

Guidelines for Export of Services by Government Owned Corporations



Queensland Government

© The State of Queensland (Queensland Treasury)
December 2001

The Queensland Government supports and encourages the dissemination and exchange of information. However, copyright protects this document. The State of Queensland has no objection to this material being reproduced and made available online or electronically, provided it is for your personal, non-commercial use or use within your organisation, this material remains unaltered and the State of Queensland is recognised as the owner of the copyright.

Background

The Queensland Government is committed to the development of profitable trade and export opportunities for Queensland industry. In this context it is recognised that a number of Government Owned Corporations (GOCs) have, over time, recognised the potential for overseas export of expertise developed in the Queensland market and, in some cases, have successfully achieved export of services based on this expertise. It is further recognised that there may be potential to develop broader export opportunities for Queensland business more generally alongside successful export of services by GOCs.

There are clearly a range of risks to both individual GOCs and the Government in undertaking the export of services. While some GOCs have negotiated specific arrangements to suit their needs through their Statements of Corporate Intent (SCI), there is no general framework in place to assist GOCs consider opportunities for the potential export of their services, whilst recognising the interests and tolerances of shareholding Ministers. These guidelines are designed to address this.

Scope of Guidelines

These guidelines relate to the export of services by GOCs. In this context, services would usually fall into the following categories:

- consultancy services;
- operating and management contracting services; and
- licensing or sale of intellectual property.

These activities are characterised by an absence of direct equity investment, other than for minor current inventory stock typically associated with export of services. These guidelines will apply to the situations described above. In the situation where the export of a service is accompanied by a direct equity investment, the GOC will also need to comply with the investment policy once it is released.

There is currently a general moratorium in place on overseas equity investments by GOCs. Specific GOCs have received qualified exemption from this policy in respect of minor equity investments required to support specific consultancy activities. However, as a general principle, the moratorium on overseas equity investments remains unchanged as a result of the release of these guidelines. For those GOCs that have qualified exemptions these will still apply pending changes arising through the current round of SCI negotiations.

Goals of Guidelines

Export services should only be considered by GOCs where they:

- are supported by a clear commercial business case; and
- assist a GOC's capacity to maintain or enhance its commercial, core services in Queensland.

In addition to meeting the above threshold criteria, any proposals for the export of GOC services should ensure that this:

- does not create potential legal or financial liabilities or political risks for the State;
- does not create unacceptable liabilities or risks for the GOC;
- is commercial as a ring-fenced activity; and
- occurs in an appropriate identification, approval and reporting framework, within each corporation, and established by the Board. The approval framework should be sufficient to ensure that a 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.

Approval for Export of Services by GOCs

GOC Boards are required to seek Shareholding Ministers' prior written approval for any export of service activity, on a case-by-case basis. This approval process is required so as to not unduly expose the State of Queensland to commercial pressures to pursue business opportunities that may not be considered appropriate.

In some instances, it may be appropriate to group similar services during one year for approval requests. However, any such application must, in the circumstances, be approved by shareholding Ministers.

It is recognised that GOCs act in increasingly competitive markets, and must be flexible to respond quickly to commercial opportunities. This is particularly the case in respect of service and consultancy businesses. In recognition of this, the shareholding Minister approval process will be undertaken as quickly as practicable. Proposals by individual GOCs for more flexible arrangements in respect of their corporation's activities, such as "prior approval" for specific services, will also be considered following a formal request.

GOCs should conduct appropriate project evaluation of each export service opportunity, including risk identification and full commercial analyses. The extent of the evaluation will vary with the risk and size of each contract. Further, GOCs should have the capacity to review the export service(s) to ensure that project expectations are met.

Before applying for Ministerial approval, a GOC Board should ensure that a proposed export service is:

1. consistent with core business;
2. commercial as a ring-fenced activity;

3. of benefit to the GOC in terms of leveraging off existing intellectual property, maintaining critical mass, and enabling economies of scale to be achieved;
4. only provided on the basis of a clear written understanding with export recipients 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 it any authority to represent the State of Queensland;
5. only provided on the basis that no parent guarantees or indemnities are required from the GOC and, where possible, the GOC does not expose the assets of the GOC to these activities;
6. only provided on the basis that the GOC's liability is several and not joint and several;
7. only provided where GOCs have appropriate liability insurance, and the long-term potential liability associated with providing a service having regard to the law of the overseas jurisdiction, is less than the insured sum;
8. 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; and
9. consistent with strategies outlined and negotiated in Corporate Plans and Statements of Corporate Intent.

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

For further enquiries please contact:

Office of Government Owned Corporations

Mark Gooch Ph: (07) 3224 4374

Andrew McMicking Ph: (07) 3225 8939

December 2001