



BLUMBERGS' CANADIAN REGISTERED CHARITY
FOREIGN ACTIVITY LEGAL CHECKLIST 2017

**LEGAL CHECKLIST FOR CANADIAN CHARITIES WORKING WITH
FOREIGN INTERMEDIARIES*****

*** Qualified donees are organizations that are allowed to issue official donation receipts under the Income Tax Act (Canada). *An "Intermediary" is defined as any organization/entity that is NOT a Qualified Donee that a Charity works with to carry out its own activities. Examples include, for-profit corporations, non-profit corporations that are not Canadian registered charities, foreign charities, individuals, celebrities.*

Over 5000 Canadian charities conduct foreign activities and they spend over \$4 billion per year. Foreign activities by Canadian charities are allowed, even encouraged through generous tax incentives, but must be done with a legal framework.

1. PRE-CONSIDERATIONS	YES	NO	N/A	COMMENTS
<p>→ The Charity has determined that it will be working with an Intermediary to conduct its activities after having considered/explored alternative options available for the proposed activities, such as:</p> <ul style="list-style-type: none"> ✓ Using the Charity’s own staff/volunteers; ✓ Providing a gift to or working with another Qualified Donee (“Qualified Donees” include the following): <ul style="list-style-type: none"> ▪ 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 that is prescribed to be a university, 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 ✓ Arranging for another organization (for-profit/non-profit/foreign charity) to conduct and pay for the activities rather than the Charity such as an affiliated entity or international federation 				

2. LEGAL OBJECTS	YES	NO	N/A	COMMENTS
<p>→ The Charity has determined that the proposed activities with the Intermediary are allowable within the scope of the Charity’s existing legal objects that have been approved by the Canada Revenue Agency.</p>				
3. RISK ASSESSMENT	YES	NO	N/A	COMMENTS
<p>→ The Charity has evaluated the potential risk versus the benefit of the proposed activities with the Intermediary by considering:</p> <ul style="list-style-type: none">✓ The likelihood and nature of harm to anyone delivering the activity, receiving the benefit, or otherwise affected;✓ The urgency of the need for the charitable assistance;✓ The experience of the Charity or applicant operating in situations with significant risk;✓ The Charity’s proposed measures to mitigate any significant risks. <p>→ The Charity has reviewed the following checklist from the Canada Revenue Agency for avoiding terrorist abuse and has implemented measures to protect the Charity against terrorist abuse:</p> <ul style="list-style-type: none">✓ 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				

<p>terrorism—and the consequences of breaching the provisions?</p> <ul style="list-style-type: none">✓ Do you have a good understanding of the background and affiliations of your board members, employees, fundraisers, and volunteers?✓ 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?✓ 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?✓ 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?✓ 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?✓ 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?✓ Do you know where your donations and other support really come from?✓ 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?✓ Do you know your partners in delivering the work you are doing, and their affiliations to other organizations?✓ 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?				
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<p>→ The Charity has conducted the appropriate due diligence on the Intermediary to determine the following:</p> <ul style="list-style-type: none"> ✓ The Intermediary has the capacity (personnel, experience or equipment) to carry out the Charity’s activities; ✓ The Intermediary will use the Charity’s resources appropriately and as directed by the Charity. 				
<p>4. LOCAL ISSUES</p>	<p>YES</p>	<p>NO</p>	<p>N/A</p>	<p>COMMENTS</p>
<p>→ The Charity has considered the enforcement and applicability of local laws before carrying out activities with the Intermediary in another jurisdiction/country, such as:</p> <ul style="list-style-type: none"> ✓ Registration requirements; ✓ Ongoing filing requirements; ✓ Bookkeeping and accounting requirements; ✓ Restrictions on certain occupations/professionals practicing; ✓ Foreign currency restrictions/sanctions/import tariffs and duties; ✓ Restrictions on ownership of land; ✓ Restrictions on activities; ✓ Local human resource requirements including payroll taxes; ✓ Wind down or closure requirements 				

5. PROPOSED STRUCTURE OF ARRANGEMENT	YES	NO	N/A	COMMENTS
<p>→ The Charity has determined that it will conduct the proposed activities with the Intermediary through one of the following structured arrangements:</p> <ul style="list-style-type: none">✓ <u>Contractor</u>: the Charity will hire the Intermediary to provides goods and/or services as a contractor. This is the most common arrangement. ✓ <u>Agent</u>: the Intermediary will carry out specific activities on behalf of the Charity as an agent of the Charity. ✓ <u>Joint venture participant</u>: the Charity will work with the Intermediary by pooling their resources in order to accomplish a commonly-agreed upon goal/activity. The Charity has ensured that the Joint Venture arrangement demonstrates the following:<ul style="list-style-type: none">▪ presence of members of the Charity on the governing body of the joint venture▪ presence in the field of members of the Charity▪ joint control by the Charity over the 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 or other performance benchmarks▪ signature of the Charity on loans, contracts, and other agreements arising from the venture▪ 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				

<ul style="list-style-type: none"> ▪ 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 Charity ▪ evidence that the Charity is receiving complete financial information for the whole venture on a regular basis ▪ documentation to show how the Charity’s contribution fits into the overall undertaking, and how the Charity’s resources have been devoted to activities that further its charitable purposes. <p>✓ Co-operative Participant: the Charity will work side by side with the Intermediary to complete a project and take on responsibility for different parts of the proposed activities.</p>				
<p>6. ENSURING PROPER DIRECTION AND CONTROL</p>	<p>YES</p>	<p>NO</p>	<p>N/A</p>	<p>COMMENTS</p>
<p>➔ The Charity has implemented the following measures of control to demonstrate direction and control when providing funds/resources to an Intermediary:</p> <ul style="list-style-type: none"> ✓ Creation and implementation of a written agreement with the Intermediary which includes all necessary CRA elements below: <ul style="list-style-type: none"> ▪ 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 (for example - 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 				

<p>of the activity</p> <ul style="list-style-type: none">▪ a statement of the right to inspect the activity, and the related books and records, on reasonably short notice▪ provision for funding in instalments 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 showing how legal title to that property is held by a qualified donee▪ 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:<ul style="list-style-type: none">▪ the Charity's resources are devoted to activities that further its purposes▪ the Charity maintains and receives financial statements and records for the entire project on a regular basis▪ effective date and termination provisions▪ signature of all parties, and the date <p>✓ Creation and communication of a clear, complete and detailed description of the proposed activities (which is discrete and separate from existing projects of the Intermediary), which forms part of the written agreement;</p> <p>✓ Ongoing monitoring and supervision of the activities by receiving timely and accurate reports from the Intermediary;</p>				
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<ul style="list-style-type: none"> ✓ Providing clear, complete and detailed ongoing instruction/direction to the Intermediary with respect to the activities; ✓ Providing periodic payments to the Intermediary based on demonstrated performance of the activities; ✓ Arranging for the Intermediary to keep the Charity's funds separate from its own and to keep separate books and records; ✓ Maintaining proper books and records with respect to the activities: <ul style="list-style-type: none"> ▪ Must be kept within Canada (at one of the Charity's address on file with CRA) ▪ Preferably in English or French ▪ Original source documents, if possible 				
<p>7. TRANSFERS OF CAPITAL PROPERTY</p>	<p>YES</p>	<p>NO</p>	<p>N/A</p>	<p>COMMENTS</p>
<p>→ The Charity has only transferred capital property to an Intermediary if the following allowable exceptions apply:</p> <ul style="list-style-type: none"> ✓ the country in which the Charity is operating does not permit foreign ownership of capital property; ✓ the capital property is being transferred only as part of a development project to relieve poverty by helping a community to become self-sufficient; ✓ the Charity can show that it has made every reasonable effort to gift the capital property to another Qualified Donee, and has made every reasonable effort to sell the capital property for its fair market value, but has not been successful. 				

<p>→ Before transferring capital property to the Intermediary, the Charity has ensured the following:</p> <ul style="list-style-type: none"> ✓ the Intermediary has a mandate that is consistent with ensuring the continued charitable use of the property ✓ the Charity has received documentation that the capital property will be used only for charitable purposes; ✓ the Charity has documented and been provided with reasonable assurances that the property will benefit the whole community. 				
8. REPORTING	YES	NO	N/A	COMMENTS
<p>→ The Charity has property reported any foreign activities using an Intermediary on the T3010 Registered Charity Information Return (and appropriate schedules).</p>				
9. OTHER LEGAL CONSIDERATIONS	YES	NO	N/A	COMMENTS
<p>→ The Charity has implemented measures and internal controls to protect charitable property from potential abuses such as money laundering, bribery, corruption and fraud.</p> <p>→ The Charity has considered any relevant donor restrictions and/or funder constraints when implementing activities.</p> <p>→ The Charity has considered the protection of valuable intellectual property (IP) of the Charity such as trademarks, copyrights,</p>				

<p>patents, and trade secrets in other countries.</p> <p>→ The Charity has obtained relevant insurance or required the Intermediary to obtain insurance for the proposed activities.</p>				
<p>10. RESOURCES FOR FOREIGN ACTIVITIES</p>	<p>YES</p>	<p>NO</p>	<p>N/A</p>	<p>COMMENTS</p>
<p>→ Have you reviewed CRA’s Guidance Canadian registered charities carrying out activities outside Canada</p> <p>→ Have you reviewed Mark Blumberg’s article Canadian Charities Conducting International Activities</p> <p>→ Which Canadian charities spent money on foreign activities in 2015 and how much did they spend?</p> <p>→ For a general checklist on registered charity compliance see Mark Blumberg’s checklist</p>				

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