

# Guidelines for Tasmanian Government Businesses

Subsidiary Companies and Joint Ventures

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GPO Box 147  
HOBART TAS 7001

# Guidelines for Subsidiary Companies and Joint Ventures

## Introduction

The use of subsidiary companies or joint ventures by Government businesses may be a valid option in specific circumstances.

Prior to establishing a subsidiary company or joint venture, a Government business must ensure that it has met any approval requirements specified:

- in the case of a Government Business Enterprise (GBE), in the *Government Business Enterprises Act 1995* (GBE Act); and
- in the case of a State-owned Company (SOC), its constitution.

In order to gain a better understanding of the circumstances in which approval may be granted, this document provides an overview of the policy framework in relation to the use of subsidiary companies, joint ventures, partnerships and trusts by Government businesses. This document is intended as a guide, not a direction.

## Framework

Section 10 of the GBE Act specifies that a GBE must not form, participate or dispose of shares in a subsidiary company without the approval of the Treasurer and Portfolio Minister (the Shareholder Ministers). Section 10 also specifies that a GBE must not exercise its power to participate in a partnership, trust, joint venture or arrangement for the sharing of profits unless the Portfolio Minister, after consulting with the Treasurer, has approved the exercise of that power

SOC constitutions contain a similar clause that specifies that a SOC must seek a Special Resolution of Members (the Shareholder Ministers) in order to form, participate or dispose of shares in a subsidiary company.

The Shareholder Ministers have an important role in that they are to act in and safeguard the interests of the public as ultimate owners of the business. In order to perform this role, the Shareholder Ministers must consider the value likely to be returned from any new venture in comparison to its risk profile, and weigh this up in the context of the strategic interests of both the business and the State.

The following is intended as a guide to reflect the Shareholder Ministers' considerations when reviewing an application to approve the formation of a subsidiary company or when reviewing a proposal to enter into a joint venture, partnership or trust.

## Guidelines

### Subsidiary Companies, Joint Ventures, Partnerships and Trusts

#### Subsidiary Companies

- (a) A compelling reason must exist for the formation of a subsidiary to be considered, such as to:
  - mitigate risk and/or liability;
  - enable expansion into broader geographic or regulated areas;
  - make business units more accountable; or
  - execute transactions with third parties.
- (b) The Shareholder Ministers will consider approval for a Government business to form, participate or dispose of shares in a subsidiary company, on a case by case basis.
- (c) A detailed business case, approved by the board, should be presented to the Shareholder Ministers accompanying any such request, identifying, in particular, how value will be returned to the Shareholder Ministers over time. The business case should include, but not be limited to, sections addressing risk mitigation, strategic direction, dividend policy, capital structure and financial forecasts.
- (d) A Government business must ensure that subsidiary constitutions do not restrict the parent Government business from operating and reporting in accordance with its existing governance and reporting requirements.
- (e) Subsidiary companies are expected to adhere to the Dividend Policy Guidelines.
- (f) Subsidiary constitutions should contain the following, or similar, clauses:
  - the purpose for which a subsidiary is being created;
  - that any change to the constitution must be approved by its parent entity prior to taking effect;
  - that directors must comply with any lawful directions by its parent entity; and
  - that directors must provide any information sought by its parent entity in a timely manner.
- (g) The maximum remuneration for Government business appointed subsidiary directors should be limited to an amount payable under guidelines issued by the Department of Premier and Cabinet for Government boards and committees. Additional remuneration would not usually be paid to directors of the subsidiary who are directors or senior executives of the parent entity. Specific provisions to give effect to this should be set out in the constitution.
- (h) The Shareholder Ministers must be kept informed about director and senior executive appointment and remuneration arrangements. The Government business should specify how it will give effect to this.
- (i) Shareholder Ministers should be kept informed through timely and balanced disclosure of all material matters concerning the subsidiary.
- (j) The reporting expectations of the parent entity shareholders will depend upon the nature of the subsidiary being established. However, at a minimum, a Government business should provide to the Shareholder Ministers the business plan of each of its subsidiaries, at the time at which its own business/corporate plan is due. In addition, a six monthly report and annual report detailing financial, operational and board performance indicators should be provided.
- (k) Additional reporting expectations should be established between the subsidiary and the parent entity, as appropriate, to ensure that adequate transparency and accountability arrangements are in place.

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- (l) The Shareholder Ministers expect that the business will engage the Auditor-General to act as the auditor of the subsidiary's accounts.
  - (m) If a subsidiary ceases the activity for which it was established, it should be wound-up and deregistered at that time.
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### **Joint Ventures, Partnerships and Trusts**

- (a) Government businesses should notify Shareholder Ministers of an intention to participate in a joint venture, partnership or trust.
  - (b) Prior to finalising the ownership arrangements, a detailed business case, approved by the board, should be presented to the Shareholder Ministers, identifying, in particular, how value will be returned to the Shareholder Ministers over time. The business case should include, but not be limited to, sections addressing governance, risk mitigation, strategic direction, dividend policy, capital structure and financial forecasts. A shareholders' agreement should also be provided, where relevant.
  - (c) A Government business should, to the maximum extent possible, ensure that its involvement in a joint venture, partnership or trust will not restrict it from operating and reporting in accordance with its existing governance and reporting requirements.
  - (d) Government businesses should not enter into unincorporated joint ventures, as they give rise to the risk that these types of arrangements will be held, at law, to be partnerships.
  - (e) A regular review of a parent Government business' continuing involvement in a joint venture, partnership or trust, should be undertaken. The outcome of this review should be included in the annual business or corporate plan of the parent entity.
  - (f) Shareholder Ministers should be kept informed through timely and balanced disclosure of all material matters concerning the joint venture, partnership or trust.
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Tasmania  
Explore the possibilities

The Department of Treasury and Finance  
Shareholder Policy and Markets Branch  
21 Murray Street  
HOBART TAS 7000

Telephone (03) 6233 3100  
Facsimile (03) 6223 2755  
Email [governmentbusinesses@treasury.tas.gov.au](mailto:governmentbusinesses@treasury.tas.gov.au)

Further information can be obtained at  
[www.treasury.tas.gov.au/governmentbusinesses](http://www.treasury.tas.gov.au/governmentbusinesses)