Export Market Development Grants (Approved Joint Ventures) Guidelines 2018

I, Steven Ciobo, Minister for Trade, Tourism and Investment, determine the following guidelines.

Dated 8 February 2018

Steven Ciobo
Minister for Trade, Tourism and Investment
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Guidelines for the approval, variation of approval, and cancellation of approved joint ventures (Federal Register of Legislation No. F2008B00773)*

6
Part 1—Preliminary

1 Name

This instrument is the Export Market Development Grants (Approved Joint Ventures) Guidelines 2018.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under paragraph 101(1)(c) of the Export Market Development Grants Act 1997.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
Part 2—Guidelines

5 Guidelines for CEO of Austrade relating to approved joint ventures

For the purposes of paragraph 101(1)(c) of the Export Market Development Grants Act 1997, this Part sets out guidelines for the exercise by the CEO of Austrade of his or her powers under Division 1 of Part 8 of that Act relating to:

(a) the approval of a group of persons as a joint venture; and

(b) the variation and cancellation of those approvals.

6 Guidelines relating to approvals as a joint venture

(1) The CEO of Austrade must not approve a group of persons as a joint venture under section 89 of the Export Market Development Grants Act 1997 unless the CEO of Austrade is satisfied that the group is pursuing an activity, project or purpose that can bring significant net benefit to Australia.

(2) Without limiting the matters to which the CEO of Austrade may have regard in deciding whether the CEO of Austrade is satisfied as referred to in subsection (1) in relation to a group of persons, the CEO of Austrade must have regard to the matters in section 7.

7 Approvals as a joint venture—matters to which regard must be had

(1) For the purposes of subsection 6(2), the matters to which the CEO of Austrade must have regard are the following:

(a) whether there is a written agreement, to which each of the member of the group is a party, that complies with subsection (2) of this section;

(b) whether there is significant synergy flowing from the collaboration between the members of the group;

(c) whether the group is promoting a new activity, project or purpose;

(d) whether the group’s activity, project or purpose is planned;

(e) whether the group’s activity, project or purpose is commercially feasible;

(f) whether the group’s activity, project or purpose is financially feasible;

(g) whether the activity, project or purpose is a cooperative exercise between the proposed members to achieve the promotion of Australian exports;

(h) whether there is no association between members of the group other than as members of the joint venture;

(i) whether the member or members of the group that control the group are not residents of Australia;

(j) whether more than half the members of the group are not residents of Australia;

(k) whether any one member of the group contributes more than 75% of the group’s expenditure on promotion of the group’s activity, project or purpose;

(l) if there are 3 or more members of the group—whether any one member of the group contributes more than 50% of the group’s expenditure on promotion of the group’s activity, project or purpose;
Section 7

(m) whether the group’s activity, project or purpose may result in:
   (i) an increase in export earnings; or
   (ii) an increase in employment in Australia; or
   (iii) the provision of new capital investment in Australia; or
   (iv) the introduction of new technologies and new value-added operations in Australia.

Note: If a member of a group is a foreign company or a government body, that member’s expenditure will not be eligible for grant funding.

(2) The written agreement must be signed by all the members of the group, and specify the following:
   (a) a description of the activity, project or purpose, and the products and target markets;
   (b) the start and finish date of the activity, project or purpose;
   (c) the role of each member of the group in undertaking the activity, project or purpose;
   (d) the processes for decision making by the members of the group.

(3) For the purposes of paragraph (1)(b), there is significant synergy flowing from the collaboration between the members of the group if the group can substantiate an increase in efficiency, or reduction in costs, by reason of the activity, project or purpose being conducted by the group as a whole rather than by individual members of the group.

(4) For the purposes of paragraph (1)(c), an activity, project or purpose is new if the eligible products being promoted are products for which no more than half of the members of the group previously had export earnings of more than $300,000 over the preceding 3 financial years in respect of each of the proposed markets.

(5) For the purposes of paragraph (1)(d), the activity, project or purpose is planned if the group has a business or export plan that includes:
   (a) market research that has been undertaken for each of the target markets; and
   (b) an analysis of the project’s strengths and weaknesses; and
   (c) specific promotional activities to be undertaken; and
   (d) a list of objectives and milestones to be achieved and a timetable for their achievement.

(6) In considering, for the purposes of paragraph (1)(e), the commercial feasibility of the activity, project or purpose, the CEO of Austrade must have regard to:
   (a) the technical and managerial skills of the members of the group; and
   (b) the success of the members of the group in the domestic market; and
   (c) the success of the members in developing new export activity.

(7) In considering, for the purposes of paragraph (1)(f), the financial feasibility of the activity, project or purpose, the CEO of Austrade must have regard to:
   (a) the arrangements for funding the activity, project or purpose; and
   (b) the consequences for the members of the group if the activity, project or purpose fails; and
   (c) each member’s current financial position; and
Part 2  Guidelines

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(d) financial projections for the activity, project or purpose for the next 3 years.

(8) In considering, for the purposes of paragraph (1)(g), whether the activity, project or purpose is a cooperative exercise, the CEO of Austrade must have regard to:
   (a) whether the members of the group meet regularly; and
   (b) whether each member is actively involved in promoting the activity, project or purpose; and
   (c) whether any one member contributes more than 75% of the group’s expenditure on promotion of the activity, project or purpose; and
   (d) if there are 3 or more members of the group—whether any one member contributes more than 50% of the group’s expenditure on promotion of the activity, project or purpose.

(9) For the purposes of paragraph (1)(h), if one member of the group controls or is able to control another member of the group, or where any association exists between members of the group other than as members of the joint venture, those members may be treated as a single member. There is an association between 2 members of a group if:
   (a) one member is a relative of the other; or
   (b) one member is related body corporate (within the meaning of the Corporations Act 2001) of the other; or
   (c) the CEO of Austrade determines that one member is closely related to the other.

8 Guidelines relating to variations of approvals as a joint venture

The CEO of Austrade must not vary the approval of an approved joint venture unless the approval as varied would be consistent with the guidelines in section 6.

9 Guidelines relating to cancellations of approvals as a joint venture

(1) The CEO of Austrade must cancel the approval of a group of persons as a joint venture if:
   (a) the approval is no longer consistent with the guidelines in section 6; and
   (b) it is not possible to vary the approval to be consistent with the guidelines in section 6.

(2) The CEO of Austrade must cancel the approval of an approved joint venture if the approved joint venture fails to comply with any conditions to which the approval is subject.

(3) The CEO of Austrade must cancel the approval of an approved joint venture if:
   (a) the activity, project or purpose for which the group is approved ceases to be the activity, project or purpose of the group; and
   (b) the approval is not correspondingly varied by the CEO of Austrade.
Part 3—Transitional provisions

10 Savings—old law

Despite the repeal of the Export Market Development Grants Act 1997—Determination (1/1997 AJV)—Guidelines for the approval, variation of approval, and cancellation of approved joint ventures (Federal Register of Legislation No. F2008B00773) by Schedule 1 to this instrument, those guidelines continue to apply in relation to an application for approval as a joint venture made before 1 July 2018.
Schedule 1—Repeals


1 The whole of the instrument

Repeal the instrument.