

Innovation and Science Australia

Information Paper

Innovation Investment Committee

Issued October 2020

Discretionary revocation under section 17-10 of the *Venture Capital Act 2002* relating to registered partnership's failure to report

Purpose

This paper explains the approach Innovation and Science Australia (ISA) may take when using its discretion to decide whether a partnership registered under the *Venture Capital Act 2002* (the Act) may be revoked under s17-10(1) of the Act, using the process set out under s17-10(2) of the Act for failing to meet reporting requirements. This notice will specify a failure by the partnership to report to ISA by not lodging returns required under s15 of the Act, and can result in revocation of the partnership's registration.

Policy intent and legislative requirements

The Australian Government's venture capital programs support fund managers, investors (through registered partnerships) and businesses to benefit from an exchange of funding, skills and experience.

Registration under the Act entitles a venture capital partnership to certain benefits conditional upon meeting certain obligations and requirements. Failure to meet these obligations can result in the loss of registration and a loss of the associated benefits.

The registration obligations set out in the Act ensure ISA can both monitor compliance of registered partnerships and assess the impact of the tax concession for those registered partnerships.

Once a limited partnership is registered as a venture capital limited partnership (VCLP), early stage venture capital limited partnership (ESVCLP), or an Australian venture capital fund of funds (AFOF), the general partner must report to ISA by giving ISA:

- a quarterly return within 1 month of the end of a quarter under s15-10 of the Act;
- an annual return within 3 months of the end of the financial year under s15-1 of the Act; and
- if registered as an ESVCLP, an annual report within 3 months of the end of financial year under s15-17 of the Act.

ISA, through the assistance of the Department of Industry, Science, Energy and Resources (the department), monitors the timing of the lodgement of quarterly returns, annual returns and annual reports. The department may contact registered partnerships prior to a reporting deadline, to remind them of their reporting obligations and provide information on how to lodge the documents.

The Act gives a discretion to ISA to revoke registration in circumstances where partnerships have failed to provide an annual or quarterly return.

Before any revocation of a registered partnership, ISA is required to issue a notice inviting the general partner to make written submissions about the particular matter ISA considers may be grounds for revocation and specifying a period of at least 28 days for the partnership to respond to the matters set out in the notice. This requirement in s17-10(2)(a) of the Act is a procedural fairness requirement, and gives notice to the partnership of the partnership's failure and the action proposed by ISA. This provision provides the partnership with an opportunity to respond, correct their action or otherwise inform ISA what has occurred. The partnership has at least 28 days after the ISA notice is given to make submissions about the matters specified in that notice.

Examples when ISA may decide to provide a notice under s17-10 of the Act

ISA may consider revocation for failure to lodge returns under ss15-1, 15-10 of the Act. Some examples and how ISA proposes to deal with them are listed below. These are examples only and do not prescribe how ISA will act or take away ISA's discretion to act differently in any given situation:

1. Partnership 1 has previously met its reporting obligations under s15-1 of the Act. Partnership 1 contacts the department two weeks prior to the annual return submission date under s15-1 of the Act to request an extension to the lodgement date due to unforeseen circumstances. The department agrees Partnership 1 can submit its annual return 4 weeks after the legislated lodgement date. Partnership 1 lodges the annual return before the agreed 4 week extension expires, and ISA does not take any further action. In this example, a notice under s17-10(2)(a) of the Act is not issued.
2. Partnership 2 has previously met all obligations under s15-10 of the Act. Partnership 2 fails to lodge a quarterly return under s15-10 of the Act within the statutory timeframe. The department contacts Partnership 2 to request the outstanding quarterly return be lodged. Partnership 2 fails to lodge the outstanding quarterly return. ISA issues a notice under s17-10(2)(a) of the Act. ISA awaits the response from Partnership 2.

Submissions under s17-10 of the Act by partnerships

When a partnership receives a notice under s17-10(2)(a) of the Act, the partnership should respond to ISA and include in its submission:

- evidence, if any, of reporting by the specified timeframe;
- a statement confirming the outstanding report information identified in the notice has been subsequently lodged, or an explanation why it remains outstanding; and
- a statement of reasons affirming the partnership's commitment to meet its ongoing reporting obligations under the Act and its efforts to correct compliance, signed by an authorised officer of the general partner and on appropriate letterhead.

ISA decisions

ISA will consider any submission made within the allowed time period before deciding whether to revoke the registration of a partnership.

ISA may decide not to revoke the registration of a partnership under s17-10 of the Act. This is more likely to occur if the partnership provides outstanding returns in its submission, ISA considers the partnership is acting within the objects of the Act and the partnership assures ISA it is making efforts to correct its ongoing compliance with the Act.

However, ISA may decide to revoke a partnership under s17-10 of the Act. This is more likely when a partnership has a history of repeated failures to lodge returns, or fails to lodge the outstanding returns. A decision to revoke registration will include a statement of reasons for the decision.

If ISA does decide to revoke registration, this decision is reviewable by ISA and any subsequent decision is further reviewable by the Administrative Appeals Tribunal. Section 29 of the Act provides more details on review of decisions.

This guidance may be updated from time to time.