
I, STEVEN MICHELE CIOBO, Minister for Trade and Investment, make this Determination under paragraph 101 (1) (b) of the Export Market Development Grants Act 1997.

Dated Twenty Second of June 2016

STEVEN CIOBO
Minister for Trade and Investment

1 Name of Determination
This Determination is the Export Market Development Grants (Close Relationships — General) Determination 2016.

2 Commencement
This Determination commences on 1 July 2016.

3 Definitions
In this Determination:


*entity* means a person or an applicant mentioned in paragraph 101 (1) (b) of the Act.

*related corporation* means a related corporation within the meaning of section 50 of the Corporations Act 2001.
4 Revocation and savings


(2) However, that Determination continues to apply to an application for a grant in respect of a grant year commencing before 1 July 2016.

5 Purpose of Determination

This Determination sets out guidelines for the CEO of Austrade to comply with in forming an opinion, for Division 2 of Part 5 of the Act, whether an entity is, or is not, closely related to another entity.

6 General principle

In forming an opinion whether an entity is, or is not, closely related to another entity, the CEO of Austrade must consider:

(a) any connection between the entities; and

(b) the extent of any control or influence the entity can exercise over the other entity.

7 Being closely related

Without limiting section 6, an entity is likely to be closely related to another entity if:

(a) the entity is ordinarily employed by the other entity; or

(b) the entity is a company and the other entity is:

   (i) a director of the company or a related corporation; or

   (ii) a substantial shareholder of the company or a related corporation; or

(c) the entity is an association or a cooperative and the other entity is a member of the body that governs, manages or conducts the affairs of the association or cooperative; or

(d) the entity is a partnership and the other entity is a partner or, if any of the partners is a company, a director of the company or a related corporation; or

(e) both entities are corporations and someone is a director of both of them; or

(f) the entity is a beneficiary of a trust and the other entity is the trustee.

8 Extended meaning of ordinarily employed

(1) A person is taken to be ordinarily employed by an entity if:

   (a) the person performs work that benefits the entity directly or indirectly; and

   (b) the person performs work that benefits the entity directly or indirectly;
(b) the CEO of Austrade is satisfied that the relationship between the person and the entity may reasonably be taken to be equivalent to employment, having regard to the following matters:

(i) whether the person regularly performs work at the premises of the entity;
(ii) whether the person regularly uses business facilities provided by the entity;
(iii) whether the entity exercises control over the work performed by the person;
(iv) whether the person is a former employee of the entity or of an associate of the entity;
(v) whether the person performs work for any other entities;
(vi) whether the person is employed by another entity that has more than 1 employee performing services for the entity;
(vii) whether the person performs work that has a specified outcome;
(viii) any other relevant matters.

(2) Without limiting subsection (1), a person may be taken to be ordinarily employed by an entity even though the person is employed, or the person’s services are otherwise supplied, by a corporation that agrees to provide that person’s services to the entity.