

Innovation and Science Australia

Information Paper

Innovation Investment Committee

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Exercise of discretion under section 11-15(2) of the *Venture Capital Act 2002* that allows Innovation and Science Australia to extend the timeframe for its decision on an application by up to 60 days if Innovation and Science Australia thinks that it will take longer to decide an application

Purpose

This paper explains the approach Innovation and Science Australia (ISA) will take towards extending the timeframe within which the delegate may make a decision to register a partnership by up to 60 days. Decisions to extend the timeframe are made under s11-15(2) of the *Venture Capital Act 2002* (VC Act).

Definitions relating to timeframes for application consideration

Section 11-15(1) of the VC Act provides that ISA or its delegate must make a decision on an application for registration or conditional registration within 60 days of receipt. Section 36 of the *Acts Interpretation Act 1901* provides that:

- the clock for making a decision begins the next day after receiving an application;
- if the last day to decide an application for registration or conditional registration (ie the 60th day) falls on a Saturday, Sunday or a holiday, the decision must be made by the end of the next day that is not a Saturday, Sunday or holiday.

The day on which an application is deemed received is the day ISA, or its delegate, receives the application form, and not the date of the application or the date the applicant sent the application.

The 60 day clock for making a decision only commences after a complete application is received. For the purpose of the balance of this paper, an application is taken to mean a complete application.

Timeframe extension considerations

ISA or its delegate may only extend the 60 day clock in certain circumstances. In determining whether to extend the 60 day clock ISA or its delegate will consider the feasibility and reasonableness of making a decision on an application within the initial 60 day timeframe.

ISA or its delegates may also seek the input of the applicant before a decision to extend the clock is made.



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All decisions to extend the timeframe for consideration will be evaluated on a case by case basis. Below is a non-exhaustive list of criteria that ISA or its delegate will consider:

1. Timing of receipt of an application.

An extension of the period for deciding an application for registration may be considered by ISA or its delegate to ensure every application is assessed thoroughly and with due process to ensure the legislative intent of the programs is met.

ISA or its delegate may consider that there is inadequate time to ensure the application is assessed thoroughly. For example, if the only available meeting of the Innovation Investment Committee of ISA within the 60 day period for making a decision on an application falls less than 30 days from the date of the receipt of an application, an extension of time may be considered necessary to enable ISA or its delegate sufficient time to consider the application.

2. Complexity of the application.

ISA may consider extending the timeframe if the level of complexity of the application requires a more considered assessment than is possible within the 60 days.

As a part of its assessment ISA or its delegate may need to obtain verification of various facts from other agencies. For example, the claimed tax exempt status of a partnership or limited partner must be obtained from the Australian Taxation Office. The time taken for this verification is out of the control of ISA or its delegate.

3. Requests for additional information

ISA frequently receives applications that may benefit from the provision of additional information by the applicant. This may impact on the decision for registration, potentially resulting in the partnership not being registered. Extending the 60 day clock on decisions can allow applicants the opportunity to seek and provide such additional information.

Notification to Applicant

If ISA or its delegate decides to extend the 60 day clock this will be communicated to the applicant in writing as soon as practicable, and within 60 days of the receipt of the.

Further Information

Please contact 13 28 46, business.gov.au or email VentureCapital@industry.gov.au.

This paper may be updated from time to time.