



Guide email JLM language on joint activity for the Equity Capital Market and Debt Capital Market

Disclaimer

AFMA cannot and does not provide legal advice or warrant the legal effectiveness of standard guide language. Persons considering adopting such language should seek their own legal advice and consider the appropriateness of the language to their own circumstances.

Cartel conduct is defined and prohibited in Part IV, Division 1 of the *Competition and Consumer Act 2010 (Cth)*. This captures agreements between competitors which fix prices, divide markets, rig bids or restrict outputs. Conduct falling within this definition of ‘cartel conduct’ is prohibited. Accordingly, where competitors come together to assist the financing of a client, such as through an issue or sale of equity or debt, they need to pay careful attention to compliance with the law regarding cartel conduct. There are defences and exceptions in respect of the cartel prohibition. One of these relates to a joint venture (JV).

A contract, arrangement or understanding between actual or potential competitors containing a cartel provision may receive the protection of the JV exception. The exception works on the basis that the JV is not carried on for the purpose of substantially lessening competition and the collaborative activities that raise cartel risk are for the purpose of and reasonably necessary for undertaking the JV. It is common practice to evidence the intention of syndicate participants, commonly referred to as ‘Joint Lead Managers’ (JLM), to include “joint activity language” in standard transaction documentation e.g. Underwriting Agreements (ECM) or Dealer and Subscription Agreements (DCM). In the preliminary communication about forming a new syndicate for a mandate it is good practice to acknowledge in writing (commonly through an email) the intention to conduct a joint activity.

AFMA provides the following standard language for emails from a JLM and an Issuer as a general guide only to indicate the good practice in Australia using similarly worded emails when JLM come together to facilitate a capital raising by an Issuer in order to indicate their intention to collaborate to the extent necessary to assist their client issue or sell equity or debt (as applicable).

1. [Joint Activities Email for ECM](#)
2. [Joint Activities Email from a JLM for DCM](#)
3. [Joint Activities Email from Issuer for DCM](#)