

Export of Services Guidelines

1.0 Introduction

The *Export of Services Guidelines* set out shareholding Ministers' expectations about how Queensland's Government owned corporations (GOCs) will assess opportunities to export services, and how GOCs can seek shareholding Ministers' approval for these activities.

2.0 Scope

These Guidelines relate to the export of services by GOCs. Exported services include (but are not limited to):

- Consultancy services;
- Operating and management contracting services; and
- Licencing or sale of intellectual property.

Exported services are typically characterised by an absence of direct equity investment, other than minor current inventory stock typically associated with the export of services.

There is a general moratorium on overseas equity investments by GOCs. Some GOCs have received specific, qualified exemption from this, for example through their Statements of Corporate Intent and/or Shareholder Mandates. Where an exported service involves direct equity investment, the GOC are also required to comply with the *Investment Guidelines* and the *Guidelines for Joint Venture Agreements*.

3.0 Principles

The Queensland Government is supportive of the GOCs engaging in profitable export activities, but recognises such activities can create risks for both the GOCs and the State. Accordingly, the shareholding Ministers expect GOCs to confine their export activities to the export of services, and to seek prior written approval from shareholding Ministers before entering binding commitments for undertaking the activity.

The approval requirements below reflect the shareholding Ministers' perspective about what GOCs would consider when assessing service export opportunities. Shareholding Ministers' approval of a proposed service export proposal will be based on the GOC adequately satisfying the approval requirements listed below.

Broader policy objectives that require a different perspective are defined elsewhere (e.g. in Shareholder Mandates or Statements of Corporate Intent). This approach improves the clarity of objectives and clearly separate the Government's role as a shareholder from its other, potentially conflicting roles.

4.0 Approval requirements

All export of service activities are subject to shareholding Ministers' prior written approval.

Before any application for approval, GOCs should undertake an appropriate project evaluation including risk identification and full commercial analysis. The extent of the evaluation will vary with the risk and size of each contract, and GOCs should ensure they have capacity to review the export service/s to ensure project expectations are met.

GOCs are encouraged to, wherever possible, negotiate contracts so that the law of the contract should be specified as the being the law of Queensland.

In seeking shareholding Ministers' approval for an export of service activity, the GOC must be able to demonstrate that the activity:

1. Benefits the GOC (e.g. by leveraging existing intellectual property, maintaining critical mass, achieving economies of scale, etc.);
2. Is commercial as a ring-fenced activity (supported by a clear commercial business case that is consistent with core business);
3. Assists the GOC's capacity to maintain or enhance its commercial core services in Queensland;
4. Is consistent with strategies outlined and negotiated in the GOC's Corporate Plan and Statement of Corporate Intent;
5. Does not create unacceptable liabilities or risks for the GOC, and in particular that:
 - the GOC has appropriate liability insurance, and the long-term potential liability associated with providing the service having regard to the law of the overseas jurisdiction does not exceed the insured sum;
 - the GOC's liability is several, and not joint-and-several;
 - no parent guarantees or indemnities are required from the GOC; and
 - where possible, the GOC does not expose its assets to the export activity.
6. Does not create potential adverse precedents or legal or financial liabilities or political risks for the State, supported by:
 - an independent expert assessment in the overseas jurisdiction
 - a clear written understanding with the export recipient that the State of Queensland does not guarantee any obligations or liabilities, and that the GOC does not represent the State of Queensland, nor has any authority to represent the State of Queensland.
7. Occurs in an appropriate identification, approval and reporting framework within the GOC established by the GOC's board (to ensure thorough risk analysis is carried out, supported by advice from professional advisors expert in the overseas jurisdiction identifying the legal and financial risks, and any jurisdictional and custom risks).
8. Is consistent with probity, corporate, environmental and workplace standards applicable in Queensland, and complies with Commonwealth legislation requiring Australian companies engaging in overseas business to apply ethical business practices.