Export Market Development Grants (Genuinely Carrying on a Business) 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
Contents

1 Name................................................................................................................................. 1
2 Commencement.................................................................................................................. 1
3 Authority.............................................................................................................................. 1
4 Schedules............................................................................................................................ 1
5 Guidelines for forming an opinion whether a person is genuinely carrying on
   business in Australia........................................................................................................ 1
6 Savings—old law.................................................................................................................. 2

Schedule 1—Repeals

Guidelines for forming an opinion whether an applicant is genuinely carrying on
business in Australia (Federal Register of Legislation No. F2008B00772)
1 Name

This instrument is the Export Market Development Grants (Genuinely Carrying on a Business) 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.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. The whole of this instrument</td>
<td>1 July 2018.</td>
<td>1 July 2018</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this instrument as originally made.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)(a) 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.

5 Guidelines for forming an opinion whether a person is genuinely carrying on business in Australia

(1) In forming, for the purposes of paragraph 7(1)(a) or (4)(aa) of the Export Market Development Grants Act 1997, an opinion whether a person is genuinely carrying on business in Australia, the CEO of Austrade must have regard to the following matters:

(a) what activities the person claims constitute the activities of the business;
(b) the following matters in relation to the activities referred to in paragraph (a):
   (i) where each of the activities is conducted (including whether activities are conducted substantially in Australia);
   (ii) the length of time the activities have been carried on;
   (iii) any evidence of an intention that the activities should be profitable;
Section 6

(iv) the degree of repetition of the activities;
(v) the continuity of the activities;
(vi) whether there is a possible commercial return from the activities;
(vii) the terms of any business or marketing strategy which relates to the activities;
(viii) the extent to which the activities are the independent activities of the person, or whether they are instead activities of another person associated with the first-mentioned person;
(c) whether any income is earned by the person, and if so, where that earning of income takes place (including whether that earning of income takes place substantially in Australia);
(d) the nature and size of the assets of the business, and whether those assets are located substantially in Australia;
(e) the number of people employed by the business, and how many of those employees are employed in Australia.

(2) In taking into account each of the matters referred to in subsection (1), the CEO of Austrade must consider the substance and not merely the form of each matter.

6 Savings—old law

Despite the repeal of the *Export Market Development Grants Act 1997—Determination 1/1997 GCB—Guidelines for forming an opinion whether an applicant is genuinely carrying on business in Australia* (Federal Register of Legislation No. F2008B00772) by Schedule 1 to this instrument, those guidelines continue to apply in relation to determining eligibility for a grant in respect of a grant year starting on or before 1 July 2016.
Schedule 1—Repeals

GCB—Guidelines for forming an opinion whether an applicant is genuinely carrying on business in Australia
(Federal Register of Legislation No. F2008B00772)

1 The whole of the instrument

Repeal the instrument.