



## BRITISH EXPORTERS ASSOCIATION

Ben Llewellyn  
Export Credits Guarantee Department  
PO Box 2200  
2 Exchange Tower  
Harbour Exchange Square  
London E14 9GS

17<sup>th</sup> June 2005

Dear Ben,

### **ECGD Consultation on Changes to ECGD's Anti-Bribery and Corruption Procedures Introduced in December 2004**

The British Exporters Association (BEXA) welcomes the opportunity to comment on the changes made to ECGD's anti-bribery and corruption procedures in December 2004 and whether or not they have the effect of ensuring: (1) taxpayers' money is not used to support transactions tainted with bribery and/or corruption; and (2) an undue burden is not placed on exporters and/or banks. As you are aware BEXA has been an active participant in the CBI Solutions Group, originally set up at the direction of Ministers to find a way to achieve those two objectives. BEXA has contributed to and is fully supportive of the CBI's very detailed response to the Consultation. This process has been informed by input from both banking and industry members and has highlighted a number of points that our members believe to be particularly important.

- UK businesses are subject to some of the most stringent anti-bribery and anti-money laundering legislation in the world, which since February 2002, has been given extra-territorial effect. We endorse Transparency International's statement that "Corruption distorts markets and is therefore the enemy of competition" and believe that the rigorous enforcement of existing law by the appropriate investigating authorities serves to ensure that the highest standards are maintained. ECGD has admitted that it is not an investigating body and we believe its procedures should reflect that. The very real sanctions that may be imposed on UK exporters and their directors under English law are the appropriate deterrent.
- We were concerned that the definition of 'Affiliate' contained in the May 2004 provisions was so broad as to leave Applicants in the impossible position of having to warrant the past and future behaviour of companies that they do not control. The example that we gave ECGD of how unworkable this provision could be was a possible joint venture between an Applicant and the US-based multinational GE. The Applicant would be required to warrant that neither GE nor any of its employees had engaged or would engage in any Corrupt Activity. Apart from the impossible task of investigating the behaviour of GE's many thousands of employees worldwide and then monitoring that behaviour on an ongoing basis,

**BEXA**

Broadway House, Tothill Street, London SW1H 9NQ  
Telephone: 020 7222 5419 FAX: 020 7799 2468  
e-mail: [bexamail@aol.com](mailto:bexamail@aol.com) [www.bexa.co.uk](http://www.bexa.co.uk)

there are also practical issues relating to conflict of laws. For example, under the US Foreign Corrupt Practices Act of 1977 it is perfectly legitimate to make facilitation payments whereas this would constitute a Corrupt Activity from ECGD's perspective. The December 2004 provisions have sought to address this problem by introducing a concept of Controlled Company so that the Applicant can give ECGD the assurances that it is rightly seeking in relation to parties that the Applicant actually has control over.

- There seems to have been an assumption throughout this process that all Agents employed in international business dealings are there to facilitate the payment of bribes whereas in reality this is very far from the truth. Agents employed by our members play an important role in the contractual process and those members should be free to pay legitimate commissions to them without the burden of providing ECGD with details that are often confidential and commercially sensitive. We do not see what additional comfort the holding of these details will give ECGD as it has already been admitted that ECGD is not an investigating body. Additionally, as Transparency International pointed out, a company that is willing to pay bribes would hardly balk at the prospect of lying to ECGD on an application form.  
We believe that the best way for ECGD to make itself comfortable with this thorny issue is to do what UK-based commercial financial institutions have to do in order to comply with anti-money laundering legislation i.e. know their customer. For example, ECGD could meet its objective of identifying and deterring Corrupt Activity by reviewing:
  - its customers' codes of business conduct;
  - the processes and procedures by which its customers appoint and manage their Agents; and
  - the representations that its customers have to make with respect to the behaviour of Controlled Companies, Associates and those acting on the exporter's behalf.
- While the burden placed on Applicants by the December provisions relating to Agency arrangements may be reasonable for major exporters who have the resources and personnel necessary to meet the new requirements, this may not be the case for smaller companies. For example, the level of commission over which details of Agents need to be provided is set at 5%. For smaller exporters it could be a very small sum indeed that triggers the additional obligation. We are not proposing that the 5% figure should be raised, as we recognise that in the context of most transactions this is appropriate, however we suggest that there could be a small absolute amount of commission below which no further detail need be provided regardless of the percentage.

In conclusion, BExA believes that the December 2004 provisions are among the most stringent of any ECA, meeting ECGD's objective of deterring bribery and corruption in international business dealings and, although the burden on business has increased, on the whole this represents a fair balance of interests.

Yours sincerely

H. Bailey

Hugh Bailey  
Director