

Equity Investors Incentive Guidelines

1. Program Summary

The Equity Investors Incentive is intended to encourage investments in high-value, export-oriented Prince Edward Island companies (“investee companies”). An investment in a Prince Edward Island company is an investment in the future economic strength of the province.

The Equity Investors Incentive provides a non-repayable incentive in the form of a direct rebate to investors (individuals or companies) and is calculated at up to 20 percent of the purchase price of the equity investment in the investee company. The maximum investor rebate available per approved investee company is \$200,000.

The investee company must first apply for the Equity Investors Incentive. Please consult with an Innovation PEI staff member for guidance specific to your company’s situation. If approved, the investee company will then proceed to secure investors. On receipt of payment for and issuance of the share(s), the investee company will have the investor complete the Investor Application Form. The investee company provides the form and all other required documentation to Innovation PEI, triggering Innovation PEI to issue payment to the eligible investor.

2. Eligible Investors

Approval of an investee company is not an endorsement or recommendation to purchase by Innovation PEI. Innovation PEI assumes no responsibility for the eventual success or failure of the investee company. It is the responsibility of the purchaser (“eligible investor”) to complete due diligence on the investee company - to assess the merits and pass judgment on their investment. Innovation PEI does not guarantee any investment. The investor is at risk for their investment.

For an investment in an investee company to be eligible for the Equity Investors Incentive, it must be made by an eligible investor. An eligible investor must hold the qualified share(s) for four years.

An **eligible investor** is:

- an individual that:
 - purchases the share(s) after the investee company has been approved and accepted the letter of offer from Innovation PEI;
 - is a Canadian citizen or permanent resident;
 - has reached the age of majority in the province or territory in which they are resident; and
 - is dealing at arm’s length with the investee company, as defined Section 251 of the Income Tax Act of Canada.
- a company that:
 - purchases the share(s) after the investee company has been approved and accepted the letter of offer from Innovation PEI;
 - is a Canadian-controlled private corporation or other Canadian-controlled company; and
 - is at arm’s length to the investee company as defined under Section 251 of the Income Tax Act.

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An **excluded investor** is an investor that meets any one of the following conditions:

- an individual or company that is a current shareholder of the investee company;
- an individual or company that was previously a shareholder of the investee company;
- an individual or company that is related to the investee company as defined under section 251 of the Income Tax Act;
- an individual or company that has a defaulted outstanding debt obligation on file in the Government of Prince Edward Island Central Default Registry;
- a venture capital organization that has received financial contributions from the Province of Prince Edward Island, whether through direct investment in the fund or the provision of operational or other funding support to the organization;
- a company that is receiving funding support from Innovation PEI.

3. Investee Company

The Equity Investors Incentive encourages investment in eligible Prince Edward Island small and medium-sized businesses to increase investment in innovation that would not happen otherwise, by supplying the required capital to support research, development or commercialization of new technology, products or processes.

Minimum Eligibility Criteria:

A business may be approved as an investee company provided that it:

- consults with Innovation PEI prior to submitting an application;
- is a taxable, private Canadian corporation;
- is registered to do business in Prince Edward Island;
- has its head office and its primary business operations in Prince Edward Island;
- has been in operation in Prince Edward Island for a minimum of one year;
- is a provider of exportable goods or services in one of the strategic sectors;
- pays at least 75% of its payroll to employees residing in Prince Edward Island;
- has fewer than 50 employees;
- has assets less than \$10 million;
- Approved investee companies must ensure compliance with securities legislation;
- has a well-developed business plan and demonstrates appropriate use of funds raised to support expansion and/or ongoing operations in Prince Edward Island; and
- does not have any defaulted outstanding debt obligation on file in the Government of Prince Edward Island Central Default Registry.

Other Eligibility Conditions:

Other conditions when evaluating an applicant's request for assistance may include, but are not limited to:

- Potential for long-term viability, including qualifications and track record of senior management.
- Cost benefit to the Province of Prince Edward Island.
- Employment creation.
- Export sales and import substitution.

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- Environmental impact.
- Availability of program funds.
- Level of assistance from other government programs offered or available.

Not all applicants meeting the minimum eligibility criteria will be approved. The program is subject to an annual budget and will prioritize support to high-growth potential businesses in strategic sectors that demonstrate economic benefits to Prince Edward Island.

4. Strategic Sectors

Strategic sectors in Prince Edward Island include:

- bioscience,
- aerospace and defence,
- advanced manufacturing and processing,
- renewable energy and clean technology,
- information and communications technology,
- creative and cultural industries,
- first-of-its-kind exportable goods or services in other sectors may be considered.

Other strategic sectors may be added by regulation over time and will be included in this guide.

Definitions of identified strategic sectors are maintained in the offices of Innovation PEI.

5. Qualified Share

“Qualified share” of an eligible investor means a share in the capital stock of an investee company, which has been purchased exclusively with money, and:

- the share was not previously owned by any person (including a corporation),
- after acquiring the share, the eligible investor, and/or any related parties, do not own securities of the investee company which have voting rights representing more than 49 percent of all voting rights issued,
- the terms of the share provide that retraction and redemption privileges, if any, may not be exercised until after four years have elapsed from the date the share was issued by the investee company to the eligible investor,
- the investee company does not provide any form of financial assistance to the eligible investor to enable the eligible investor to acquire the share,
- the eligible investor is dealing at arm's length with the investee company immediately after the acquisition of the share,
- are issued in accordance with securities legislation, supported by a written opinion from a person entitled to practice law in Prince Edward Island, to confirm that the issuance of the share is in accordance with Prince Edward Island securities laws.

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6. Related Parties

“Related Parties” has the meaning assigned to it under section 251 of the Income Tax Act of Canada. As well as “employees of the corporation who do not deal arm’s length with the corporation,” the definition includes such persons as parties related through blood relationship, marriage, common-law partnership, and adoption. Some common examples include persons who control the corporation, “controlling shareholders”, and the spouse, child, grandchild, parent, brother or sister of the controlling shareholders.

The investee company is not at arm’s length from a potential investor company if:
the investee company and the potential investor company are under common control, or
if Related Parties control both the investee company and the potential investor company, or
other non-arm’s length relationships of control involving corporations.

For detailed interpretation guidance, review *Income Tax Folio S1-F5-C1, Related Persons and Dealing at Arm’s Length* at <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-1-individuals/folio-5-transfer-income-property-rights-third-parties/income-tax-folio-s1-f5-c1-related-persons-dealing-arms-length.html>

7. Roll-Over Restriction

In addition to paragraph 5 above (“qualified share”), an investment is not qualified if, in the twelve months before or after the date the qualified share is issued:

- the investee company has redeemed, acquired or canceled a share of its capital stock that was owned at any time in the period by the eligible investor in respect of such a share, or
- paid an amount on a reduction of the paid-up capital in respect of such a share, or
- the investee company has repaid, or repays, an amount on account of the principal amount of a debt obligation that was owned by the eligible investor at any time in the period.

8. Use of Funds

An investee company that raises funds with the consideration of an Equity Investors Incentive is expected to use those funds to expand an active business carried on by the investee company in Prince Edward Island. At the time of application for an Equity Investors Incentive, the investee company must identify what the funds raised will be used for and is limited to using the funds raised for the identified purpose(s).

Acceptable uses of funds raised by an investee company include:

- reduce requirements for conventional term debt and working capital financing,
- support expansion or diversification,
- product development or commercialization of new technology, products or processes,
- injection of technical or managerial expertise.

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9. Prohibited Use of Funds

The investee company is prohibited from using the funds raised for any of the following purposes:

- lending,
- acquiring securities,
- purchasing land, other than land that is required for the active business that the investee company is primarily engaged in,
- paying dividends,
- purchasing or redeeming shares of the investee company (or associated corporation),
- repaying the debt to a Director, shareholder or officer of the investee company (or one of their *associates* – see below),
- the redemption of shares or the funding of the purchase of all or substantially all of the assets of a previously existing proprietorship, partnership, joint venture, trust or company, except where that firm is in receivership or bankruptcy,
- retiring a liability of a shareholder of the investee company (or an associated corporation),
- the purchase of assets or services by the investee company for a price greater than fair market value.

An *associate of a person* is considered any of the following:

- a corporation of which the person owns, directly or indirectly, shares carrying 10% or more of its voting rights,
- a partner of the person,
- a participant in a joint venture with the person,
- a trust or estate in which the person has a substantial beneficial interest or serves as trustee,
- a person's spouse along with the person (and their spouse's) parent, grandparent, child, grandchild, brother or sister who reside in the same residence as the person.

10. Process Summary

Prior to submitting an application to Innovation PEI for an Equity Investors Incentive, an investee company is required to first consult with an Innovation PEI employee. The consultation is to (a) determine if the Equity Investors Incentive is the most effective means for Innovation PEI to provide support to the investee company; (b) determine if the investee company and proposed share issue may qualify for the incentive; and (c) ensure that the investee company understands the incentive.

If the investee company proceeds to submit an application following the consultation, Innovation PEI will review the application and, if it is found to meet the criteria, will issue an Equity Investors Incentive letter of offer to the investee company. The detailed terms and conditions of the incentive, including the specific rate and maximum aggregate value of the incentive, reporting requirements, triggering payment to eligible investors, and conditions of default are included within the letter of offer (the "LOO") issued by Innovation PEI and accepted by the investee company.

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11. Calculating the Equity Investors Incentive

The Equity Investors Incentive is a rebate of up to 20% of the eligible investment, with the specific rate and maximum aggregate value of the incentive included within the terms of the LOO.

12. Applying to be an Investee Company

A company must support its application with:

- a copy of the investee company's financial statements for its last taxation year;
- a copy of the investee company's income tax returns for its last taxation year;
- a copy of the investee company's articles or other constating documents;
- a list of directors and officers;
- a list containing the names of each individual of the company (where known) to whom the investee company intends to issue a share and the social insurance number, business number, occupation, and residential address of each such individual/company;
- a copy of the opinion, from a person entitled to practice law in Prince Edward Island, confirming that the issuance of the share is in accordance with Prince Edward Island securities legislation;
- a business plan containing a complete description of the investee company's activities, estimates of anticipated receipts from qualified shares and investments that are not qualified, and a description of the intended use of the funds raised from the issuance of the identified investments.

13. Letter of Offer

For each application approved, a letter of offer will be forwarded to the investee company which, when accepted, shall constitute a contract between Innovation PEI and the investee company. The detailed terms and conditions of the incentive, including the obligation of each party, are included.

14. Confirmation of Transaction

The company is required to provide to Innovation PEI a certification, signed by an Officer of the Company and the investor, that the qualified share has been delivered to the investor and that the company has received payment in full. The form to be used for this purpose is the *Report of Share Sale and Purchase* for Equity Investors Incentive, attached as Appendix 1.

15. Payment of Equity Investors Incentive to Eligible Investors

The letter of offer provides detailed information on triggering payment to eligible investors. Briefly, payments to eligible investors will occur when Innovation PEI receives, from the legal firm representing the investee company, a completed *Report of Share Sale and Purchase for Equity Investors Incentive* and documentation to evidence that:

- the eligible investor is a holder of qualifying shares;
- the purchase price has been deposited to the accounts of the investee company;
- the investee company is in compliance with all other requirements and conditions of the LOO.

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16. Prince Edward Island Securities Act

Nothing in this document takes precedent over the requirements of the Securities Act. Therefore, approved investee companies must ensure compliance with securities legislation before issuing or purchasing an investment.

To ensure compliance investee companies are required to provide an opinion, from a person entitled to practice law in Prince Edward Island, that the issuance of the share is in compliance with Prince Edward Island securities legislation. Further information regarding the Securities Act may be obtained at the Securities Law and Policy website at <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/securities-law-and-policy>.

17. Responsibility for Shares Purchased

The issuance of an Equity Investors Incentive with regard to a specific share or shares, or to a specific company, does not constitute an endorsement by the government of the investee company issuing the shares or the value of the share purchased.

Innovation PEI assumes no responsibility for the eventual success or failure of the investee company. It is the responsibility of the eligible investor to complete due diligence on the investee company - to assess the merits and pass judgment on his or her investment. Innovation PEI does not guarantee any investment. The eligible investor is at risk for his or her investment.

18. Investor's Holding Period

Eligible investors are required to hold the investment for a minimum of four years. If the shares are disposed of within this four-year period, the investee company may be required to repay the incentive paid to the eligible investor by Innovation PEI in relation to these shares, plus interest.

19. Amalgamation with an Investee Company Holding a Certificate

Where two or more corporations amalgamate (within the meaning of subsection 87(1) of the Federal Income Tax Act) and one or more of the corporations is an investee company that has issued qualified shares under the Equity Investors Incentive Program, the new corporation may be deemed to be the same corporation as each of its predecessor corporations, thereby being treated as the investee company.

20. Winding-up of an Investee Company Holding a Certificate

Where a subsidiary is wound up and subsection 88(1) of the Federal Income Tax Act applies, and the subsidiary has issued qualified shares under the Equity Investors Incentive Program, the parent corporation may be deemed, for the purposes of this section, to be the same corporation as, and a continuation of, the subsidiary that was an investee company.

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21. Non-compliance

Should the investee company fail to comply with the terms of the LOO or be discontinued, Innovation PEI may at its sole discretion:

- Declare the investee company to be in non-performance (default) of the contract
- Request the investee company repay, in full or in part, the incentive received
- Take necessary legal action to collect the incentive amount in full, with interest

22. Filing of Corporate Information

An investee company that has issued a qualifying investment for which it has received an Equity Investors Incentive will file requested information annually with Innovation PEI for the year in which the share was issued and for the three subsequent years. The required information will be specified within the LOO.

23. Freedom of Information and Protection of Privacy Act

Information collected in connection with this program is subject to and will be treated in accordance with the Prince Edward Island Freedom of Information and Protection of Privacy Act. For additional information see <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/foipp-frequently-asked-questions>.

Report of Share Sale and Purchase for Equity Investors Incentive

Section 1. – Instructions

This report is to be completed and signed by the business issuing shares qualifying for the Equity Investors Incentive and by the purchaser of those shares for each separate transaction of shares, and must be submitted to innovation PEI after acceptance of the Equity Investors Incentive Agreement, confirming the sale and purchase of shares subject to the Equity Investors Incentive.

Section 2. – Investee Company Information

Business Name:

Business Number:

Project Number:

Mailing Address:

City:

Province:

Postal Code:

Civic Address:

City:

Province:

Postal Code:

Authorized Contact Name:

Title:

Telephone:

Facsimile:

Email:

Website:

Section 3. – Eligible Investor Information

Investor Name:

Mailing Address:

City:

Province:

Postal Code:

Telephone:

Email:

Date of Purchase of Shares (D/M/Y):

Number of Shares Purchased:

Type of Shares: ☐ Common ☐ Preferred
☐ Voting ☐ Non-voting
☐ Redeemable ☐ Non-redeemable

Amount Paid:

Is the Investor dealing at arm's length with the Investee Company as defined under Section 251 of the Income Tax Act? ☐ Yes ☐ No

Section 4. – Certification

On behalf of the **Investee Company** identified above, I hereby confirm, as described in the information stated above, that the corporation issued shares to the person named as the purchaser, at the price and on the date stated. I agree that this transaction complies with the applicable provincial and/or territorial securities laws and regulations, and that the share issuance and purchase conform with the terms and conditions of the Equity Investors Incentive Agreement and Guidelines set out for that purpose.

Signature of Authorized Signing Officer of the Investee Company:

Date (D/M/Y):

As the Eligible Investor (purchaser) identified in Section 3 above, I hereby acknowledge and confirm the purchase of shares from the Investee Company as described in the information above, having paid for and received the shares. I understand and agree that this transaction is made under the applicable provincial and/or territorial securities laws and regulations.

To the best of my knowledge, the share issuance and purchase conform with the terms and conditions of the Equity Investors Incentive Agreement and Guidelines set out for that purpose.

I acknowledge that the issuance of an Equity Investors Incentive **does not constitute an endorsement or recommendation to purchase** of the investee company issuing the shares or the value of the shares purchased by Innovation PEI. Innovation PEI assumes no responsibility for the eventual success or failure of the Investee Company. It is my responsibility as an investor to complete due diligence on the investee company to assess the merits and pass judgment on the investment. Innovation PEI does not guarantee any investment. I recognize that I, as an Eligible Investor, am at risk for my investment.

I further acknowledge that I am aware that my investment must be maintained for a minimum of four (4) years, during which period distribution of capital to shareholders is not permitted. Non-compliance with this and the other conditions of this financial support will result in incentives paid under this offer becoming repayable by the Investee Company to Innovation PEI.

Signature of Eligible Investor (Purchaser of Shares):

Date (D/M/Y):

Section 5. – Contact Information

Please submit completed report and supporting documentation to:

Innovation PEI

94 Euston Street

PO Box 910

Charlottetown, Prince Edward Island

Canada C1A 7L9

Our staff can be reached at:

Tel: 902-368-6300

Fax: 902-368-6301

Toll-free: 1-800-563-3734

business@gov.pe.ca

www.innovationpei.com

Information on this form is collected for the purpose of determining your suitability or eligibility for programs delivered by Innovation PEI. Information provided is subject to the Freedom of Information and Protection of Privacy Act. The amount of funding may be disclosed at the discretion of Innovation PEI and in accordance with the Freedom of Information and Protection of Privacy Act R.S.P.E.I. 1988, Cap. F-15.01. This information may also be used for policy and statistical analysis, research, and evaluation purposes. If you have any questions about this collection of personal information, contact Innovation PEI at 902-368-6300.

Section 6. – This section is to be completed by Innovation PEI.

Report Received Date (D/M/Y):

Report Reviewed Date (D/M/Y):

- ☐ evidence of purchase price deposited to the accounts of the Investee Company
- ☐ executed subscription agreement and executed shareholder agreement to confirm that issuance of the share(s) has been completed
- ☐ copy of Investee Company's updated share register

Decision: **Approved:** ☐

Declined: ☐

Officer: