86. In addition, a charity must still satisfy all its monitoring and reporting requirements. If a charity has concerns about charitable status and participation in CIDA-funded projects, it should [contact the Charities Directorate](#) for advice.

Keeping books and records in Canada

87. Under the Act, a charity must keep adequate [books and records](#) in Canada. The CRA strongly recommends that books and records be kept in either French or English. [\[Footnote 29\]](#)

88. The books and records must allow the CRA to verify that the charity's funds are being spent on its own activities, or on gifts to qualified donees, and that the charity is exercising enough direction and control over the use of its resources. The books and records must have enough information to allow the CRA to determine if the charity is operating in accordance with all the provisions of the Act. [\[Footnote 30\]](#)

89. A charity that fails to keep adequate books and records may be subject to various [sanctions](#) under the Act, including having its registration [revoked](#). [\[Footnote 31\]](#)

90. A charity operating abroad with an intermediary should get timely financial and progress reports. These reports must be supported with documents verifying the expenditures reported.

Difficulty getting records

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91. War, famine, natural disaster, lack of access to telephones or the Internet, or other conditions may make it difficult or impossible to get reports and records. A charity is still expected to be able to show it has made all reasonable efforts to get reports and records from staff and intermediaries to support its expenditures.

92. Even if a charity can show why it has limited access to reports and records, it still has to show when, how, and in what amounts funds were transferred to staff or intermediaries. The staff or intermediaries should also be able to show when, how, and where the charity's funds and resources were used.

Agents

93. A charity carrying on its own activities through an agent should make sure that its funds and property are kept separately from those of the agent. The agent should also keep separate books and records for funds received from, and expenditures made on behalf of, the charity.

94. The agent's records should also include progress reports with details on exactly how the agent is carrying on instructions issued by the charity. Copies of these books and records and, where possible, original source documentation should be forwarded regularly to the charity.

95. If local laws prohibit the transfer of source documentation to Canada, copies should be forwarded regularly to the charity, and the original documentation should be available for inspection at the place the books and records are kept. Upon completion of each activity, the charity should get a final comprehensive report detailing all the work that has been done on its behalf, along with supporting documentary evidence, such as invoices and receipts, as well as photographs and other documenting media.

Contractors

96. Charities that employ contractors should get regular financial and progress reports. The reports should show the amounts received from the charity and the expenses incurred in carrying on an activity. Upon completion of the activity, the charity should get a final comprehensive report detailing all the work that has been done on its behalf, along with supporting documentary evidence, such as invoices, receipts, and photographs.

Joint ventures

97. In the case of joint ventures, the charity should make sure it regularly receives full and complete financial information relating to the **entire** venture. It should also have enough documentation to show how its contribution fits into the overall undertaking, and how its resources have been devoted to activities that further its charitable purposes.

Foreign activities and a charity's disbursement quota

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98. Each year, a charity has to meet a spending requirement, or disbursement quota. A charity meets its disbursement quota by using its resources on its charitable activities or by making gifts to qualified donees. These amounts are separate from spending on administration, fundraising, and other items that do not directly accomplish a charitable purpose. This spending requirement applies regardless of where the charity is carrying on its own activities.

99. Amounts considered spent on charitable activities include, but are not limited to,:

- transfers of goods and services to provide eligible beneficiaries with charitable relief;

- payments for buying goods and services to provide eligible beneficiaries with charitable relief;
- buying or maintaining facilities, equipment, and other items used directly in the charity's charitable activities;
- fees, licences, or memberships that are necessary to deliver the charity's charitable activities; and
- salaries paid to those that directly provide charitable relief to eligible beneficiaries.

100. If a charity is working jointly with other organizations, it must account for all charitable and other expenditures it incurs when carrying on an activity.

Example

A Canadian university that is a charity contributes \$10,000 annually to an international archaeological project operated as a joint venture with several educational institutions. The venture devotes 90% of its resources directly on charitable research work and expeditions, with the remainder covering administrative costs. The university can therefore apply \$9,000 towards meeting its disbursement quota.

Appendix A – Applications for charitable registration to provide disaster relief

101. Following a natural disaster such as an earthquake or flood, many organizations want to provide immediate help and relief to those affected. As a result, the CRA often receives applications from such organizations seeking to be registered under the Act.

102. Since the situation is usually urgent, priority is typically assigned to these files. However, before they can be registered as charities, disaster relief organizations must still meet the same requirements as all other applicants. Applicants must be able to show how they will make sure that they are carrying on their own activities, as well as how they will direct and control the use of their resources.

103. In the immediate aftermath of a disaster, an affected area can be quite volatile and dangerous. Also, authorities may give access to the area only to well established, experienced relief organizations. Rather than establishing a new charity to respond to a disaster, it is often faster and more effective to support existing qualified donees that have experience, resources, and infrastructure already in place to respond to disasters.

104. If you have more questions, please [contact us](#).

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Appendix B – Capacity building

105. Broadly speaking, capacity building is helping a community develop the abilities and resources necessary to solve that community's problems.

106. Charities that engage in capacity building will typically do more than transfer goods to a community. For instance, the charities would work with the people of the community as equal partners to develop skills, knowledge, and resources to find and implement community solutions to problems.

107. One of the principles behind capacity building is that simply giving money to a region, without providing ongoing support, rarely leads to long-term solutions. Capacity building therefore tends to emphasize long-term relationships and learning for both parties. Recipients of help can develop new abilities and new solutions to problems, while charities can learn how best to deliver the help they seek to provide.

Example

A charity registered to relieve poverty decides it wants to help an impoverished farming community. Instead of (or in addition to) raising money, buying food, and then sending the food to the people in need, the charity decides to help them develop and improve their agricultural practices.

The charity does not only buy seeds and tools that may or may not be suitable for the area and then ship them to the community. Instead, it meets with the community to learn more about the area, farming practices that have worked and those that have not worked in the past, the social structure of the community, its infrastructure requirements, and so on.

After the charity has this information, the charity arranges for appropriate training and resources to be delivered to the community. But the charity also helps to develop the community's administrative infrastructure, and to seek out new partners who can help the community.

108. Charities involved in capacity building may need to help resolve several challenges at once, in a holistic fashion, rather than simply dealing with one of a community's problems in isolation. For example, a charity trying to relieve poverty with micro-loans [Footnote 32] might discover that the residents of a particular community require improved health care, and to learn basic business skills, before they can benefit from the micro-loans.

109. Before beginning capacity building programs, charities should try to make sure that their objects and activities as registered with the CRA allow them to carry out whatever activities they anticipate will be required. If a charity finds itself needing to undertake activities other than those registered with the CRA, the charity will need to contact the Charities Directorate to have its objects amended or its activities updated.

Appendix C – Additional guidelines for joint ventures

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110. The following are the types of factors the CRA looks for when determining whether a charity carries out its own activities and exercises ongoing control in joint ventures:

- presence of members of the Canadian charity on the governing body of the joint venture;
- presence in the field of members of the Canadian charity;
- joint control by the Canadian charity over the hiring and firing of personnel involved in the venture;
- joint ownership by the Canadian charity of foreign assets and property;
- input by the Canadian charity into the venture's initiation and follow-through, including the charity's ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
- signature of the Canadian charity on loans, contracts, and other agreements arising from the venture;
- review and approval of the venture's budget by the Canadian charity, availability of an independent audit of the venture, and the option to discontinue funding;
- authorship of such things as procedures manuals, training guides, and standards of conduct by the Canadian charity; and
- on-site identification of the venture as being the work, at least in part, of the Canadian charity.

Appendix D – Transferring capital property to non-qualified donees

111. Charities may occasionally seek to transfer ownership of real or capital property, for

example—land or buildings, to a non-qualified donee in a foreign country. These types of transfers can be particularly problematic because land and buildings tend to have a relatively high value, and can also be used for a wide variety of purposes, including those that are not charitable.

112. For example, a charity might help build a school in a foreign country. If it transfers ownership of the school building to a local group or individual, the new owner might sell it for a personal profit, or the government might assume ownership for use as a military training facility.

113. However, charities may find themselves in certain situations where owning real or capital property is impractical or impossible. Some countries, for example, do not permit foreign ownership of real property. In such circumstances, a title-holding arrangement with a local charity or government body might be possible, as long as the arrangement clearly stipulates that the property will be used only for charitable purposes.

114. Similarly, charities might be involved in development work, which usually takes the form of projects designed to relieve poverty by helping a particular community to become self-sufficient. This may include capital projects, such as bridges, wharves, schools, and hospital buildings.

115. A charity involved in development work may want to construct these types of facilities, but not own or operate them. Turning over the facilities to a local organization may be integral to carrying out the charitable activity.

116. Charities should make all reasonable efforts to make sure any facilities constructed as part of development work are not misused. Depending on the circumstances, it may be possible to turn the property over to a government body, municipality, or non-profit organization established to provide benefits to the community at large.

117. The charity should get reasonable assurances, which it must document and keep in its records, that the property will, at least for the duration of its expected useful life, be used for the benefit of the community as a whole.

118. The CRA recognizes that in certain non-developmental situations it may be necessary for a charity to transfer capital or real property to individuals or organizations outside the country to achieve its charitable purpose.

119. Wherever a charity wants to dispose of real property abroad (other than by a gift to a qualified donee, or a sale at fair market value), the CRA strongly recommends that the charity consult with the Charities Directorate.

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Appendix E – Checklist of the elements of a written agreement

120. Following is a checklist intended to help charities in making sure that any agreements they create contain the minimum elements necessary to meet the requirements of the Act. However, charities should remember that their relationships with their intermediaries is not only judged on how well their agreements are written, but more importantly on their ability to show that they direct and control their activities through active, ongoing, sustained relationships.

121. Even when a charity and intermediary create an agreement that contains the elements contained in the checklist, either the charity or the CRA can refer to, and rely on, other relevant evidence to establish the nature of the relationship between the parties to the arrangement.

Checklist of the basic elements of a written agreement

Elements	Included
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Are the legal names and physical addresses of all parties provided?	
Is a clear, complete, and detailed description of the activities to be carried out by the intermediary provided? Do the activities further the charity's purposes?	
Is (are) the location(s) where the activity will be carried on clearly stated (for example—physical address, town, or city)?	
Are all the time frames and deadlines set out?	
Does the intermediary have to provide regular written financial and progress reports, supported by documentary evidence, to the charity to prove the receipt and disbursement of funds and the progress of the activity?	
Does the charity have the right to inspect the activity (and the related books and records) on reasonably short notice?	
Is there a provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources at the charity's discretion? (Funding includes the transfer of all resources.)	
Does the charity have ongoing instructions in place?	
For agency agreements, is there provision for the charity's funds to be segregated from those of the intermediary, and the intermediary to keep separate books and records? [Footnote 33]	
Where any of the charity's funds or property are to be used in acquiring, constructing, or improving any immovable property, will the title of the property vest in the name of the charity? If not, is there: <ul style="list-style-type: none"> • a provision indicating how the legal title to that property will be held (in the name of a local charity or a government agency, municipality, or non profit organization established to provide benefits to the community at large); or • a provision for the intermediary to get reasonable assurances from the property holder, owner, or landlord (as the case may be) that the property will continue to be used for charitable purposes for the benefit of the public? 	
For joint ventures, are there provisions that allow the charity to be an active partner, exercising a proportionate degree of direction and control in the venture as a whole? Also, are there assurances that: <ul style="list-style-type: none"> • the charity's resources are devoted to activities that further its purposes; and • the charity maintains and receives financial statements and records for the whole project on a regular basis? 	
Are an effective date and adequate termination provisions established?	
Have all parties signed and dated the agreement?	

Footnotes

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Footnote 1: *The Income Tax Act R.S.C. 1985, C 1, (5th Supp.), at paragraph 149.1(1)*

Footnote 2: *Ibid*, at paragraph 149.1(6)

Footnote 3: [The Canadian Committee for the Tel Aviv Foundation v. Canada \(2002 FCA 72\) 2002-03-01](#); [Canadian Magen David Adom for Israel v. Canada \(Minister of National Revenue\) \(2002 FCA 323\) 2002-09-13](#); [Bayit Lepletot v. Canada \(Minister of National Revenue\) \(2006 FCA 128\) 2006-03-28](#)

Footnote 4: *Bayit*, supra note 3, at paragraph 5

Footnote 5: *The Act*, supra note 1

Footnote 6: *Everywoman's Health Care Society (1988) v. Canada (Minister of National Revenue - M.N.R.) (C.A.)*, [1992] 2 F.C. 52, at paragraph 14

Footnote 7: *Camille and Henry Dreyfus Foundation, Inc. v. Inland Revenue Commissioners*[1955] 3 All E.R.97, at page 717

Footnote 8: See [Summary Policy CSP - P13, Public Policy](#) and *Everywoman's Health Care Society*, supra note 6, at paragraph 14

Footnote 9: Part VI of the *Anti-terrorism Act*, S.C. 2001, c. 41

Footnote 10: *Criminal Code* R.S., c. C-34, s. 1

Footnote 11: The phrase "disbursement of funds to qualified donees" in subsection 149.1(1) of the *Act* ("charitable purposes") is intended to include the transfer of any property in kind." See [Policy Commentary CPC-014, Disbursement of Funds to a Qualified Donee](#)

Footnote 12: *Tel Aviv*, supra note 3, at paragraph 40

Footnote 13: See [Summary Policy CSP-R13, Resources](#)

Footnote 14: *Bayit*, supra note 3, at paragraph 5

Footnote 15: "Although it is true that joint ministry agreements are useful tools in many situations, **they should never be seen as a simple method for transferring money to non-qualified donees.** (...) We would point out that where the funds of several organizations are commingled, this will not necessarily be legitimized by the adoption of a joint ministry agreement." See [CIL - 1997 – 003](#).

Footnote 16: *The Act*, supra note 1, at paragraph 149.1(1)

Footnote 17: *Ibid*, at paragraph 149.1(6)

Footnote 18: *CAMDI*, supra note 3, at paragraph 66, and *Tel Aviv*, supra note 3, at paragraph 40

Footnote 19: *Tel Aviv*, supra note 3, at paragraph 30

Footnote 20: *CAMDI*, supra note 3, at paragraph 71

Footnote 21: *Ibid*, at paragraph 74

Footnote 22: *Ibid*, at paragraph 71

Footnote 23: *Tel Aviv*, supra note 3, at paragraph 40

Footnote 24: *CAMDI*, supra note 3, at paragraph 66

Footnote 25: *Tel Aviv* supra note 3, at paragraph 30

Footnote 26: [Guide RC4143, Registered Charities: Community Economic Development Programs](#)

Footnote 27: *Tel Aviv*, supra note 3, at paragraphs 30 and 31

Footnote 28: *Bayit*, supra note 3, at paragraph 6

Footnote 29: Charities must maintain records in either official language if they are required to file a GST/HST Return or have made an application for a Rebate. Please refer to the Excise Tax Act 286(1) R.S., 1985, c. E-15, and 15.1, and [General Requirements for Books and Records](#).

Footnote 30: *Tel Aviv*, supra note 3, at paragraphs 41 and 42

Footnote 31: *The Act*, supra note 1, at paragraph 168(1)(e)

Footnote 32: For more information on micro-loans, please see [Guide RC4143, Registered Charities: Community Economic Development Programs](#).

Footnote 33: [CIL - 1997 – 003](#).

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