

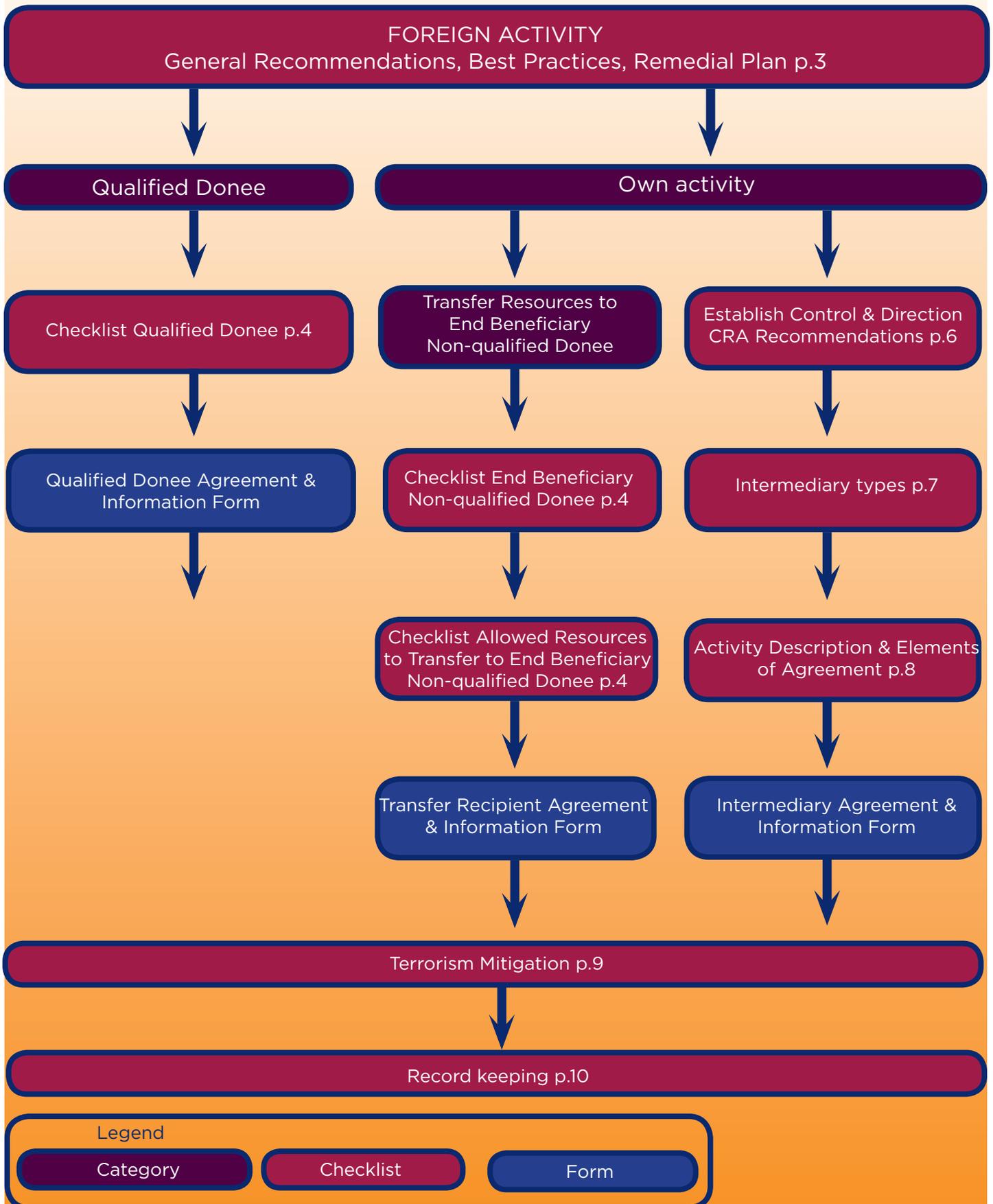
CRA COMPLIANCE FOREIGN ACTIVITIES CANADIAN CHARITY

Interpreted from:

[Guidance document](#)
[Canadian registered charities carrying out activities outside Canada](#)

Flow Chart

COMPLIANCE FOREIGN ACTIVITIES CANADIAN CHARITY



ORGANIZATIONAL STRUCTURE RECOMMENDATION

When supporting foreign activities:

Name a board member responsible for CRA compliance

Have key staff responsible for compliance activities trained to procedures

PROJECT BEST PRACTICES

Create project summary file to include basic information: identities, contacts, Board instructions, outline of how project will be directed and controlled by organization (Page 6), and a written agreement containing disbursement conditions for each payment

Assemble CRA compliance documents, including correspondence/monitoring reports and Board minutes of discussions/decisions/instructions, translate to English or French and keep accessible. Identify all documents needed to demonstrate compliance with agreement and CRA.

Be aware of local laws in area of activity

Have Board, at outset, direct how project will comply with CRA and under which rules and relationships (qualified donee, own activity direct control, transfer assets direct to end beneficiary etc.), Particularly outline how it will meet test for direction and control (page 6). Have project files clearly identify this.

Attach a CRA compliance document dated, at time of disbursement, to all disbursement records/stubs indicating conditions of payment, project progress, and record of compliance with agreement

REMEDIAL - (Pre-Audit Plan)

Identify projects where resources only transferred to qualified donee (page 4)
Note: some files identified as Intermediary/agent may actually qualify

Identify projects where qualified resources delivered to end beneficiary who is non-qualified donee (page 5)

Identify remaining projects that require proof of control and direction

Identify list of missing required documentation to establish control and direction for these projects

Search for additional documentation within organization that may demonstrate compliance

For remaining projects, seek evidence from beneficiary of transferred resources of compliance

Advise CRA of newly adopted practices to prevent non-compliance, steps taken to remediate, and where possible, proof that any non-compliance did not result in a material difference.

Qualified Donee

Qualified Donees are:

- A registered charity (including a registered national arts service organization)
- A registered Canadian amateur athletic association
- A registered housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged
- A registered Canadian municipality
- A registered municipal or public body performing a function of government in Canada
- A registered university outside Canada, the student body of which ordinarily includes students from Canada
- A registered charitable organization outside Canada to which Her Majesty in right of Canada has made a gift
- Her Majesty in right of Canada, a province, or a territory the United Nations and its agencies. (Her Majesty in right of Canada, a province, or a territory, and the United Nations and its agencies are qualified donees that do not have to be registered to be recognized as such.)

Under the Income Tax 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, registered universities outside Canada, the United Nations and its agencies, and [registered foreign charities that have received a gift from Her Majesty in right of Canada](#).

Global Affairs Canada works in co-operation with a number of voluntary sector organizations. Although registered charities may find it useful to support 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.

Verify not Illegal Conduit

For this guidance, a conduit is a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief. Acting as a conduit violates the Income Tax Act, and could jeopardize a charity's registered status e.g. two organizations sign a written agreement, and the non-qualified donee commits to use the Canadian charity's money only for purposes considered charitable in Canada. To avoid being a conduit, the Canadian charity must have demonstrable control over the use of its money, so that the carrying out of that activity by the intermediary amounts to the charity carrying on its own activity itself.

Transfer of resources to non-qualified Donee

End Beneficiary Non-qualified Donee

A transfer of resources to a non-qualified donee may in limited circumstances be considered own activities:

A charity does not have to adopt measures to direct and control use of resources when to proper beneficiaries of charitable activities such as school books to a school or writing instruments to impoverished students

- Both parties understand and agree the property is to be used only for the specified charitable activities [need contract].
- Based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities [need report on file].

Allowable Resources that may be Transferred to Non-qualified Donee (end beneficiary)

- The nature of the property being transferred is such that it can reasonably be used only for charitable purposes (for example, medical supplies like antibiotics and instruments, which will likely only be used to treat the sick, or school supplies like textbooks, which will likely only be used to advance education).

Note:

- Transfers of money are not acceptable, and always require ongoing direction and control [need records on file].
- A charity cannot transfer any property it knows or ought to know will be used for non charitable purposes
- The transfer of real property is complex

Own Activities

Own activities may be delivered by the organization directly using (employees, volunteers or directors) or through an intermediary (company, non-profit, partnership with others).

Direction and Control Includes:

- How the activity will be carried out
- The activity's overall goals
- The area or region where the activity is carried out
- Who benefits from the activity
- What goods and services the charity's money will buy
- When the activity will begin and end

The charity must have the ability to intervene in any decision. A charity may delegate authority to decide: Local vendor, staff, locating specific potential beneficiaries, maintaining buildings for the activities. However, the intermediary must report back on any decisions made with ability to veto.

Intermediary Requirements

- The intermediary must have the capacity (e.g. personnel, experience, or equipment) to carry out the charity's activity.
- There must be a strong expectation that the intermediary will use the charity's resources as directed by the charity (may be beneficiary provided it uses all resources only for its own qualified activities and not act as conduit).
- Must be Charitable activity (If puts anyone at risk this may make it fail public benefit test of a charity) - show awareness of the level of risk and net public benefit - Likelihood of harm, urgency of need, experience of charity or applicant operating with significant risk, proposed measures to mitigate risk.

Checklist CRA Recommendations for direct and control intermediaries

- A written agreement with the intermediary: [In situations where the money spent on a one-time activity is \$1,000 or less, other forms of communication might be used to show direction and control e.g. confirmation of delivery of faxed or written instructions, records of bank transfers, and minutes of meetings that show decisions made and instructions sent. In turn, the beneficiary could send back things such as receipts and invoices, written reports, photographs, and confirmation of purchases.] See Elements of Agreement page 8.
- Communicate a clear, complete, and detailed description of the activity to the intermediary. Include in Agreement. See project description page 8.
- Monitor and supervise the activity: Show real, ongoing, active relationship with intermediary.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis Ongoing instruction includes additional instructions or directions to an intermediary: Minutes of meetings or other written records of decision, letters, emails, or faxes.
- Arrange for the intermediary to keep the charity's funds separate, and to keep separate books and records. A transfer of funds should mean a separate bank account, withdrawals should be authorized by the charity or on meeting benchmarks. If it is impossible to keep funds separate, then a charity must provide other evidence to distinguish its own resources and activities from the intermediary's, and the charity's direction and control over them.
- Make periodic transfers of resources, based on demonstrated performance. Making periodic transfers is the process of sending a charity's resources to an intermediary in installments, based on demonstrated performance, rather than in one transfer. Ongoing support be based on benchmarks, progress reports, requirements being filled.

Own Activities - Types of Intermediaries

Agent

An agent is an intermediary to carry out activities on a charity's behalf, typically, when the charity cannot send its staff to a region to carry out an activity.

Joint ventures

The charity may pool their resources with other participants to accomplish a commonly-agreed upon goal under the terms of a joint venture agreement. *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 for the charity.*

Typically the charity has members on the governing board for the entire project, letting the charity make decisions on the use of its resources. A charity must establish that its share of authority and responsibility allows the charity to dictate, and account for, how its resources are used. *Otherwise, it may have difficulty establishing that it is carrying on its own activities.* Considerations include:

- Presence of members of the charity on the governing body of the joint venture
- Presence of the charity's personnel in the field
- Joint control by the charity over hiring and firing of personnel involved in the venture
- Joint ownership by the charity of foreign assets and property
- Input by the charity into the venture's initiation and follow-through, including the charity's ability to direct or modify the venture and to establish deadlines/benchmarks
- Signature of the charity on loans, contracts, and other agreements
- Review and approval of the venture's budget by the charity, availability of an independent audit of the venture, and the option to discontinue funding when appropriate
- Authorship by the charity of such things as procedures manuals, training guides, and standards of conduct
- On-site identification of the venture as being the work, at least in part, of the Canadian charity

For joint ventures, the charity should make sure that it regularly receives full and complete financial information for the whole 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.

Co-operative participants

A co-operative participant is an organization that works side-by-side with a registered charity 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.

Contractors

A contractor is an organization or individual that a charity hires to provide goods and/or services. For example, a charity might hire a for-profit company to dig a well in a foreign country for people lacking clean drinking water. The charity and the company draft and sign a contract that outlines all the terms and conditions of their relationship. The contract is the instrument through which the charity directs and controls the use of its resources, and it monitors the use of its resources as the company carries out the activity.

Elements of Agreement

- Exact legal names and physical addresses of all parties
- A clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the charity's purposes
- The location(s) where the activity will be carried on (e.g. physical address, town or city)
- All time frames and deadlines
- Any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity
- A statement of the right to inspect the activity, and the related books and records, on reasonably short notice
- Provision for funding in installments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources)
- Provision for issuing ongoing instructions as required
- Provision for the charity's funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records
- If any of the charity's funds or property are to be used in the acquisition, construction, or improvement of immovable property, the title of the property will vest in the name of the charity. If not, there will be provision indicating how legal title to that property shall be held (in the name of a local charity, government agency, municipality, or non-profit organization established to provide benefits to the community at large)
- 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, provisions that enable the charity to be an active partner, with a proportionate degree of direction and control in the venture as a whole, as well as assurances of the following:
 - the charity's resources are devoted to activities that further its purposes
 - the charity maintains and regularly receives financial statements and records for the project
 - effective date and termination provisions
 - signature of all parties and the date

Charity should record due diligence verifying representations.

Activity Description

- 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 time-lines
- A description of the deliverables, milestones, and performance benchmarks that are measured and reported
- The specific details concerning how the charity monitors the activity, the use of its resources, and the intermediary carrying on the activity
- The mechanisms that enable the charity to modify the nature or scope of the activity, including discontinuance of the activity if the situation requires (for example, the intermediary begins misusing funds)
- 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)
- Any contributions that other organizations or bodies are expected to make to the activity

Evidence of Monitoring Includes

- Progress reports
- Receipts for expenses and financial statements
- Informal communication via telephone or email
- Photographs
- Audit reports
- On-site inspections by the charity's staff members

Terrorism Mitigation

Organization should meet elements of checklist – complete for each activity and retain copy –
Some are Enterprise specific some apply to Charity itself

1. Do you know about the individuals and entities associated with terrorism, which are listed in Canada under the United Nations Act and the Criminal Code? Are you aware of the Criminal Code and the Charities Registration (Security Information) Act provisions on financing and supporting terrorism—and the consequences of breaching the provisions? [Enterprise specific: list those operating in each theatre of activity]
2. Do you have a good understanding of the background and affiliations of your board members, employees, fundraisers, and volunteers? [Charity and Enterprise Specific: Gain and hold list report on organization AND intermediary for each enterprise]
3. Have you read the CRA guidance about keeping adequate books and records, activities, engaging in allowable activities, operating outside Canada, and charities in the international context? [Charity: make sure all relevant people have read compliance document including anti-terrorism requirement document and a record of this is kept on file]
4. Do you have appropriate, sound, internal financial and other oversight and verification controls—for example, appropriate delegations and separations of authority over the collection, handling, and depositing of cash and the issuing of receipts? [Charity specific: Determine requirement for charity and keep record of relevant people having read it]
5. Do you transfer money using normal banking mechanisms, wherever possible? When it is not, do you use reputable alternative systems, and have strong additional controls and audit trails to protect your charity's funds and show how and when they were used? [Charity and Enterprise specific: Charity have bookkeeper certify compliance, and have intermediary supply details to charity considering requirement of direction and control – (not sufficient to have certification of intermediary alone)]
6. Do you know who uses your facilities and for what purpose—for example, your office or meeting space, name, bank account, credit cards, website, computer system, telephone or fax—what they are saying, and what materials they are distributing or leaving behind? [Charity certify, Intermediary provide document listing details for each]
7. Do you try to find out who else might be supporting a person or cause that you are endorsing in public statements, and who uses your name as a supporter? [Enterprise specific document report, Every x months initiate search and retain record]
8. Do you know where your donations and other support really come from? [Charity and Enterprise specific: Document and retain report from intermediary if they have alternate support, who they are from and the conditions of that support]
9. Do you know who has ultimate control over the project that your charity's money and resources are benefiting, and what the money and resources are used for, including after the particular project is finished? [Enterprise specific: Document and file report]
10. Do you know your partners in delivering the work you are doing, and their affiliations to other organizations? [Enterprise specific: Document and file report including all project stakeholders]
11. Do you have clear written agreements with agents/contractors/other partners, in Canada and abroad, covering what activities will be undertaken and how they will be monitored and accounted for? Do you check that the agreements are being followed? [Enterprise specific: retain contract, and prior to launch, have board determine periodic monitoring activity]

Produce questionnaire for intermediary to complete that will be retained covering requirements listed above. Ensure that all within charity are aware of requirement to report suspicious activity: Anyone who suspects links to terrorism should report them to the RCMP's National Security Information Line, 1-800-420-5805

Have each employee sign any understanding of requirements in this and other parts of compliance document. Have intermediary sign requirement of reporting to charity suspicious activity.

Record keeping

Under the *Income Tax Act*, a charity must keep adequate books and records in Canada. The CRA recommends that books and records be kept in either French or English.

Books and records must enable the CRA to check the following:

- Whether a charity's funds are being spent on its own activities or on gifts to qualified donees
- Whether the charity is directing and controlling the use of its resources
- Whether there are grounds to revoke the charity's status

Getting original source documents may not be possible or practical. If so, a charity should be able to explain why it cannot get them, and make all reasonable efforts to get copies and/or reports and records from staff and intermediaries to support its expenditures, and show that it has made such efforts. The charity will also have to show when, how, and in what amounts funds were transferred.

A charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities. Exceptions: following transfer of resources to Qualified Donee or, under some limited circumstances, following transfer of allowable resources to a Non-Qualified Donee who is the proper end beneficiary.

A charity might delegate the authority to make the following kinds of decisions: Local vendor, staff, locating specific potential beneficiaries, maintaining buildings for the charity's activities. However the intermediary must report back on any decisions made with ability to veto.

Disbursement quota

All the amounts a charity spends on directly carrying out its charitable activities will go towards meeting its disbursement quota, whether the activities were carried out in Canada or in a foreign country.