

THE MUTTART FOUNDATION

Consultation on Community Economic Development

28 October - 31 October 2025

Ottawa, Ontario

A Summary of the Discussion

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This report is a summary of one of a series of periodic discussions convened by the Muttart Foundation on voluntary sector regulatory issues. The session was held to promote an exchange of ideas and to develop a fuller understanding of the concerns of both sector groups and government regulators. Any remarks included in the report are intended to reflect the discussions. Written summaries of the presentations on international jurisdictions were provided by the international guests following the consultation and this content may vary slightly from the oral presentations. No undertakings or commitments from either regulators or sector participants are expected or made, notwithstanding any of the wording in the report.

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Day 1

ROUNDTABLE INTRODUCTIONS

Participants were asked to introduce themselves, indicate which organization they are affiliated with and identify one issue they feel should be discussed in the context of reviewing the guidance on community economic development (CED) and on program-related investments (PRIs).

Here are the issues, questions and observations made by the participants:

- How far can we move on CED when we don't have judicial guidance on the topic?
- How can we structure a social enterprise within a nonprofit?
- How do we consider the community context in the application of rules relating to CED?
- Much of the language in Canada is now focused on economics. There are huge funding pressures at the community level, funders are inundated, processes to respond to all of these demands are slowing down. Charities are looking to CED again as an option to diversify their funding sources.
- PRI guidance should be separate and apart from the CED guidance. Foundations want to use their investments to build greater impact. They want to do PRIs, but there is a general lack of knowledge about how PRIs work and how to use them.
- The context and the language used has evolved since the original guidance on CED was created. For example, the document talks about sheltered workshops for persons with disabilities. The document will therefore have to be reviewed to reflect the changing context and the terms now in use.
- The language is inter-related and undefined (for example, terms like social enterprise, social finance, CED, etc.).
- There is interest in ensuring good definitions, understanding the practice of CED and how to use PRIs. It would also be good to understand why CED is more prevalent in some areas of the country than others.
- There is not a lot of demand from qualified borrowers - they don't want debt, they want grants. There is a need for education about debt, and how debt can be managed.
- There may not be a big interest in CED but a lot of interest in PRIs. Investors and recipients want more guidance and more information.
- Need to look at PRI in terms of how it corresponds to the disbursement quota (DQ). There was interest in special treatment for PRIs in relation to the disbursement

- quota back in 2022.
- The CED term is not universal; some refer to local economic development, but that is seen as something that the government does to you when the term is used in Ireland.
- Need to look at the private benefit issue in CED; need to disentangle public and private benefit.
- Canada Revenue Agency (CRA) would like to know what is happening in communities and what the issues are around CED and PRIs.
- Some foundations have thought a lot about impact investments and others are trying to get their head around PRIs. Many foundations may not be aware of the existence of PRIs as an investment tool.
- There is interest in the idea that PRIs can be used as a catalyst and not as a sole source of funding, so that the organization becomes attractive to traditional investors.
- The term PRI comes from the U.S. It came out of a very different tax system.
- Some have witnessed how CED has lifted communities out of poverty in developing countries as well as in some regions and communities in Canada.
- What is the interplay between foundations moving to PRIs and support for operating charities?
- The guidance does not make it clear that people can build assets through community activity.
- There is a lack of financing to build the ecosystem that will allow CED to flourish. The need for convening is especially strong. There is no organized voice on the demand side for social finance.

Opening Comments – Mr. Bob Wyatt

A historical overview was provided on the development of the original guidance on CED back in 1996 and how the original consultation on CED led to consultations on a variety of other topics over the next 27 years, all of which have impacted regulation of the charitable sector.

At that time, The Muttart Foundation wanted to support CED activities, but this was not deemed a furthering a charitable purpose. CRA had very little room to engage in policy development in 1996, so The Muttart Foundation came forward with resources, working collaboratively with the Centre for Philanthropy and CRA. At this time the relationship between sector organizations and the CRA was not positive, but some saw this as an opportunity to reset that relationship.

In June 1997, the concept of convening sector representatives and the Charities Division began to take shape. The idea was to bring together sector stakeholders and CRA representatives to discuss a definition for CED, identify risk factors, what should be registered activity and what should not, as well as the current state of law and practice and how to marry the two. There would be no attribution of comments and no retribution from CRA for any comments made. Nineteen people came around a table, which ultimately led to adoption of CED as a charitable purpose and the development of related policies and guidance that were deemed to be innovative at that time. The meeting was a success although discussion was at times difficult. People from the sector were forthright in their views and ideas, some of which were challenged by CRA staff, but they ultimately managed to find common ground.

In the second part of his opening comments, Bob Wyatt presented the guiding principles for this meeting:

- This is not an opportunity for lobbying. Participants have been invited as individuals and not as representatives of organizations. This meeting is an opportunity for learning and sharing.
- There is no predetermined outcome, and this is not a decision-making body. The Muttart Foundation has no position and may or may not adopt a formal position afterwards. Facilitators are not given direction regarding any outcomes.
- We use the Chatham House Rule.
- Frank talk is encouraged. People are free to float trial balloons. Where the conversation ends up is anyone's guess.
- Take away what you will from this meeting. Speak and listen in equal measure.
- There may well be disagreements along the way, but we insist on the need to always respect the views of others. Healthy debate is encouraged. "You can aim a cannon at a person's idea but not so much a peashooter at the person expressing the idea."

PRESENTATIONS BY INTERNATIONAL GUESTS

The content of all four presentations can be found in the Appendix.

USA

After the presentation, participants raised the following questions and observations:

Q: Are there any issues with public/private benefit?

A: The IRS has always grappled with the questions of what is deemed improper private benefit. There is private benefit intertwined in achieving the mission of any organization. You have to come up with a definition of incidental private benefit. There is a need to balance private and public benefit, but there is no mathematical formula.

Q: Are there rules related to arm's length transactions so as to avoid self-dealing?

A: Self-dealing is prohibited.

Q: Can a foundation make a PRI in a nonprofit to provide jobs or services?

A: Yes, but a successful investment over time could cause it to be profitable and at some point, the act of retaining that investment ceases to stimulate the economy and ceases to achieve its charitable purpose. The profit becomes a source of income.

Economic development has a geographic boundary and the IRS wants to see the purpose of the PRI, the target clients or community, etc. Economic opportunity zones have been identified as in need of economic activity to create jobs.

Q: When is a PRI no longer a PRI for a foundation? When is a business too successful to remain a PRI?

A: It is quite rare for these initiatives to become successful to the point that they no longer advance a charitable purpose. There is no bright red line to indicate when it is time to exit. The foundation generally exits by itself.

England and Wales

After the presentation, participants raised the following questions and observations:

Q: What does the guidance say about private benefit?

A: Public benefit must outweigh private benefit. Investment can involve some private benefit, but it must be necessary, reasonable and in the best interest of the mission of the charity. It is up to the trustees to decide whether there is any private benefit.

- There was a question about community land trusts and whether they are a form of CED in Canada. The answer was yes, but it depends; need to look at context and circumstances.
- It should be noted that in England and Wales, there is no disbursement quota and no direction and control. The bigger question is whether the trustees have the power to make PRIs. In 2010, there was uncertainty about the tax implications and investment advisors were unsure.
- As of 2016, an act sets out the duties and powers of trustees. The term used is 'social investment' and it is more expansive than PRIs. Non-charitable expenditures are taxed and infrastructure investment is allowed. Accounting standards set guidance for PRIs as well; for example, PRIs are a separate line in the balance sheet. Charities that were doing PRIs already were given assurance that they were doing it right with this new legislation, but it did not necessarily entice new entrants.

Ireland

There were no questions from participants.

Australia

After the presentation, participants raised the following questions and observations.

- Are PRIs needed? What can be done with PRIs that can't be done without?
- Is there a formula to determine what is "excessive private benefit?"
- Are there principles that can be applied to determine appropriate vs. excessive private benefit?
- It is challenging to determine appropriate vs. excessive private benefit given that the "optics" can be quite different if dealing with a charity vs. a non-qualified donee?
- In the case of a PRI that is a loan, what comes out of the asset base for DQ calculation? The amount of the loan? The opportunity cost? How are opportunity costs calculated?
- What is appropriate (aligned with regulation) when it comes to opportunity costs?

PRESENTATION BY CRA

The representatives from the Canada Revenue Agency (CRA) provided the participants with a PowerPoint presentation for background purposes and to get their initial feedback. The presentation is in Appendix E.

After the presentation, participants raised the following questions and observations.

The third slide defines community economic development as follows:

- Community economic development (CED) activities are carried on to improve the economic opportunities and social conditions of a community.
- CED activities are charitable when they further (any) category of charitable purposes

Several questions were raised by participants:

Q: Definition says “improve economic opportunities AND social conditions.” Are both required?

A: No, the investment need only further a charitable purpose.

Q: “Furthers a charitable purpose” – which charitable purpose? The investor’s? Or the recipient’s?

A: “Furthers the charitable purpose of the recipient expending the funds.”

Slide 5 defines CED activities in areas of social and economic deprivation. It goes on to say:

“An area of social and economic deprivation is a geographic community affected by a disaster, or a community that displays high rates of:

- unemployment
- crime, including family violence
- health problems, including mental health issues, drug and alcohol addiction, or suicide
- children and youth at risk

Any private benefit assessment is made based on context.”

Q: Is the list (in bullets above) a closed list?

A: The list is provided as examples. Other elements could be considered.

Q: How is “private benefit” measured?

A: It is based on context – must be necessary, reasonable and proportionate to the public benefit.

Q: The definition of community is specific to geography. Is that deliberate? Would other types of community (affinity, age-specific, etc.) be considered?

A: This is explored further in this report (see pages 10 and 11).

Slide 6 speaks to CED activities that promote commerce or industry.

Comments:

- An example of determining public benefit would be artisans being supported by being linked to a purpose of “promotion of the arts” but could also improve the industry. If the industry is a professional body, the risk of private benefit would need to be considered.
- Another example provided was a standards program for gravel pits. This did benefit the industry but also had a public benefit to the environment.

The next section of the CRA presentation focused on PRIs (program related investments).

Comments and questions:

Q: Why does the CRA say that the investment must follow the INVESTOR'S charitable purpose vs. "a charitable purpose?" Does it matter?

A: Some of the existing policy related to this was drafted when only investments to "qualified donees" were permitted. The CRA now allows investments to "non-qualified donees"

Slide 13 speaks to PRIs and the disbursement quota (DQ)

Comments and questions:

- Private foundations have asked for the opportunity costs to be part of meeting the DQ; it currently only applies if you are NOT meeting the DQ.
- Including opportunity costs might mean that there is less money for granting to charities.
- The draft guidance for PRIs is simply that - draft form - the CRA is looking for input on the guidance.
- When considering social businesses – why wouldn't other groups, in addition to people with disabilities, be included (for example, those who have been involved in the judicial system, newcomers who don't speak English or French, etc.)?
- Should the guidance be revised to acknowledge the evolution of employment services? They are no longer directed solely at individuals. An example would be to build the capacity of the employer to incorporate people with autism into their workforce.
- There was a suggestion that principles might be more appropriate for this section (as opposed to specifics).
- An issue was raised in regard to intermediaries. If the role of the intermediary is to promote CED, would that be considered a charitable purpose?
- Traditional CED has been more "local." When considering geography, could we consider scale? Are there principles related to local participation, local benefit, etc.?
- Should a section of the guidance be specifically about Indigenous communities? Most/many are non-qualified donees. They are unsure about how to engage with philanthropy.
- What are we trying to achieve with PRIs? What will success look like once we have the guidance (tactics)? One of the policy objectives is to ensure that non-qualified donees can get support from investors. How will we know if this worked? Is there a shared understanding of success between the government, the investor and the recipient?
- We need to keep in mind that PRIs are high-risk investments. The regulator needs to have a certain amount of trust in the recipient. The key will be record-keeping and reporting.
- CRA understands that recipients may not have the resources for detailed and complicated reporting. It is trying to keep the reporting simple; it is a risk-based approach.
- The group needs to spend time reviewing the purpose of PRIs from the perspective of the regulator, the investor and the recipient. Can we arrive at a common understanding of purpose?
- The concern is not about charities taking capital and using it to achieve social or

environmental outcomes; it is about potential bad actors entering the space. Record keeping needs to be sufficient to show that the PRI is achieving the charitable impact.

- There are some interesting examples being undertaken by United Way of Greater Toronto supporting local organizing in low-income areas like Scarborough and Rexdale. United Way is taking the lead in bringing local residents together with local employers for employment purposes. It isn't called CED but feels like CED.
- Construction and infrastructure is a huge area of growth. There is demand from the private sector, and we need to explore how to collaborate with these new types of partners.
- How do multi-service organizations and churches fit into this space?
- Many of the concepts we have been discussing have evolved over time and will continue to do so. The terminology also evolves. Perhaps using principles in the guidance would help ensure that it is more 'future-proof'.

The facilitators tracked the list of preliminary issues/questions that were raised throughout the day. They are:

- Need for judicial guidance.
- How to structure a social enterprise within a not-for-profit.
- Lack of knowledge and understanding of program related investments (PRIs).
- Language (CED, PRI, social enterprise, social finance, etc.) is undefined.
- Lack of demand from qualified borrowers.
- PRIs and disbursement quota.
- Foundations may not be aware of PRIs.
- How can PRIs be used as a catalyst, not as the sole source of funding, in order to attract investors?
- What is the interplay between foundations moving to PRIs and support for operating charities?
- Guidance is unclear as to whether people can build assets through community economic development activity.
- Distinguishing public vs. private benefit.
- Lack of financing to build the ecosystem to allow CED to flourish.
- Need to streamline and make the related policies understandable to people in the sector.
- In the current economic context, can CED be revitalized as a tool to diversify funding for not-for-profits?
- Does the community context matter when applying rules?
- Whose charitable purpose is being furthered? The grantor or the grantee? Does it matter?
- Need to understand 'community'. It can be related to geography, but can it also mean a community of interest?
- Are we putting more restrictions on the use of PRIs?
- Investments vs. grants?
- What about Indigenous communities e.g. issues related to language, definitions/knowledge and challenges?
- Most First Nations Communities are non-qualified donees – there is a need to build relationships with Foundations.
- Recipients of PRIs should keep records. Do they have the necessary resources to allow for effective reporting?
- PRIs are deducted from assets (and then added back in).

- Concern is about private gain.
- Need to distinguish community economic development (CED) from economic development.
- Need to develop principles.
- Need to broaden areas of investment (alleviating poverty/unemployment/underemployment).
- Need to consider new ways of investing (United Way of Toronto is doing this in some Toronto neighbourhoods).
- Why are we excluding other groups (besides disability groups) – example: newcomers, former inmates, etc.?
- In the changing context, should we consider helping employers (not just employees)?
- What is the role of intermediaries in promoting guidance?

Day 2

KEY ISSUES REVIEW

Drawing from the issues identified by participants Tuesday morning, a summary list was drawn up by the facilitators and shared with participants for their review and feedback.

Key Issues (CED, PRI)

1. Terminology (CED, PRI, social finance, social enterprise, etc.) is undefined.
2. PRIs and how they affect the disbursement quota.
3. The fine line between public and private benefit (and how much private benefit is too much).
4. Need to streamline policies and guidance to make it more accessible and user-friendly.
5. Whose charitable purpose should be furthered? Grantee or grantor?
6. Evolving definition of community and how it affects the guidance.
7. What records should be kept by recipients of PRIs? What is reasonable?
8. Can the guidance document start with principles and, if so, what would they be?
9. Does the guidance need to be adapted to address the needs of Indigenous communities (FN, Metis, Inuit)?

Broader Issues Raised

1. There is a lack of demand from qualified borrowers – why?
2. How can PRIs be used as a catalyst to attract other investors in the capital market?
3. Are CED intermediaries required? If yes, how can they be financed?
4. As the social and economic context evolves, how does this impact policies and guidance on CED and PRIs?

Examples: new community approaches that involve building infrastructure and attracting private capital to create jobs, a focus on employer capacity building versus employment services being directed solely at the unemployed/underemployed, etc.

Participants made the following observations in relation to the content of that list:

- Key Issues Item #1: should read “terminology is variously defined and dated” (instead of undefined).
- Key Issues Item #5: it should be noted that the investor (grantor) may not have a particular stated charitable purpose. The focus for CRA is on ensuring that the organization is furthering an activity that is charitable. The purpose issue is dealt with at registration, although it was recognized that charitable purposes can change.
- Key Issues Item #7: should be reformulated to refer to both recipients and providers of PRIs.
- Two additional issues were suggested: how do you measure the success of PRIs and of CED? Should PRIs be available to non-qualified donees?
- In relation to the private benefit question, it was pointed out that in the U.S. there are tiers of responsibility and ownership. It's not just charitable actors and includes private capital (that has no charitable purpose). Is this too risky for Canadian rules and context? The charity could be the first loss investor.

Discussion on Principles

The group agreed on the need to articulate core principles that are foundational to the guidance on both CED and PRIs. They then proceeded to identify some possible principles. Any principles should be maximally enabling or minimally constraining in order to foster innovation and support impactful initiatives.

1. All charities can carry out CED activities and engage in PRIs.
2. The activities must further a charitable purpose and provide public benefit.
3. Private benefit is unavoidable, but any private benefit must be reasonable, necessary, proportionate and incidental.
4. The charity must exercise due diligence and assess the degree of risk to the charity.
5. The charity must adhere to provincial legislation.
6. The PRI or investment in CED activities must be aimed at improving economic opportunities and/or social conditions in an identified community.
7. The charity has exercised due diligence and assessed the degree of risk to the charity.

These principles generated the following comments and questions, most of which related to the issue of charitable purpose:

- There is a difference if the relationship is between a grantor and a grantee. Both should invoke their charitable purpose, whereas if the relationship is one of investor and investee, the need to invoke charitable purpose is not necessary.
- Non-qualified donees have no charitable purpose, so when it comes to using PRIs, the donor could treat them like any other investment in the market. But if the investment is removed from the asset base for the DQ calculation, it needs to be linked to a charitable purpose. It should be noted that in the U.S. the investee's charitable purpose is not deemed relevant at all.
- A donor furthering a charitable purpose can do PRIs or invest in CED, but the regulator may want more specificity in its purposes than an overarching statement. Remember that an investment is not a grant.
- CRA is taking a light approach to description of charitable purpose.
- In the U.S., the most important document is the minutes of the meeting that explains why the donor made the investment and how it links to its purpose, intended

outcome, and key activities. The language in the organizing document is secondary to what is in the minutes.

- New organizations may not know exactly what they are going to do so defining a charitable purpose can be difficult. Some people may take advantage of this more open approach and when that happens the first question to CRA is, “Why did you let them in?”
- We are trying to create an environment where more capital is unlocked. We need an enabling environment as it relates to risk. Don’t try to anticipate every future scenario that may arise. Agree on a balance between enablement and risk. Leave room for creativity and innovation so that good works can be done.
- A suggestion was made to add the following principle: The arrangement between the investor and investee that is a non-qualified donee must be at arm's length. The following scenario was provided to explain the need for this principle: A pharmaceutical company has a drug to cure an ailment. Venture capitalists might not be keen to invest, so the CEO of the pharmaceutical company creates a foundation that provides a PRI to the company. 10 years later the drug doesn't go to market, and the foundation writes off the loan. In the discussion, it was deemed that the *Income Tax Act* (ITA) contains many provisions that would cover this scenario, such as those around private benefit. Charities with foundations already have the necessary rules in place.

Defining Community

Participants suggested there be a conversation around how community is defined in the CED guidance and whether it needs to be changed because the context has evolved over the last 25 years.

The current definition in the CED guidance was shared with the group.

Many CED activities involve improving economic opportunities and social conditions of an identified community. A community is often defined geographically, but in this guidance, it can also mean an identified group of eligible beneficiaries who share a common characteristic that results in an economic disadvantage. Sometimes, both characteristics will be present.

- When the original policy was drafted, the focus was more so on the community at large within a geographical area. Now we focus on identified communities as per the common law. We should focus on genuine beneficiaries.
- CED is place-based, but it is really about doing the work with people in the community - the design, ideation, planning, and ownership. It's still place-based but there are particular communities of identity that are disadvantaged.
- In the original guidance there were concerns that only using Statistics Canada data to define a community of need would be too broad in terms of the beneficiaries. It would take in people who don't necessarily need financial or other supports.
- There's a growing interest in social entrepreneurship, but some are not rooted in community. In such cases, there is no buy-in from the community nor a sharing of the ownership of the assets. In some cases, social entrepreneurship may even be driving out community members.
- What about communities of interest? It would be difficult to engage people online that would benefit from a CED activity. The definition should refer to the engagement of community as a factor.
- From the Indigenous perspective, defining community is not an issue. It is geographic and the beneficiaries live in those communities.

- Need to refer to those who will benefit from CED within the definition - nothing for us without us. Is that a better way to define community?
- We should not be defining community. Community members are best able to define it for themselves.
- Eligible beneficiaries are a significant segment of the definition. It was proposed to use the word 'with' in the first sentence: Many CED activities involve improving economic opportunities and social conditions **WITH** an identified community.
- The current definition is directional but not constraining. What can't be undertaken as a CED practitioner within the confines of this definition? Is there anything in the current definition that can result in mischief?

Charitable Purpose

As several questions had been raised regarding charitable purpose, the facilitators invited the participants to discuss the issue in more detail.

- A grantor, when making a grant, must operate in accordance with its charitable purpose. The activities carried out by the grantee are to further its charitable purpose.
- It can be more complicated when dealing with an investment as they can be made to qualified donees as well as non-qualified donees. An example was provided of a private foundation making an emergency grant (Jasper wildfires). How would this tie to charitable purpose - is it the investor's purpose? Or the investee's purpose? The non-qualified donee may not have a charitable purpose. If the response is that the investment needs to further the investor's charitable purpose and it doesn't align, will the investor need to change its charitable purpose? This is challenging in an emergency.
- For PRIs to non-qualified donees, it is understood that the investor needs to apply direction and control to ensure that the dollars are being used properly.
- Do investors need to have purposes that specifically state that they can make investments to non-qualified donees? There are still foundations that have questions in this regard; they want to follow the rules. Additional clarity from the regulator would be appreciated.
- Another issue that factors into PRIs is how investments affect the disbursement quota. Is it treated the same if the investment is to a qualified donee or a non-qualified one?
- In the U.S., the donor foundation is the one that is important. There are two components to a PRI: 1) to accomplish a charitable purpose, and 2) that return on investment is not the primary goal. The concept of risk capital is part of the equation.
- The regulator wants charities to have greater prudent investment rules. There have been examples of a charity hosting a fundraiser and sending the dollars overseas where the investment may not further a charitable purpose.

The facilitators then formed four breakout groups. Two were asked to consider PRIs and the disbursement quota; two were asked to discuss how success is measured in a PRI.

Report back from group on PRIs and the disbursement quota (DQ)

- If the PRI is a loan, it should be removed from the DQ as it is considered to be property used in charitable purposes.
- If the PRI is a loan guarantee, it should be included in the DQ base as it is NOT

- considered to be used in charitable program (unless required to pay out).
- Charitable expenditures to include forgiven loans and bad debt as both are foregone revenue.

Comments and Questions on PRIs and the DQ

- In the big picture, the goal of PRIs is to get more money to charitable purposes and PRIs are a “clunky” way to do that.
- Property should remain in the assets of the lender as there is an expectation of return.
- Opportunity costs are more challenging. There is clarity when there is a capital loss or a loan forgiveness. There is less confidence about whether the margin between the applied rate of interest and the market rate of interest should count as part of the DQ.

Report back from group on PRIs and the disbursement quota (DQ)

- Suggested the DQ should be calculated based on the PRI as an asset that stays in the base for calculation purposes.
- Foregone interest income and capital loss should be ‘DQable’ as a charitable expenditure.
- DQ review is coming in 2027. PRI regime is a possible avenue for “relief” of higher DQ, i.e. lower DQ if investing in PRIs (or social impact investment more broadly, to further a charitable purpose).
- PRIs are “clunky”.

Comments and Questions on PRIs and the DQ

- If the investment is a loan guarantee, it stays in the control of the investor and remains in the base for the calculation of the DQ. If the money is loaned out or invested and is no longer under the control of the investor, it is removed from the base for the calculation of the DQ.
- Is it too generous to remove the investment from the asset base as well as the value of the opportunity cost?
- The challenge of counting a loan is that it will reduce the necessity to make grants in order to meet the DQ.

Day 3

Report back from group on the success factors for PRIs

- Very existence of the project
- Normalization of use of PRIs
- Increased capacity to use PRIs in the sector
- Financial return
- Repayment of the PRI
- Success of PRIs can be measured by the fact that something charitable happened that would not have otherwise happened

Comments and Questions on PRI success factors

- Will CRA substitute its own views to those of the charity when assessing success? The Compliance Branch does the audits separate from the Charities Division. Not a lot of work has been done to date on educating staff in the division on PRIs. There are ways of addressing misinterpretations of the related policies.
- Oversight will also vary based on the amount of the PRI.
- From the onset, it may be determined that only part of the loan will be repaid and that both parties agree to that.
- Failure of a project may in fact be a signal of success in an organization's efforts to innovate.
- The success factors may vary in relation to the type of project being funded.
- If the investee develops a good relationship with the investor and the regulator and has a successful project, it could allow them to attract private sector investors in the future.

Report back from group on the success factors for CED

- It is important from the outset to ensure both investor and investee have the same understanding of success factors (for example reducing unemployment or poverty, reduced hospitalization rates) as well as setting measurable targets.
- What is the language we should be using in these cases: participants, stakeholders, or community members?
- There has been work done on evaluation of CED to agree on a common approach to impact measurement. One needs to follow up with the same people with whom one sets the baseline to assess impact on the individuals affected.
- Community voices need to be included in setting the metrics. Success should look at the degree of community involvement and their degree of ownership and decision-making power.
- There is a need for long-term sustained revenues through ongoing funding from donors or from the creation of successful enterprises.
- There are insufficient resources to do adequate research and analysis in the CED sphere on matters like this.

Comments and questions raised from participants about CED success factors

- We need to recognize the relationship between time and expectations regarding outcomes. Time is needed for the project to unfold, and the investors need to have the staying power so that the results can be reached.
- How do success factors relate to the regulatory regime? The process of identifying the success factors may inform an understanding of the public benefit and whether it is realized in the long term. Most of those benefits are downstream from the beginning of the project. The original guidance is deemed adequate in setting direction on success factors.
- For CRA, they try to be enabling within the confines of the ITA. They would question if there was consistent failure of projects or if the money granted to an organization disappeared. Auditors may sometimes question impact because it takes so long. It's important to be able to demonstrate that due diligence was undertaken.
- In England and Wales, there is a statutory requirement for trustees to conduct reviews from time to time, which allows them to determine if the length of time for repayment is adequate.

- There should be attention paid to outcomes but also to process. Who is involved, what was the impact of their involvement, etc.? That being said, it should be recognized that process is much harder to track and assess.
- When you look at financial audits over time, it gives you a better understanding of the changes in funding practices, past reliance on governments but also seeing how the organization is moving away from funding needs to capital needs. The sector could help by providing loans over longer periods of time. For example, banks may not go beyond a 10-year term for loans to First Nation communities, which makes it problematic because Indigenous communities have no tax base and support their needs via commercial activity only. It can take longer to get to a profitable position for repayment.

Scenarios Work

Five different scenarios were presented to the participants with a view to testing the contents of the guidance by analyzing a theoretical situation.

Participants were assigned to groups and were asked to discuss and answer the following questions in relation to each scenario.

- If you were the investor, what questions would you ask?
- What terms would you be prepared to offer?
- Do you believe that your “decision” will align with CRA regulations?

Scenario 1

The Brown Foundation has a stated charitable purpose of promotion of the arts. The three major theater venues in the town of Brownville have been struggling since COVID to offer productions to the public and have approached the Brown Foundation, in two cases for low-interest loans and in one case an investment in shares. One of the theaters is a charity, one is a nonprofit and one is for-profit.

The Brown Foundation is wanting to support the arts, and this clearly aligns with its charitable purpose.

What questions would you ask?

- What are the financials for each of the three entities described in this case?
- What should be considered private benefit vs. public benefit in this case?
- We need to understand the context - for example, are they failing because of COVID or were they failing as a business before that?
- Can the three theatres be supported?
- What does success look like?
- Is another investor stakeholder possible so that the risks are reduced?
- What is the exit strategy? What if only one theatre is doing well?

What terms are you prepared to offer?

- Would need to look at risk and do a comprehensive assessment first and foremost.
- What can and should the role of the foundation be? Should we consider a gift instead? A low interest loan? What would be the best terms for the investor and

investee?

Do you believe that your “decision” will align with CRA regulations?

The group did not answer this question.

Scenario 2

CMHC has offered to put \$5 million into an affordable housing fund that the ABC Foundation is interested in sponsoring. CMHC would like the ABC Foundation to raise \$30 million from 3rd party investors including other philanthropic foundations as well as other investors. One further condition is that the ABC Foundation invest a minimum of \$5 million of its own assets and that it take a first loss position (even behind CMHC). The charitable objects of the ABC Foundation are to provide modest affordable housing to low-income families and new Canadians.

The Brown Foundation (in scenario 1) has heard about the housing fund and is interested in being one of the other investors.

What questions would you ask? (both as members of the ABC Foundation and the Brown Foundation)

- What kind of housing project is this? Is it a new build or retrofits? Who are the intended beneficiaries?
- What is our financial position as an organization?
- What are the prospects for raising additional funds? What are the prospects for paying back the loan?
- What is our exit plan?
- What happens if the goals aren't reached?
- What other role will or can CMHC play?
- How do you determine location for this project?
- Is CMHC transferring the land?
- Does this project align with our charitable objects?
- Is it financially viable?
- Does it meet our expectations?
- Would it be more palatable if CMHC took a second loss position?
- Would the Brown Foundation be prepared to assume some of the loss?
- The Brown board itself would have to determine if it should get involved.
- If the intended beneficiaries were new Canadians only, that might not align with a charitable purpose. The build could be geared to mixed incomes to accommodate both low-income beneficiaries and new Canadians.

The group did not have time to answer the last two questions.

Scenario 3

A youth-serving non-qualified donee wishes to raise funds to support a program which will accept young people suspended from high school for the period of the suspension with a view to ensuring that youth suspended from school aren't left flailing on the streets. The organization has operational funding but needs \$2.5 million to initiate a new program and operate it for two years as a pilot project. It would like to continue the program with reinvested funds if it is successful. It is proposing to issue a social impact bond which will provide investors with no interest but with a return of capital provided that the youth remain in high school for a full year after the suspension. The Snow Foundation is interested in investing. The charitable purpose of the Snow Foundation is to relieve poverty.

What questions would you ask?

- What are the implications of making an investment of this nature?
- Who are the young people that are being suspended from school? There needs to be a better understanding of the beneficiaries.
- Is what is being proposed too short a time frame to develop a program of this type?
- Who is doing the work and how will it be done?
- Are the expected results robust enough? Should they aim for high school completion instead of requiring that the participants stay only one year in school?
- Does the charitable purpose of the foundation align with this project?
- If this were a request from a non-qualified donee, it would require additional oversight and controls.
- If it were a PRI, it would require other conditions, including having an exit strategy.
- Would we agree to reinvest the funds? Only if the program was deemed to be reasonably successful.
- Where will the organization find the resources to repay the investor?
- Why wouldn't we want to simply provide a grant instead? A social impact bond is a more complicated tool.
- In response to the above, it was proposed that social impact bonds are good because the foundation gets the money back and can reinvest that money whereas a grant will never be repaid.
- The operational cost of doing a social impact bond would also need to be factored into the equation.
- Some grantors like the idea of investing in a program that defines outcomes and that the government will backstop.
- If the model had already been tested and the organization had a positive track record, the risks would be reduced and the opportunity for reinvestment would be more realistic.

The group did not have time to answer the last two questions.

Scenario 4

A small Ontario town, because of tariffs, loses all of its automotive parts manufacturing. The retail sector is suffering, restaurants are closing. The Rain Foundation has a disaster relief purpose and is interested in providing a \$1 million loan to a small business manufacturing Blue Jays swag. The owners of the business have indicated that they could employ 25% of the people who lost their jobs. The small business would have a bank loan, and the Rain Foundation would be second in priority in the event that the business was struggling.

What questions would you ask?

- Does this situation meet the CRA description on disaster? How broadly do we define disaster?
- Does this further a stated charitable purpose of the investor or a different (unstated) charitable purpose?
- Has there been an attempt to quantify private benefit, and are we only concerned about the private benefit of the investee, or also the employees? Is it proportionate and incidental?
 - What's the unemployment rate?
 - Does this relieve poverty?
- Private benefit consideration seems to be an existing business saying they can employ 25% of the people who have lost their jobs. Section E talks about how private benefit considerations can be “relaxed” and depends on circumstances. So, is this an excessive private benefit based on the criteria in section E (85A and 85B)?
- How long have folks been out of work and how long will they be employed? Is there a detailed business plan? What reskilling will occur? Will this attract other businesses?
- What is the future demand for Blue Jays swag and the long-term viability of the business?
- Should this be treated as a conventional investment? It might be a bad investment and there might be trust law implications.
- If this business is going to absorb 25% of the displaced workforce, is the investee still a small business?
- Are the directors comfortable with level of risk associated with being second in priority?
- What other options or tools are available (e.g. loan guarantee from another foundation).
- What are the direction and control and accountability measures?
- Who are the other lenders and is the bank loan contingent on Foundation loan? What is the size of the bank loan? Are there other organizations prepared to issue PRIs?

What terms would you be prepared to offer?

Considered:

- Requirement that loan only be used to relieve poverty.
- Partnerships with other nonprofits (e.g. skill training, loan guarantees, entrepreneurship training, business planning).
- Decision-making processes (to fulfill requirement for direction and control).
- Australian example of ‘shadow director’ status if significantly involved in decision-making.

- Bringing in more Foundation PRIs.

In the absence of more and better information, the Foundation would not pursue the opportunity and rather would consider other ways to support the community.

Do you believe the decision will align with CRA regulations?

- No: Main reasons it may be offside:
 - Purposes?
 - Economic deprivation or disaster?
 - Private benefit?
 - Definition of small business?

Questions and Comments

- Considerations around licensing arrangements.
- In instances where a community is on a precipice, do we have to wait for the community to 'fall to the ground' before the organization can act? In another five years, and if the community has further deteriorated, has the fact situation changed such that it's now okay to pursue? The U.S. context contemplates these situations.
- Assuming workers are paid more than minimum wage, at some point they are no longer eligible beneficiaries.
 - Not a relief of poverty situation as much as community regeneration – so perhaps the focus isn't at the individual level.
- Agreement that PRIs may not be the way to do this.
- Section E of the guidance is about relaxing rules around private benefit in distressed communities. Not sure what this section sets out to do. Emphasis on the contextual. Section could use some clarification. Could be a situation where the community is teetering – and this factors into the private benefit analysis.

Scenario 5

An Indigenous Community that is a qualified donee needs to build and equip a basic health clinic for a nurse practitioner and other health professionals to provide primary care for the growing community population. Many of the health professionals will be independent practitioners who operate on a for-profit basis. The estimated cost is \$3 million dollars. The federal and provincial governments have agreed to contribute a total of \$1 million to the capital cost of the project and to provide on-going operating costs to support the clinic. The Band Council has asked if one more public or private foundation would like to provide gifts or low interest loans for the remaining \$2 million in capital costs. The band could arrange repayment of loans over 15 years with income from community fisheries and aquaculture enterprises.

A newly established Indigenous Health Authority, which has applied to the CRA to be registered as a qualified donee, is also able to provide on-going financial support for staff salaries and "rent" costs at the clinic, but it does not have resources to contribute directly to capital projects. The Indigenous Health Authority is willing to support a loan or loans from foundations by serving as an intermediary if it will help.

What questions would you ask?

- What are the activities associated with the business? Are there ancillary businesses involved like cleaning companies?
- Is this investment aligned with the foundation's charitable purpose?
- What is the public benefit? What is the private benefit?
- What are the additional goals? To attract doctors to come to the community and to stay for a reasonable period of time?
- Who will own the building and other capital assets?
- Is there a reasonable timeline for the public benefits to accrue?
- Does private benefit outweigh the public benefit in this case?
- Why can this not be resolved by using a 'nice, simple' mortgage instead?

What terms would you be prepared to offer?

- Need to consider what terms might work for the community.
- Would be a loan instrument payable over 15 years.
- Consider that they could sell the building to a private sector entity in the future. How do you control that?
- Non-financial terms need to be woven into the agreement.
- What about procurement processes that would benefit community businesses?
- Professionals must commit to staying at least a year in the community.

Do you believe that your “decision” will align with CRA regulations?

The group felt that structured properly, this investment would align with CRA regulations.

Additional Comments

This scenario should provoke some reflection about the importance of establishing a relationship between the investor and the investee, especially in a case where an Indigenous organization is involved. Asking these kinds of questions feels both traditional and colonial.

Providing Input to the Guidance

The facilitators invited the group to form 4 groups. Two of the groups were asked to review the current CED guidance and the other two reviewed the draft PRI guidance. All groups were asked to consider what needs to be added, what needs to be deleted and what sections require major change. Groups were also asked to review the overarching principles developed earlier in the session and determine if more specific principles should be added in each guidance.

Group 1 – Input and Feedback on CED Guidance

- Loans and guarantees – when does a loan or loan guarantee become a PRI? There should be some language in this section (30-38) to ensure that people can understand when it is a PRI for CED as opposed to just a PRI.
- Section E, 85a – Recommend adding “high levels of poverty” ...working poor. Having a job no longer means that you aren't facing social and economic deprivation.
- Section E, 88 – the four years feels strange, but the group couldn't come up with anything better. If this isn't a problem, suggested leaving it as is.
- Section B, paragraph 9 – good as is.
- Question – does the complexity of the guidance mean that organizations are simply

self-editing? Is there any evidence of this?

Group 2- Input and Feedback on CED Guidance

- Start with Principles, Scope, and Approach
- Audience
 - Operating charities
 - Investors/investees
 - Legal professionals
 - Directors
 - Charity Directorate officers
- There is somewhat of a Catch-22 where the regulator is sometimes asked to stick to a principles-based approach when developing guidance but, when it does, charities inevitably ask for more detail and certainty.
- It was suggested that an effective guidance interprets the relevant ITA requirements and provides broad definitions and principles at the start, then brings these to life with examples.
- It's also important that the introduction captures the overall gist of the guidance and of CED. There needs to be clarity in the preamble such that charities can determine if the activities they want to pursue are addressed in this particular guidance.
- What does the sector need by way of language and concepts around CED? The guidance can provide confirmation to charities or practitioners that CED can exist in the charitable sphere.
- It is important to acknowledge that examples provided are just that. This is to say the examples shouldn't be constraining. It should be made clear that there are other ways to do things.
- Would social enterprise and social finance naturally be a part of CED?
- Is CED still the right title for the guidance? Counterpoint: CED remains the most relevant term among those available. It's also a somewhat descriptive term compared to others. "Social enterprise, investment, finance, and CED" was suggested as an alternate title for the guidance.
- The guidance should enable activities and allow for grantors and investors to manage risk. That is, for those contemplating activities, these are the rules that need to be followed. But there was a caution that the guidance could inadvertently make certain things appear to be riskier than they actually are.
- Should the guidance elaborate on social enterprise (paragraph 7 and appendix A) recognizing that it's also addressed by related business guidance and that the existing CED guidance also references "social businesses" (paragraph 14 and again starting at paragraph 69) as they relate to disability?
- Social businesses are tied to beneficiaries with disabilities (paragraph 14 and again starting at paragraph 69), which is probably too narrow. The description could be expanded to include others with barriers to employment (e.g. newcomers, those with past involvement with the criminal justice system, etc.)
- The guidance should acknowledge underemployment and the working poor, not only unemployment.
- Employment services that benefit individuals and groups with barriers to employment include employer education and capacity building, but this might be discouraged by the cautionary note about helping employers with recruitment (paragraph 20). It follows that

it may be helpful to include explicit reference to removing barriers and biases for employers.

- Giving more guidance around the rules or expectations for for-profit vs. not for profit may be helpful (paragraph 74 and appendix A).
- It was noted that although prevention of poverty can't be a charitable purpose, many activities falling under relieving poverty, advancing education, and promoting health result in legitimate ways of going about it.

Group 3 – Input and Feedback on PRI Draft Guidance

- Separate PRI guidance is a good idea and should start with providing clarity on “what” a PRI is and provide examples.
- Setting out principles at the front end of the document would be helpful.
- Guidance is trying to do more than it needs to and may lead to confusion.
- Consider specific sections for PRIs to non-qualified donees and align this to the non-qualified donees section in the ITA and a different section for PRIs to qualified donees.
- Section 3 – PRIs with a non-qualified donee requires “each of these features” – needs to be reviewed.
- Examples provided are not current – this needs to be refreshed.
- Questions related to section 2, paragraph 11 (specialized intermediary): this is unclear – examples would be helpful.
- Disagreement in the group on the final section related to impact investment – is this the right placement of this section?

Group 4 – Input and Feedback on PRI Draft Guidance

- An introduction or preamble is required in clear, plain language – what is a PRI, what is it for, and who will benefit?
- The title “investment and loans” and the PRI terminology may not be appropriate. Consider different options such as purpose related investment or charitable investment.
- Exit strategies are a key part of PRIs and need better explanation along with examples.
- Terminology is an issue – would a recipient organization recognize themselves as an “investee”?
- Group felt that a better understanding of the impact to DQ was required – would benefit from visual aids such as decision tree or short guide.
- Starting all guidance with a “who should be reading this” section should be considered.

Day 4

The facilitators reminded the group of the process to date and the areas that have been discussed.

- Introductions of all participants – asked for issue identification
- Presentations from international guests
- Presentation by CRA
- Key issues reviewed, summarized and categorized

- Identification of principles that would apply to both CED and PRI
- Discussion of the definition of the term ‘community’
- Discussion on charitable purpose
- Breakouts – relationship between PRIs and DQ and how to measure success
- Breakouts to test ideas developed against prepared scenarios
- Breakouts to review the guidance documents for both CED and PRI

Participants were then asked to give preliminary input on record-keeping for PRIs from the investor point of view as well as from the recipient’s point of view.

Record-keeping

- Does the regulator specify what records need to be kept for a qualified donee?
- If the investment is to a non-qualified donee, it is happening under direction and control - which already has stated requirements?
- It is necessary for the investor to undertake “due diligence”?
- The regulator does not specify which records must be kept but if there is an audit, proof of due diligence and adequate records is required.
- One of the guiding principles should be that the records kept should align with the risk related to the investment.
- In the U.S., the record-keeping burden falls on the investor. The investor must show that it will track the dollars and the activities – we are not assessing the same things in a grant situation as the results can be significantly different. This is often seen as risk-investment. The excise tax penalty provides the IRS with a safeguard.
- Record-keeping is important given the link to the DQ.
- Given that revocations are often tied to record-keeping, the regulator needs to be quite specific as to what is required.
- The guidance should provide clarity between the words “must” and “should” so that both the investor and the recipient can maintain records appropriately.
- Would proof of due diligence, a written loan agreement with payment conditions, and information related as to whether any related-party transactions exist be sufficient?
- The regulator could look at record-keeping related revocations to determine what lessons have been learned to inform the guidance.

Why is there so little demand from sector organizations?

One of the broader issues raised at the beginning of the consultation was about the apparent lack of demand from borrowers for program-related investments or for investing in community economic development work.

The results of an Imagine Canada Survey of registered charities about using these instruments were shared. In summary, the survey uncovered the following reasons for low uptake:

- Generally low awareness of social finance instruments.
- Concern about generating earned income.
- Uncertainty about the organization’s ability to repay a loan.
- Board buy-in would be difficult.
- Most charities don’t hold debt at all.
- Most are simply not interested in taking a loan even if it were made available.

The group discussed this matter and came up with the following observations and questions:

- CRA is getting more interest and questions about PRIs from a small number of private foundations and some lawyers. The questions are coming from the investor side, not from the charities themselves.
- Social enterprises have been told that debt is risky so they don't pursue PRIs. They aren't a well-known instrument even to social enterprises. There is therefore a need to communicate what PRIs are. Most organizations who are serious about accessing capital have focused more on being investment ready for getting conventional loans from banks.
- Boards have declined to take on financial risk because they fear the whole organization will go under if they are unable to repay them. Short-term funding arrangements and uncertainty of revenue streams means responsible boards will not take on debt because of their limited capacity to repay.
- People can be naïve about the way debt actually works so they don't appreciate the upside of taking on debt.
- Organizations aren't well equipped to understand the reward side, only the risk side of the equation. They also are afraid of losing their charitable status.
- It is possible that these types of activities will move more towards centre stage over time. The welfare state is shifting, government austerity is on the radar, parents are investing in their kids and giving less to charity, and the leadership of the sector is changing - the next generation may be less risk averse, so having these guidance products will be necessary.
- There have been situations where organizations have taken on too much debt and have had to wind down operations. Should we just stick to giving grants?
- There may be more PRI activity in the housing sector in the future.
- We still don't know exactly what we are talking about when we say PRIs.
- Indigenous communities have a need for more capital, and it would be great to get loans at below market rates from foundations. Lending is subject to the provisions of both the *Bank Act* and the *Indian Act*. So, while it's more complex for Indigenous communities to take on debt, their capacity and understanding to do deals with commercial investors has greatly increased in the last few years.
- In Australia, the main area for investment activity is in housing development. Any large housing development must include social housing. The social housing must have wraparound services and these require capital contributions. Remember that in Australia charities can conduct unrelated businesses. Until a few years ago, there were only four large banks in Australia, and they would have the same conditions for lending to charities as they would for small business. The banks were reluctant to exercise their mortgage powers, and it wasn't a good look if they had to step in to recover the funds. In 2000 that changed. A large rescue organization failed, and the bank sued the directors of the organization, not for the personal guarantees but because they had allowed the organization to trade. Trustees did not want to put their own personal assets at risk. Another example of failure was in the sphere of long-term care homes. One church tried to expand the number of homes and took on millions of dollars of debt that they were ultimately unable to repay. Local congregations had to sell their churches as a result, leading to more widespread aversion to debt in the sector.
- PRIs in the U.S. may not require taking on debt. An equity stake is taken instead.
- Organizations are so busy attending to their day-to-day business that they don't have time to seek additional capital.

FINAL REFLECTIONS ON THE CONSULTATION

Participants expressed deep appreciation to The Muttart Foundation, and specifically to Bob Wyatt and the Board of Directors, for continuing to make the investments of time and money in these consultations.

The international experts were also thanked repeatedly for sharing information about how and whether their regulatory frameworks address PRIs and investing in CED. Their deep knowledge, insights and perspectives enriched the conversations and broadened the thinking around the table.

Many participants highlighted the value of candid exchanges between the sector and government and thanked the CRA for their engagement, their openness to suggestions and their desire to learn from the practitioners.

A particular thanks was extended to the persons whose collective vision over 27 years ago led to the development of this unique and enduring process of engaging both the CRA and the sector in making better policy regarding the regulation of charities. It all started with a first consultation about community economic development.

Finally, the facilitators were thanked for their work and for how they skillfully directed the discussions.

Beyond the many expressions of thanks, participants made the following comments about their experience:

- There was lots of knowledge and experience in the room, making it a great opportunity to learn, especially for those new to the sector and those who are new to these forms of investing.
- The way the time was organized facilitated conversations between the participants well beyond the formal meetings, which made this such a rich experience.
- The experience was both humbling and inspiring. Some felt they were taking away far more from the discussions than they contributed.
- Many expressed appreciation for the range of perspectives brought to bear on the topics, such as the CRA, foundation EDs, CED and social enterprise practitioners, intermediaries, allied professionals, subject experts, etc.
- More and more responsibilities are being offloaded to charities and there is a need to fund this work as a result. We need to be able to unlock the capital in foundations. For-profit organizations also have a role to play, and some are doing better than others to adopt social positions.
- Who was not in the room? Quebec has a strong social economy sector, and their insights would have been useful, but it was pointed out that the Global Social Economy Forum was taking place this week so they would likely not have been able to attend.
- Hopefully this work provided useful feedback, insights and critique that will allow CRA to reshape the content and provide practical guidance. Plain language is needed to ensure clarity about what is permissible and what is prohibited.
- The rules around PRIs and CED need to be designed to facilitate charitable activities, not only to constrain them. Striking that balance is important. In the U.S. PRI rules are written to encourage risk-taking. We don't do that here. We need to be able to unlock capital and keep that in mind when we review the guidance.
- There is often fear among charities about getting audited, so it was useful to get a

better understanding from CRA as to the purpose and the realities of why audits occur.

- While much of the conversation revolved around technical aspects of the guidance, there was a broader conversation about how we can and should lean into raising awareness in the sector about PRIs and CED because the guidance itself will not do that. We will need to do that together.
- We have public servants who are prepared to engage in this kind of exercise which is incredibly rare. This is the way public policy should be made.
- Regret was expressed that we did not have more time to reflect on the relationship between PRIs and the disbursement quota (DQ). For many non-qualified donees, this is not a tool that would work for them at this stage.
- There is an urgent need to develop a new cadre of leadership in the sector, so it was heartening to hear new younger voices around this table. We are in good hands.
- Having rules of engagement laid out at the beginning of the session and receiving the reading materials were important and helpful parts of the process.
- This event underlines the systemic reasons why consultation is so important. There are not a lot of court cases from Canada to draw on since the last guidance on CED was created. Without that, it is up to the regulator to make decisions, so it is more important for them to be able to touch base with the stakeholders.
- Even though more than three days were spent discussing PRIs and funding mechanisms for CED, there may be more uncertainty about the topic than when we began. Some are leaving with less certitude and with the same questions they brought to the consultation but with many concepts and ideas to consider and an appreciation for the fact that they can reach out to participants in the room for guidance. They are looking to the updated guidance on CED and to the separate guidance on PRIs to clarify some outstanding issues that were raised in this consultation.

CLOSING REMARKS

It is a privilege to spend three and a half days to focus on one issue. Did we solve all the issues that arose from our conversations? No. But did we make progress? Yes. At the end of the day, we need to remember why we have these rules and why we do this work - to improve the lives and well-being of the beneficiaries.

This has been a great opportunity to network, and it was gratifying to see people establish new relationships. We don't issue name tags for a reason - so that participants will actively reach out to meet and engage with one another.

We are grateful to the Advisory Committee for its ongoing work of helping us to identify relevant and timely topics and more importantly to identify the people who need to be around the table. Inviting the right people is the most important dimension of these events.

Thanks again to the international guests. They help us avoid reinventing the wheel when it comes to creating policy and guidance in Canada.

Appendix A
Presentations by International Guests
USA

PROGRAM -RELATED INVESTMENTS
THE U.S. EXPERIENCE
MUTTART FOUNDATION CONSULTATION
OCT. 27 – OCT. 31, 2025

Marc Owens, formerly the Director of the Exempt Organizations Division of the IRS and currently an attorney in private practice with Loeb & Loeb, LLP in the firm's Washington, DC, office presented an overview of the program-related investments from a U.S. federal tax perspective. The overview was accompanied by explanatory training materials from the IRS.

Legal Context

Program-related investments (“PRIs”) are defined in section 4944 of the Internal Revenue Code (“Code”) as an exception to the penalty excise taxes enacted in the Tax Reform Act of 1969 that otherwise apply to certain financial arrangements entered into by private foundations, in particular, the excise tax that applies to investments that are so risky as to jeopardize the ability of a private foundation to carry out its charitable purposes. Although defined in section 4944, PRIs are also excepted from the limitations on the percentage ownership of business enterprises under section 4943¹ and are treated as expenditures that can be used to meet the mandatory payout requirement in section 4942 of the Code that is also applicable to private foundations.² Although the excise taxes noted above are applicable only to private foundations, tax-exempt organizations that are public charities make financial distributions in furtherance of the charitable purposes can make distributions to taxable entities when the distributions are designed to further the charitable purposes of the public charity.³

Although enacted in 1969, the concept of program-related investments was actually pioneered by the Taconic Foundation and its general counsel, Prof. John Simon, who was a professor at Yale University. The Taconic Foundation was focused on advancing civil rights issues through the use of economic strategies, which were identified as “program-related investments” by the Foundation⁴ and later by the Ford Foundation in its charitable giving around the time of the Tax Reform Act of 1969.

¹ Section 4943 generally restricts private foundations to the ownership of no more than 20% of any commercial enterprise.

² Section 4942 mandates that private foundations annually distribute an amount equivalent to 5% of the value of its investment assets, that is, those assets that are not utilized in the foundation's charitable activities other than a source of funds.

³ The standard applicable to public charities is found in Revenue Ruling 74-587, which was issued by the IRS at approximately the same time as regulations were issued providing guidance for PRIs under section 4944.

⁴ [Supporting Economic Justice? The Ford Foundation's 1968 Experiment in Program Related Investments - Resource](#)

In short, U.S. tax law defines PRIs as financial arrangements, styled as “investments,” the primary purpose of which is to accomplish one or more charitable purposes and for which no significant purpose is the production of income or the appreciation of the value of property. The “investments” can take the form of loans, loan guarantees, grants or purchase or acquisition of equity interests in taxable enterprises, with no particular legal form required, so long as the purpose of the arrangement is to advance the charitable purposes of the funding foundation. The terms and conditions of the arrangements can be quite varied, so long as the arrangements are not intended to simply generate income for the foundation. In fact, complex collaborative financial arrangements can be structured with different tiers of participation with different participation requirements and resulting benefits ranging from no return, to a return of the initial investment, or a financial return that includes a modest interest component for a foundation and market-rate returns for other financial participants. Such arrangements can be structured to effectively allow foundations to arrange for their projects to take advantage of regular sources of financial capital.

Appendix B
Presentations by International Guests
England and Wales

Summary of the law in England and Wales – 28 Oct 2025

We have the concepts of CED and PRI – there are lots of similarities but also some key differences.

Overview of UK regulation

In the UK we have 3 different charity law jurisdictions. Main one is England and Wales, then separate regimes in Scotland and NI. This summary focuses on England and Wales.

We have 2 regulators – the Charity Commission and His Majesty's Revenue and Customs HMRC.

- The Charity Commission is our most active regulator – dealing with registration, investigations, permissions, annual reporting regime. Very focused on trustee duties.
- His Majesty's Revenue and Customs (HMRC) is less visibly active – only really engages if there's a challenge to tax exemptions that a charity is claiming.

CED

In England and Wales community development is recognised as a charitable purpose in itself. Our charity legislation lists out categories of recognised charitable purposes – and one category is “the advancement of citizenship or community development”. The Commission accepts this includes:

- Promotion of urban and rural regeneration
- Relief of unemployment
- Promotion of community capacity building

For each of these, the Commission has published model objects and detailed guidance (links below). The Commission's guidance was published in the late 1990s/early 2000s which is around the same time as Muttart and the CRA were looking at community economic development. Interestingly none of the Commission's guidance has been updated since then.

To take a quick look at each one:

Promotion of regeneration

See [1999 Guidance](#)

It has to be an “area of social and economic deprivation” – so linked to a specific geographical area which can't be, say, an individual road.

The guidance says to register an organisation needs to demonstrate:

- It has effective criteria for determining whether an area is in need of regeneration
- It will carry out a broad range of regeneration activities (there's a list in the guidance)

Numbers wise, out of approx. 178,000 charities, there are 1800 with regeneration in their objects, and only 66 with regeneration in the name.

Relief of Unemployment

See [1999 Guidance](#)

An organisation has to show:

- It is set up for the primary purpose of relieving unemployment – for people who face some barrier to work eg youth, disability, age, poverty.
- Its activities are directed to relieving unemployment generally or to a significant section of the community in a way that can be demonstrated objectively;

Numbers wise, there are around 2800 charities on the Register with unemployment in their objects

Promotion of Community Capacity building

See 2000 Guidance .

This relates to development of individuals and must be in relation to communities which are socially and economically disadvantaged (or in some cases just socially disadvantaged). Community can be geographical or a shared characteristic such as disability or membership of an ethnic group. The community must be “in need”.

What does our guidance say about private benefit?

The Commission’s guidance uses slightly different language for different purposes:

- Regeneration – public benefit must outweigh private benefit
- Unemployment – uses similar language to CED guidance eg incidental, and private benefit must arise only as a necessary means of achieving the overall charitable purpose.
- Community capacity building - any personal benefit to individuals is incidental.

Below are some key cases the Commission guidance references around private benefit.

¹ The distinction was made clear in the case of **IRC v Oldham Training and Enterprise Council (1996) STC 1218**. One of the objects of Oldham TEC was the **provision of support services and advice to new businesses**. The court decided that the object allowed the organisation to promote the private interests of individuals regardless of whether there would be any consequential benefits to the wider community. The benefit to the community was found to be too remote from this activity and the object was not charitable.

Conversely, in the case of **ViRSA Educational Trust**, the Commissioners decided that registration could proceed. This organisation was established to carry out research into the availability of retail and other services in villages, **to provide training and guidance to rural communities on establishing and maintaining those services and to promote trades and crafts connected with the rural economy as a whole**. The organisation was charitable because it provided support to rural communities generally. (An organisation which promoted particular village shops would confer too high a degree of private benefit on the proprietors to be charitable.)

Land banks

These are set up in the UK using a range of structures:

- Registered charities
- Community benefit societies – this is an incorporated legal form which works well for community projects as societies can do a community share issue. Also attractive because it’s one member one vote irrespective of shareholding.
- Community interest companies – these are non-charitable asset locked bodies, often used where a founder wants to be on the board and be paid (as generally this isn’t possible in a charity). There’s no tax exemptions for CICs.

Social businesses

The CRA guidance also uses the term “social businesses”. We don’t have an equivalent because under our charity and tax laws, if a charity receives income from a trade carried out by the charity’s beneficiaries, that’s treated as primary purpose trading and is tax exempt.

Procurement

We recently had a new Procurement Act which includes a key to the test for awarding contracts. The test used to be the “most economically advantageous tender” (MEAT) now changed to “most advantageous tender” (MAT). This is intended to allow the contracting authority to give more weight to social value or environmental impact in its award criteria.

PRI

Amidst an increasingly challenging funding environment in the UK, the wider use of PRI and social investment has provided a new avenue of much needed funding for charities and social enterprises.

The rules related to program-related investments

In England and Wales we have a very similar concept of programme-related investments, which has been fairly well established for the last ten years. There are some key background differences - we don't have disbursement quotas, qualified donees or direction and control of intermediaries to worry about.

We are mainly concerned with trustee investment duties (which is a provincial matter in Canada) and whether HMRC agrees the investment is what is called "charitable expenditure".

Background

Around 2012 the principal issue in England and Wales was whether charity trustees had the power to carry out PRI. The story goes that at a meeting called by government, there were 4 KCs, 2 said you could and 2 said it wasn't clear.

There was also uncertainty about:

- the tax position – will HMRC accept social investment is a qualifying charitable investment?
- Grey areas around accounting for social investments
- The extent to which private investors can be involved – is there too much private benefit?
- Investment advisors were uncertain whether they could recommend PRI

This led in 2016 to a piece of legislation called the Charities (Protection and Social Investment) Act which introduced a power for most charities to carry out "social investment". This power can now be found in Sections 292A to 292C of the Charities Act 2011. The power goes wider than PRI, but put beyond doubt that charities could carry out PRI.

The power sets out some trustee duties (eg to consider whether to get professional advice) and imposes an obligation to review the investments "from time to time".

Our legislation also includes a power to use permanent endowment for social investments subject to certain safeguards.

There has been a significant recent case about trustee investment duties. Bates Wells partner Luke Fletcher, represented trustees of two foundations in a court case. Butler-Sloss, seeking clarity on whether charities can adopt an investment strategy which aligns more with their objects but gives less financial return. The case established trustees can move away from traditional investment for purely financial purposes. And it established the principle that impact is relevant in investment strategy.

Charity Commission guidance on investment

The Commission has issued:

- CC14 - General guidance on investment
- A Legal underpinning

Private benefit

CC14 says "*Private benefit means any benefits that a person or organisation receives from your charity. Private benefit is 'incidental' where (taking account of its nature and amount) it is a necessary result or by-product of carrying out your charity's purposes.*

An investment your charity makes can involve some private benefit to others, such as business owners or other investors. This is acceptable if you are satisfied that all of the following apply to the private benefit. It is:

- *no more than incidental*
- *necessary in the circumstances*

- *reasonable in amount*
- *in the best interests of your charity*

You must use your judgement to determine whether any private benefit from an investment your charity makes is acceptable, and always act in the best interests of your charity.”

Tax treatment of PRI

Our tax regulator, HMRC, sets categories of approved charitable expenditures. The consequence of something being non-approved charitable expenditure is that the charity loses tax exemption on an equivalent amount of income.

HMRC has guidance on the types of investments and loans that are ‘approved charitable investments’ and ‘approved charitable loans’. An investment or loan which is not accepted as falling within one of the definitions mentioned will be regarded as non-qualifying expenditure.

There are 12 types of investments that are accepted as qualifying investments. They include the traditional purely financial investment and they include “any loan or other investment made for the benefit of the charity and not for the avoidance of tax (whether by the charity or any other person)”. (There was a 2020 case which considered the test [Case Comment: Reb Moische Foundation v HMRC - Charity Tax Group](#)) HMRC’s guidance says

“Programme Related Investments are not investments in the strict sense. While such investments may take the form of subscribing for shares in a company they’re not made with a view to generating a flow of income or gains to carry out the charity’s objects. Indeed, such investments may not offer any realistic prospect of a commercial investment return. Instead, these investments are properly viewed as application of funds to further the purposes of the charity. Where the trustees are able to demonstrate that proper consideration has been given to such an investment and how it’s expected to further the charity’s objects HMRC is likely to accept that it’s been made for the benefit of the charity.”

HMRC also accepts:

- Qualifying investments includes “mixed motive investments” ie where a charity invests with a view to both generate a financial return for the charity and achieve its charitable purposes
- “Qualifying loans” – which include a loan made to another charity for charitable purposes only, a loan to a beneficiary of the charity, and made in the course of carrying out the purposes of the charity, any other loan made for the benefit of the charity, and not for the avoidance of tax (whether by the charity or another person)

Accounting for PRI

We have an accounting standard for charities called the Charities’ SORP FRS 102. It uses (and defines) the terms “programme-related” and “mixed-motive” investments.

“A programme related investment is an asset held by a charity that provides investment funding to individuals or organisations in order to directly further the charitable purposes of the investing charity; any financial return obtained is not a primary reason for making the investment.

A programme related investment is made exclusively to further the charitable aims of the investing charity by funding specific activities or related tangible fixed assets of a third party which, in turn, contribute to the investor’s own charitable purposes.”

Property may be classified as a programme related investment only when it is held specifically to enable a third party to undertake particular activities using the property that contribute to the investing charity’s charitable purposes.

Programme related investments must be disclosed either as a separate line on the face of the balance sheet or identified as a separate class of investment in the notes to the accounts, depending on the materiality of the holding.

If a programme related investment ceases to be held primarily to further the charitable aims of the investing charity, it must be reclassified as a financial investment, or investment property, or a mixed motive investment, as appropriate.

There's guidance in the SORP about how to value PRI for the purpose of the accounts.

Did the introduction of the statutory power make a difference?

A Government review in 2020 concluded that charities already doing PRI were reassured by the Act and were continuing to do what they'd already been doing. And that other charities were now exploring PRI.

These are some current examples of PRI and wider mission related investment:

[STW Loan Charity | Interest Free Business & Education Loans](#) (established in 1542) provides loans to new and existing business owners and postgraduate students across Leicester, Leicestershire and Rutland.

Stewardship [Loans](#) to churches – currently provides loan finance totalling £28m to churches and Christian charities. [Partnering for purpose: Glow Church and the power of generosity](#)

In March 2025 the Joseph Rowntree Foundation said it would move to a “fully mission-aligned” investment approach for all of its £400m endowment. [Charity switches to ‘fully mission-aligned’ investment of £400m endowment](#)

Appendix C
Presentations by International Guests
Ireland

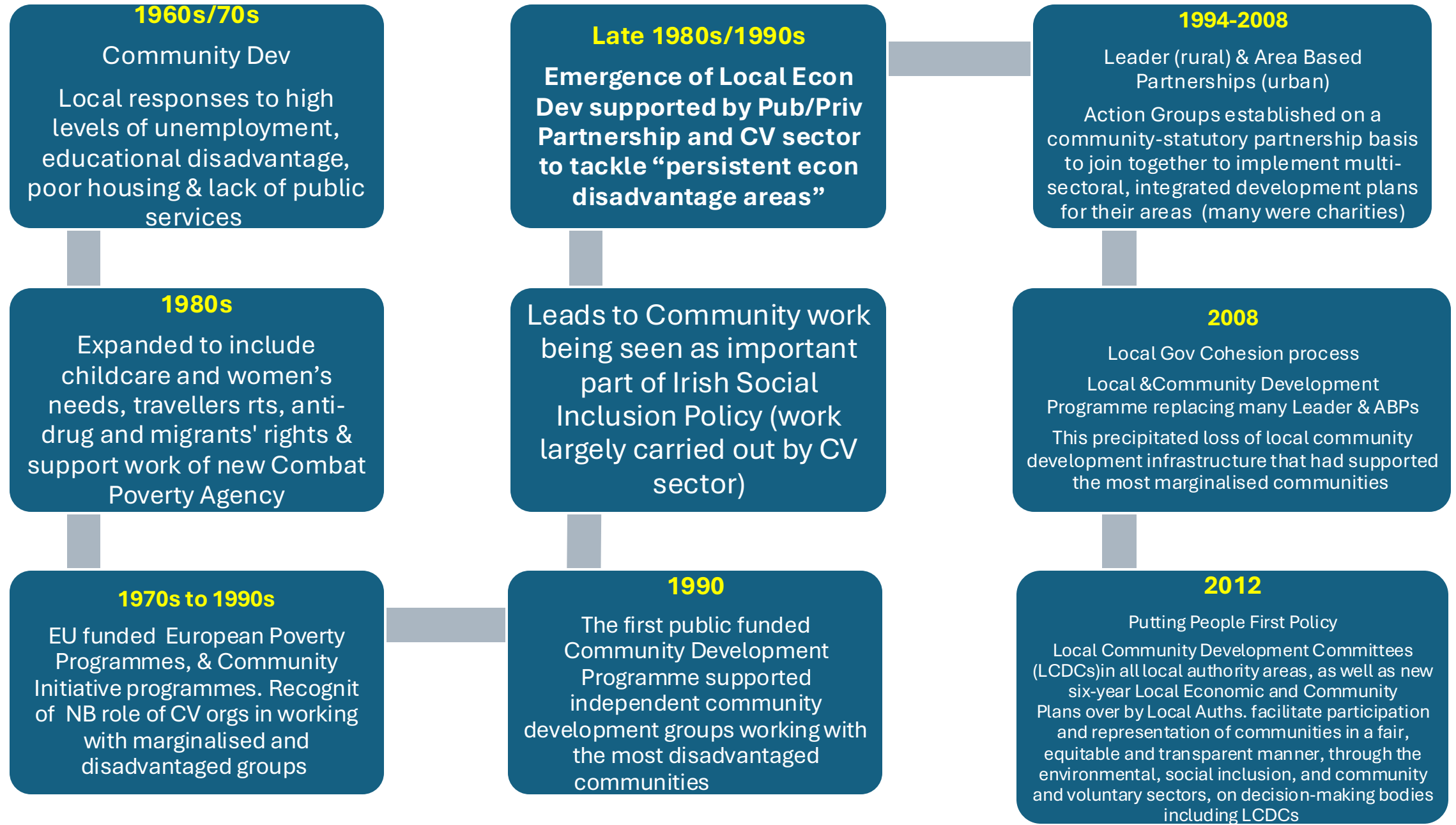
Community Economic Development

A Short Irish Contribution

Current Irish context

- CED not a common term but ‘social enterprise’ terminology is common and equally undefined. There is also a term called “local economic development” which is driven by government as a funding mechanism and has gone through several iterations in the past 50 years.
- PRI is not prevalent although it does exist if you go searching. My rationale for this is that PRI requires a foundation/philanthropic institution to have funds that it can grant/lend/lose. The philanthropic institutional base in Ireland is very small (and is something Gov is anxious to grow with its new National Policy on Philanthropy 2024-28). There are very few grant-making organisations in comparison to other countries.
- Unlike Canada, Ireland has a Charities Regulator (the CRA) and Revenue maintains sovereignty over tax matters, including charitable tax exemption. There is a statutory definition of charitable purpose and statutory provisions on the concept of “public benefit”. There are approximately 11,000 registered charities in Ireland of which 3,000 odd are primary schools.
- The CRA has developed a classification standard to enable charities provide greater context on the Charities Register as to the focus of their particular charitable purposes but as completion is voluntary is not yet at scale.

Irish Historical & Policy Context of ‘Local Economic Development’



How CED is treated under Irish Charity Law

- Similarly to Canada, CED is not recognized as a charitable purpose per se.
- Activities related to CED may be charitable (as in Canada) when they further a charitable purpose directly.
- **The Charities Act 2009, s3(11)** includes within the definition of ‘other purposes beneficial to the community’ three relevant subheads,
 - a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,
 - b) the advancement of community development, including rural or urban regeneration,
 - (l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.
- The CRA Classification Standard (2022) recognises “Community Development and Housing” as a **primary standard** under which nestles the **secondary classifications** of urban or rural regeneration; community or local development and improvement, and economic development and social enterprise.

Irish Tax Law echoes Canadian principles re direct charitability and social business support

- **Section 208 TCA** exempts from income tax trading profits and (from 1 January 2024) professional services income arising to charities. There are two important requirements attaching to the trading and professional exemption.
 - 1) the income must be applied solely to the purposes of the charity.
 - 2) one of the following conditions must be satisfied:
 - the trade or profession must be exercised in the carrying on of a primary purpose of the charity – for example, where a religious organisation sells religious books and magazines, the main object of the organisation is the promotion of religion and the sale of books and magazines is a facility to achieve that object; or
 - the work in connection with the trade or profession is carried on mainly by beneficiaries of the charity - for example, the sale of goods produced by people with a disability through a shop or mail order/online catalogue.

Social Enterprises that enjoy Charitable Registration and Tax Exemption

- Baseline survey of Social enterprises (SEs) in Ireland in 2023, commissioned by Dept Rural Community & Development, revealed that there are 4,335 organisations in the social enterprise sector in Ireland.
- Nearly 70% of SEs are concentrated in 4 sectors – childcare, community infrastructure and local development; health, youth services and social care and heritage festivals, arts and creative industry.
- While the report lacks clarity it states, “75% of social enterprises are registered as a CLG with 88% registered with the Charities Regulator”. Either way this shows the close interaction between CED and charity law. CRA has interpreted this as being 88% of the 75% (so 75% of 4335 = 3251 and 88% of this figure = 2861 social enterprise CLGs registered as charities. Note caution required as not definitive.)

Activities that relieve the unemployed

- Irish National Organisation of the Unemployed (RCN 2020536) – information, training and support services; community employment schemes
- Fingal I.C.T.U. Centre For The Unemployed (RCN: 20032340)
- Examples found on the Charities Register and typically meet the criteria described in the English and Canadian guidance.

Legislative and Policy Framework

- No equivalent in Ireland to **England and Wales' Charities (Protection and Social Investment) Act 2016**.
- No similar guidance on Programme Related Investments by either Revenue or the Charities Regulatory Authority (CRA).
- Investment powers primarily spelt out in trust deed/memo & articles, subject to general statutory "Charity Test".
- In absence of express investment powers, default investment powers are governed by Tee (Authorised Investment) Act 1958 (and Statutory Instruments thereunder). This represents a prescribed list with some small shift towards prudent investor standards in later SIs in the late 1990s.
- CRA's predecessor (the Commissioners for Charitable Donations and Bequests 'CCDB') issued a Practice Note in 1994. This note speaks to conventional investment powers and provides certain global authorisation to Ch Tees to invest in specified categories of securities, without the need for any application to be made to the Board (in absence of express trust powers) but there is no discussion of PRI.
- The CRA approach PRI and Social Enterprise applications on a case by case basis driven by required proof of public benefit over private benefit.

Approved Charitable Investments – existing law

- The power of trustees, whether charitable or not, to invest is primarily governed by the terms of the trust instrument. If the trust instrument is silent, then the trustees have to rely on statute and are restricted to the trust securities authorised by **the Trustee Act 1893 as amended by the Trustee (Authorised Investments) Act 1958**.
- The underlying legal framework for charity investments is governed by the s9 &10 of the Charities Act 1973, amending ss 32& 33 of Charities Acts 1961.
- **AMENDED s32** provides that—(1) A Court may invest or order, empower, consent to or approve of the investment of any fund held upon any charitable trust in such manner, on Ts and Cs, as the Court thinks proper whether or not such investment is authorised by the trust instrument, if any.
 - (2) The [CRA] may, in its discretion, invest any fund held by it upon any charitable trust in such manner as it thinks proper, whether or not such investment is authorised by the trust instrument, if any, or by law.
 - (3) The[CRA] may, if it thinks fit, on the application of the trustees of any fund held upon any charitable trust, by order confer upon the trustees, either generally or in any particular instance, power to invest the fund in such manner, on such Ts and Cs, as the Board may think proper, whether or not such investment is authorised by the trust instrument, if any, or by law.
- **AMENDED s33** provides CRA may grant leave to Tees to invest charity fund held subject to prior limited interest.

Current Practice Notes, CRA guidance and Legislative Change

- **CCDB Revised Form of Authorisation of Investments (1994)** gives global authorisation to Charity Trustees to invest in specified categories of securities, without the need for any application to be made to the Board.
 - The whole or any part of the fund may be invested in Government Stocks or other Trustee Investments as authorised from time to time by the Minister for Finance.
 - Up to 60% of the funds may be invested in the equity of Irish registered companies with a listing on the Irish Stock Exchange where the market capitalisation of the company exceeds IR£100 million at the time of the investment, limited to not more than 10% of the funds in any one such qualifying company.
 - Up to 25% of the funds may be invested in the equity of Irish registered companies with a listing on the Irish Stock Exchange where the market capitalisation of the company exceeds IR£50 million at the time of the investment, limited to not more than 5% of the funds in any one such qualifying company.
 - Up to one third of the funds may be invested in any Unit Trust which is authorised under the Unit Trusts Act, 1972 as amended by the Unit Trusts Act, 1990.
 - Up to 50% of the funds may be invested in the equity of companies which are part of the FTSE 100 index in the United Kingdom, limited to not more than 10% of the funds in any one such qualifying company.
 - Up to 50% of the funds may be invested in the equity of companies listed on any Stock Exchange of the European Community, The New York Stock Exchange, or the Tokyo Stock Exchange, where the market capitalisation of the company exceeds the equivalent of IR£600 million at the time of the investment, limited to not more than 10% of the funds in any one such qualifying company.
- The Charities (Amendment) Act 2024 strengthened the sector's regulations by introducing new financial rules, and it is expected that when fully commenced, charities will be required to follow the Charities SORP for accounting, which classifies PRIs as a specific investment type requiring disclosure on the balance sheet.

Yet, examples of charities that engage very much in PRI from the Charities Register . . .

- **Small Foundation (reg charity)** – PRI in sub-Saharan Africa (see <https://smallfoundation.ie/>)
- **Western Development Commission (registered charity)** (“The Western Investment Fund provides equity finance and loans to business, communities, social enterprises, strategic initiatives and the creative industry in the Western Region in Ireland. The Fund is currently valued at €88m and has been self-financing since 2010. Over the past twelve months the fund has disbursed over €9.3m across 39 projects including €6.2m invested in SME’s, €430k to Creative Industries and €3.1m across community and social enterprises and strategic initiatives.”)
- Many of the religious orders report on impact investment in the community in furtherance of their charitable objects. The **Presentation Sisters (reg charity)** founded **Clann Credo (reg charity)**, Ire’s first social finance funder.
- Established as a not-for-profit, independently funded charity in response to the devastating closure of the famous Krups factory in 1998, **Limerick Enterprise Development Partnership (reg charity)** purchased the facility, which it lets the property and uses 100% of its revenue to invest in impactful community projects across Limerick’s most disadvantaged communities.

Some Outstanding Issues

- Recent issues with philanthropic institutions funding non-profits as opposed to registered charities (and some informal discussion around principles pertaining to support of non-qualified donees) but nothing in writing.
- Growing interest in creation of enterprise foundations where a charity holds a controlling share in a business, the dividends of which are used to directly further the foundation's charitable purposes.
- Lack of clarity in sector as to when social enterprises are eligible or not for registration as charities. Need for guidance.
- Published Guidance on PRIs would also benefit those existing charities that operate in this space as currently it is on a case-by-case basis.

**Appendix D
Presentations by International Guests
Australia**

International participants presentation: Australia

- *how community economic development is treated*
- *the rules related to program-related investments*

Community Economic Development

Definition

Barraket et al define “social enterprises” as organisations that trade to produce a public or community benefit and reinvest a substantial proportion of their income in the fulfilment of their mission.

The Australian not-for-profit organisation, Social Traders, describes social enterprises as businesses that trade to intentionally tackle social problems, improve communities, provide access to employment and training, or help the environment. They provide a practical definition of this type of business using three criteria. The organisation must:

- (1) be driven by a public or community cause;
- (2) derive most of its income from trade rather than donations or grants; and
- (3) use the majority (at least 50%) of profits to work towards its social mission.

Legal structures tend to force a decision between for-profit and not-for-profit objectives:

- Incorporated Associations
- Companies Limited by Guarantee
- Co operatives

The ways to overcome these restrictions – by creating two distinct legal entities, by choosing voluntary certification, or by using some of the more unusual business forms. However, these are not always simple options, and at this time in Australia there is no legal structure specifically designed to meet hybrid business objectives.

Charities carrying on incidental or unrelated businesses thru ***Commissioner of Taxation v Word Investments Ltd*** principles are not subject to income tax – destination of income principle.

In 2016, there were about 20,000 social enterprises in Australia - 73% of social enterprises in Australia were small businesses, 23% medium, and only 3.6% of organisations were large.

32.8% of were incorporated associations, 31.3% were companies limited by guarantee and 18% were proprietary companies. About 300 are certified as B Corps.

Issues:

- Access to top-shelf tax benefits and incentives thru Deductible Gift Recipient (DGR) Status
- More government funding and reserved contracting opportunities
- Hybrid legal structures – waning enthusiasm.

Charitable Purposes:

Case law is generally taken from England and Wales:

Employment for those in poverty/disability

Education also wide

Purpose focus – not activities

TASMANIAN ELECTRONIC COMMERCE CENTRE PTY LTD v COMMISSIONER OF TAXATION

The appellant was a charitable institution, as its main object was to assist Tasmanian business and industry to adopt electronic commerce and compete in the electronic market place, which was a charitable purpose.

How does TECC's main object benefit the community or the public or a part of it?

Once it is accepted that assistance to business and industry can provide a public benefit of the kind which the law recognises as charitable, a proposition which does not seem to be in dispute in the present case, I do not see how the fact that individual businesses may benefit can be a disqualifying factor. Presumably some farmers in Yorkshire were able to make, or increase, profits as a consequence of the work of the Yorkshire Agricultural Society, but there was no suggestion that this militated against classification of the Society as a charity.

- Improved technology for business, employment,
- Public funding irrelevant

Contra National Tourism Development Authority v Coughlan [2009] 3 IR 549; [2009] IEHC 53 at [37] per Charleton J.

was whether the trust comprising as its subject matter a set of scenic golf courses and a club house was a charitable trust? It was argued that the trust herein was charitable because it was intended to be and had been beneficial to the community in Killarney and that it resulted in the preservation of a lake vista that would otherwise have been subject to suburban-style development.

Canterbury Development Corporation v Charities Commission [2010] 2 NZLR 707; [2010] NZHC

The public/private dichotomy

Another point of difficulty is the weight given by the High Court to the benefit provided to individual businesses as a result of CDC carrying out its work. It is well-established that the existence of incidental benefits to individual businesses does not deprive an entity of its charitable nature (see, for example, *Triton* [62]). However, the High Court found ([60]) that CDC's assistance to business is its central purpose, despite acknowledging CDC's belief that this assistance will, in turn, result in benefit to the Canterbury community.

It is not clear why this conclusion was reached. CDC's stated focus is the economic development of the Canterbury community, with assistance to selected businesses merely the means by which that overall objective of public benefit is pursued. It is difficult to see how export-led economic development could be achieved otherwise than through assistance to individual businesses.

Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue

The Chamber's provision of services to its membership was, explained Chaney J, 'merely a means to the end of pursuing and promoting free enterprise' and 'ancillary to, and possibly a necessary part of, fostering trade and commerce generally for the benefit of the wider community'

SA

An organisation does not have the charitable purpose of advancing trade and commerce if it has as a substantial purpose, or purposes, the advancement of the sectional interests of particular participants, or classes of participants, in trade and commerce.

To this end, the New Zealand case law — here aligning with the approach later espoused in South Australia — supports the defensible proposition that while assistance to business and industry can provide a public benefit that the law recognises as charitable, it is not ordinarily charitable if the assistance is provided to individual businesses in such a way that the benefit to the industry, or to the broader public, is derived through the individual businesses.

Angel Loop Ltd v Commissioner of Australian Charities and Not-for-profits Commission [2021] AATA 3894

By a series of branches of like-minded people, Angel Loop facilitated the introduction of inventors and investors to each other to encourage mentorship and investment. Angel Loop did not charge fees and did not have any interest in any investments made.

Angel Loop, which was self-represented, contended that its facilitation of private investment through the roadshows, screening, coaching, and combination of groups was simply part of its objective of promoting a culture of innovation and entrepreneurship and should be considered as similar to the organisation which was accepted as charitable in *Commissioner of Taxation v Triton Foundation* [2005] FCA 1319 (Triton).

The principal object of Triton is "the promotion of a culture of innovation and entrepreneurship in Australia, particularly among the young, by visibly assisting innovators to commercialise their ideas".

In *Royal Australasian College of Surgeons*, the High Court held that the "main or real object of the College [was] the promotion and advancement of surgery"

Having regard to Triton's constitution and the other constituent documents mentioned above, as well as other facts found by the Tribunal, it is clear enough that Triton focused on inventors, especially inventors with ideas that were most likely to have commercial success, as a means to achieve its main promotional object, which was designed to benefit the community at large. The assistance given to inventors, though of direct benefit to them, was concomitant or ancillary to its principal object. This assistance, which was intended to enable Triton to "showcase" inventors and their inventions, complemented Triton's other activities, also directed to promoting and publicizing an innovative and entrepreneurial commercial approach in Australia. Triton offered its services for the benefit of the public or a sector of the public, as opposed to individual members of the community. The authorities confirm that, in these circumstances, the fact that individuals (here inventors) may benefit from Triton's activities does not detract from its charitable status.

Angel Loop conclusion: Its core function is not simply to educate and encourage or assist. A core function is to bring about a commercial deal between investor and inventor. That cannot be said to be ancillary to the charitable purpose. It is a purpose, if not the main purpose, of [Angel Loop]. It is a noncharitable purpose even though it is doubtless a worthy purpose.

THE RULES RELATED TO PROGRAM-RELATED INVESTMENTS

Ancillary Funds and Minimum Distributions

- Private and Public Funds – to be renamed “Giving Funds” soon
- Mandated distribution rates of Public 4% of the market value of the fund’s net assets at the end of the previous financial year and 5% for Private funds.
- For a PuAF: if the fund’s expenses are paid from its assets/income, there’s also a condition that the minimum must be at least \$8,800 (or the remainder of the fund if less than that).
- For a PAF: there is a floor of \$11,000 (or the remainder of the fund if less than that) where the 5% calculation yields less than \$11,000 and expenses are paid from the fund.
- Both funds may apply to the Commissioner to reduce the minimum rate in special circumstances.
- For PuAFs, in their first financial year and the next four years, they are not required to meet the minimum distribution rule.

1. Investment in Social Impact Bonds: If a PAF or PubAF invests in a **social impact bond** issued by an eligible DGR, and that bond provides a return that is less than the market rate of return expected on a comparable corporate bond issue, the fund is deemed to be providing a benefit. The market value of this distribution is determined as an amount equal to the interest saved in that financial year by the DGR due to the discounted rate of return.

2. Discounted Loans: If a PAF or PubAF lends money to an eligible DGR at an interest rate discounted below what would be charged on a comparable arm’s length loan sourced from a financial institution, the fund is providing a benefit. The market value of the distribution is the interest forgone in the financial year by the fund because the DGR was not charged an arm’s length rate of interest.

3. Guarantees on Loans: If a PAF or PubAF guarantees a loan provided by a financial institution to an eligible DGR, this guarantee is considered a provision of benefit. The fund may calculate the market value of this distribution as the discount to the interest rate that the DGR would have otherwise been charged on a comparable arm's length unsecured loan from that financial institution. Furthermore, if the DGR defaults on the loan and the

fund is required to make a payment under the guarantee, that payment is also treated as a distribution (provision of money, property, or benefits).

4. Discounted Lease/Office Space: If a fund grants a lease of office space to an eligible DGR at a discount to the market price, the benefit provided counts as a distribution. The market value used is equal to the amount of the discount.

An interesting example is here <https://www.philanthropy.org.au/news-and-stories/new-impact-investment-opportunity-for-ancillary-funds-a-game-changer>

**Appendix E
CRA Presentation**

Community economic development and program related investments

Muttart consultation

Marina Nicolau

October 28, 2025



Agenda

01

Community economic development (CED) activities

- CED activities in area of social and economic deprivation
-
- CED activities that promote commerce or industry
-

02

Program related investments (PRIs)

- How can charities engage in PRIs
-
- Legal requirements and other considerations
-

03

Questions ?

Community economic development activities

- Community economic development (CED) activities are carried on to improve the economic opportunities and social conditions of a community.
- CED activities are charitable when they further (any) category of charitable purposes.

For more information, see [Guidance CG-014, Community economic development activities and charitable registration](#)

Community economic development activities-examples

- Providing assistance with finding or obtaining employment or self-employment
- Providing employment-related and self-employment-related training
- Operating a social business for persons with a disability
- Holding a community land trust
- Contributing to an individual development account
- Providing a loan to a charitable beneficiary
- Guaranteeing a loan obtained by a charitable beneficiary from a lender

CED activities in areas of social and economic deprivation

An area of social and economic deprivation is a geographic community affected by a disaster, or a community that displays high rates of :

- unemployment
- crime, including family violence
- health problems, including mental health issues, drug and alcohol addiction, or suicide
- children and youth at risk

Any private benefit assessment is made based on context

CED activities that promote commerce or industry

Subcategories of charity:

- To promote greater efficiencies [specify industry]
- To promote and facilitate the achievement, preservation and maintenance of high standards of practice [specify industry] :

Activities

- by helping entrepreneurs bring new and innovative ideas to the marketplace
- by holding public exhibitions that showcase developments, or the high standards of practice and by awarding prizes for excellence of its products and services.

Program related investments (PRIs)

- A unique category of investments that registered charities can make to further their charitable purposes
- Leverage resources of an investee to provide greater public benefit
- Make more resources available in the communities

Common types or forms of PRIs



LOANS



**LOAN
GUARANTEES**



**SHARE
PURCHASES**



**LEASES OF REAL
PROPERTY**

PRIs- general considerations

Opportunities



Enhanced Financial Flexibility



Increased Impact



Access to New Resources



Meeting Disbursement Quotas

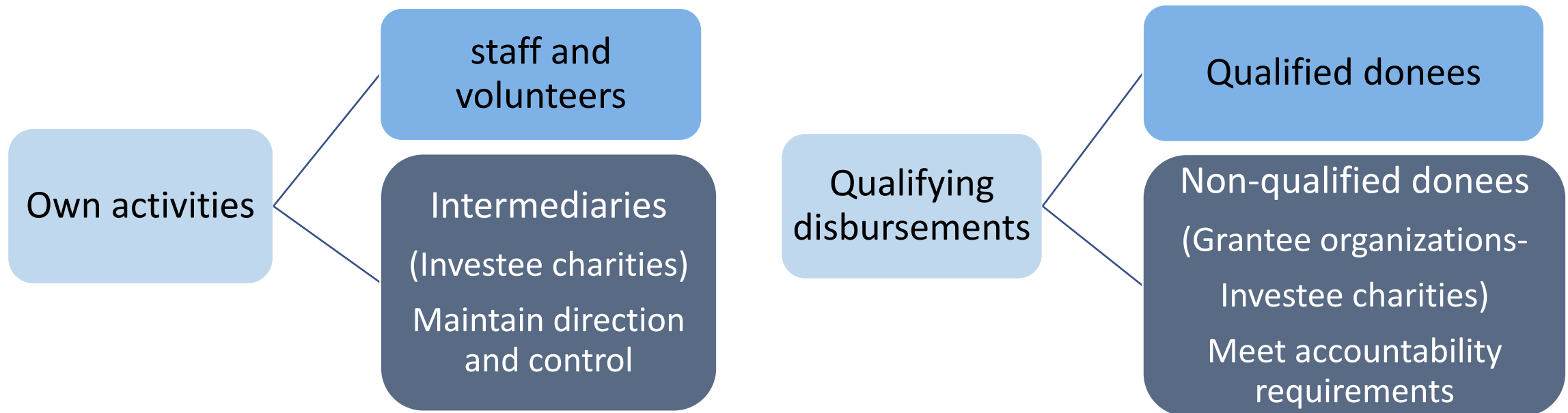
Challenges

Financial Risk

Compliance Challenges

Resource Intensive

The ways a registered charity can operate



For more information, see [Guidance CG-002, Canadian registered charities carrying on activities outside Canada](#), [Guidance CG-004, Using an intermediary to carry on a charity's activities within Canada](#), and [Guidance CG-032, Registered charities making grants to non-qualified donees](#)

Own activities vs Granting

Own activities	Granting
<ul style="list-style-type: none">• Charity must exercise direction and control• Reported as the charity's "own activity"• Measures focus on the charity directing and controlling the activities, such that they could be considered the charity's own	<ul style="list-style-type: none">• Charity must meet accountability requirements• Charity can support existing work of non-qualified donee• Accountability tools focus on:<ul style="list-style-type: none">➤ mitigating risk➤ collaboration➤ providing autonomy to non-qualified donee

Requirements of a PRI entered into with a non-qualified donee

- 1. Maintain direction and control over resources (own activities) OR meet the accountability requirement of the Income Tax Act (granting)
- 2. Ensure it has appropriate exit mechanisms.
- 3. Not provide any non-incidental private benefit.

For more information, see [Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.](#)

The disbursement quota and PRIs

- Generally, property subject to a PRI is considered property used in charitable activities or administration
 - this property **is not** included in the disbursement quota calculation
- Interest or other income that is earned from loans or interest are considered as investment income received or earned
 - they are “property not used in charitable activities” until they are used again for charitable activities or administration
- Value of charitable activities carried on could possibly be used to meet the investor charity’s disbursement quota



Financial return

Charity's programs

Conventional investments

Made to achieve a maximal financial return

Social investments

Made to directly further charitable purposes and achieve a financial return:

- ethical
- impact

Program related investments

Expenditures on the charity's own charitable activities

See Guidance of the Public Guardian and Trustee, [Charities and Social Investments](#).

Questions

- Do you have examples of charities carrying on CED activities? Any concerns, challenges, best practices to share?
- What types of PRIs have charities engaged in, and what outcomes have you observed?
- What challenges have you faced in structuring or reporting PRIs?
- Can you share examples of ways you have seen PRIs used to further charitable objectives?

