



**EXPORT CREDITS GUARANTEE DEPARTMENT**

**INTERIM  
GOVERNMENT RESPONSE  
TO THE  
PUBLIC CONSULTATION  
ON  
PROPOSED REVISIONS TO  
ECGD'S BUSINESS PRINCIPLES  
AND  
ANCILLARY POLICIES**

**19 March 2010**

## INTRODUCTION

- 1 This is the Government's Interim Response to the Public Consultation, launched on 3 December 2009, regarding proposals to change ECGD's Business Principles and ancillary policies. The reasons for this being an Interim, rather than Final, Response are given at paragraphs 8-10 below.
- 2 The Consultation Document ("the Document") can be found on ECGD's website at [www.ecgd.gov.uk](http://www.ecgd.gov.uk). This argued that ECGD's Statement of Business Principles had become outdated by developments since it was first published in 2000. Those subsequent developments include the adoption by the OECD of various Agreements relating to the way in which official export credit agencies (ECA), when considering applications for cover made to them, should take account of factors such as environmental, social and human rights impacts, debt sustainability and bribery and corruption. They also include the coming into force of the Freedom of Information Act, the revised Environmental Information Regulations and the adoption by HMG of a revised Code of Practice on Consultation.
- 3 The Document therefore proposed that the Statement of Business Principles should be substantially revised. It also proposed that ECGD should adopt a policy of following OECD Agreements relating to the environment, sustainable lending and bribery but not separately operate or additionally create its own policies going beyond the terms of those Agreements. It further proposed that it should in future apply the Government Code of Practice on Consultation.
- 4 The Document additionally proposed, arising from ECGD's experience of the application of its anti-bribery and corruption procedures, changes in the way those procedures are applied in situations where a UK exporter is seeking ECGD support for a sub-contract to a foreign exporter and where ECGD's support is being given by reinsuring the ECA which is supporting the main contract between the foreign exporter and the ultimate buyer. For reasons set out in Annex F to the Document, it is proposed that ECGD should have discretion in the circumstances therein set out as to the extent to which it applies its anti-bribery and corruption

procedures in such situations. Moreover, it is proposed that where the foreign exporter's ECA is situated in an OECD Member Country, ECGD should rely upon that agency's application of the OECD Recommendation.

- 5 The Document was sent to a wide range of companies and other bodies believed to have an interest in ECGD's Business Principles. Consultees were given a period of 12 weeks – until 3 March 2010 – in which to make their representations.
- 6 Twenty-two Representations were received from consultees within the time specified in the Document. One representation was a joint response (“the Joint Response”) giving the views of six individual consultees (although one of those six added an individual response as well). ECGD is grateful to all consultees for their contribution. Each submission has been carefully considered and analysed. A list of respondents to the Consultation can be found at Annex A. Copies of all the representations can be found on ECGD's website at [www.ecgd.gov.uk](http://www.ecgd.gov.uk).
- 7 Two representations (from Transparency International UK and Interchange Solutions Ltd) touched on more general issues about ECGD's anti-bribery and corruption procedures than those specific issues on which comment was sought in the Document. While ECGD is grateful for the comments made by those two consultees, it has only been able, in this Response, to address those consultees' comments which relate specifically to the issues in the Consultation.
- 8 In contrast to those from exporters, business representatives, financial institutions and insurance brokers, the representations from special interest groups raised a series of specific objections to the proposal in the Document that in future ECGD should assess the environmental, social and human rights (ESHR) impacts of projects only on the occasions required by the relevant OECD Recommendation. Such a change would, essentially, exclude applications with a UK export value of less than SDR 10m or with a repayment term of less than 2 years from such assessment. They also objected to the fact that a Regulatory Impact Assessment had not accompanied the Consultation nor, in their view, was there sufficient evidence that the ESHR impacts of the proposals for change been taken into account.

- 9 The Government does not accept that an Impact Assessment could, or therefore should, have been provided with the Document but has decided that it will provide consultees with certain further information and that consultees should be given a brief further opportunity to make representations about the proposed change referred to in paragraph 8. A letter giving that information has been sent to all consultees who responded to the Document (“the Letter”) which can be found on ECGD’s website.
- 10 This document (“the Interim Response”) gives the Government’s final response on those proposals with which it deals in substance: it is interim in the sense that there will be a further response on all other proposals (“the Reserved Matters”). The matters dealt with in the Interim Response (“the Interim Matters”) are the proposals for change to ECGD’s anti-bribery and corruption procedures set out in paragraphs 45 and 46 of the Document, and allied matters, and the proposal that ECGD should in future carry out public consultations in accordance with the Government’s Code of Practice on Consultation and that it should cease to make separate statements about its disclosure policy given that that is determined for it by the Freedom of Information Act and the Environmental Information Regulations. The Reserved Matters will be the subject of decision after consideration of all representations made in relation to them. The Government is satisfied that the Interim Matters can be dealt with separately to the Reserved Matters.
- 11 This document therefore analyses, and gives the Government’s Response to, the comments made by consultees in relation to the Interim Matters.

## **ANALYSIS OF REPRESENTATIONS AND GOVERNMENT RESPONSES**

### **Transparency**

- 12 The Joint Response expresses concern that the proposed revised Business Principles on Disclosure may result in ECGD becoming less proactive in terms of

publishing information about its activities. They therefore express a preference for ECGD to retain the current Business Principles wording.

## **Government Response**

**13 The Government believes that these concerns are misplaced. There is no intention to restrict the amount of information ECGD publishes in, for example, its Annual Review or in the Decision Notes on sensitive cases. The primary objective in proposing this change was to take account of the fact that the Freedom of Information Act has been in operation since 2005 and of the revisions, that came into effect in the same year, to the Environmental Information Regulations. As a Government Department, ECGD is subject to that Act and Regulations. It has, therefore, become unnecessary for ECGD to retain wording in its Business Principles about the circumstances in which it will, or will not, disclose information. Those circumstances are now defined for it in the Act and Regulations.**

## **Bribery and Corruption**

14 Concern is expressed in the Joint Response and the Transparency International response that, where ECGD is providing reinsurance to another OECD ECA, it should rely on that agency's "due diligence" in relation to the risk of bribery or corruption, because they assert that the other ECAs procedures are or may be less stringent than those applied by ECGD. In their view, relying on another OECD ECA enhances the risk of a contract tainted by bribery or corruption being supported by ECGD, and the knowledge that ECGD will so rely may actually lead to a situation where the commercial parties contrive to achieve a contractual position where the main contractor is located in an OECD Country where the ECA operates a less stringent anti-bribery regime than ECGD's, in order to circumvent the ECGD scrutiny.

15 Interchange Solutions recommends (paragraph 14, 4<sup>th</sup> sub-paragraph of its representation) that where ECGD is reinsuring another OECD ECA, it should obtain that ECA's bribery risk due diligence report on the recipient of the insured

export credit. This would appear to constitute an objection to the change proposed by ECGD in paragraph 46 of the Document.

16 Transparency International raises no objection to the change proposed in paragraph 45 of the Document but suggests that the discretion sought by ECGD – not to apply its anti-bribery procedures to low value sub-contracts under reinsurance arrangements – should operate against a maximum threshold of US\$ 5,000.

17 The consultees representing commercial parties and their representative bodies endorse the proposals for change to ECGD's anti-bribery and corruption procedures described in paragraph 45 and 46 of the Document. Some objections are, though, raised to the proposal in paragraph 47 that ECGD should continue to form direct judgements on bribery and corruption matters, and not rely on the scrutiny of the lead ECA, in reinsurance situations involving Airbus transactions or transactions where the UK exporter has a direct contract with the end buyer. The consultees contend that, in these situations as well, ECGD should be willing to rely on the anti-bribery due diligence of the lead export credit agency.

### **Government Response**

**18 The proposal in the Document to rely on the enquiries of another OECD ECA relates to a contractual position where the main contractor is in another OECD Country and where the UK exporter has a sub-contract with the main contractor. The UK exporter has no direct contractual relationship with the end-buyer: its supply is incorporated in the main contract alongside that of the main contractor. The main contractor is applying to its ECA for support for the whole of the main contract. That ECA is in turn looking to ECGD to reinsure it in respect of the value of the UK element of the main contract.**

**19 In these circumstances, neither ECGD nor the UK exporter has the locus to superimpose ECGD's anti-bribery requirements on the main contractor's ECA. And the main contractor may well be resistant to providing the UK**

parties with information, for example about his agent, which is neither being requested by his ECA nor is required under the OECD regulations. To insist on such information being provided may well prejudice the UK exporter's prospect of securing the sub-contract. The Government has, therefore, concluded that the only practical solution in these circumstances is for ECGD to rely on the anti-bribery procedures and provisions of the lead ECA recognising that these will meet the standards of the Bribery Recommendation (as defined in paragraph 23 of the Document).

20 The risk that the commercial parties might seek to contrive contractual arrangements aimed at circumventing ECGD's anti-bribery is considered to be remote. The main contractor is usually appointed by the buyer and is normally responsible for the management of, and the main items of supply for, the project. That main contractor will in turn place sub-contracts for subsidiary elements of the supply. It is not at all likely that this normal commercial arrangement would be distorted, so that the natural sub-contractor becomes the lead commercial party in order to avoid the any differences between the application of ECGD's anti-bribery procedures and the application of the procedures of another OECD ECA.

21 The Government's view is, therefore, that the change proposed is the appropriate option to adopt in the circumstances described. The logic of the change is that it should apply in all cases and not just to those cases above £5m as suggested in the Joint Response; and this is the Government's decision. ECGD will, however, report the number of occasions it has relied upon the due diligence undertaken by the lead ECA that is a member of the OECD in its annual report to the Export Guarantees Advisory Council on the application of its anti-bribery procedures which is made publicly available.

22 In relation to the discretion proposed in paragraph 45 of the Document, the Government believes that it is not practicable to set the ceiling suggested of US\$ 5,000. The exercise of the discretion will depend on the specific circumstances of the case, though the incidence of such cases is expected

to be rare. ECGD will also report the number of occasions it has exercised the discretion in its annual report to the Export Guarantees Advisory Council on the application of its anti-bribery procedures.

**23** The Government has noted the comments in paragraph 17 above. The issue of the procedures on reinsurance for Airbus transactions is outside the scope of this Consultation for the reasons given in the Document. In any event, the changes proposed in the Document were born of ECGD's practical inability, in the specific circumstances cited in the Consultation, to apply the anti-bribery procedures which were announced in 2006 following the major public consultation on that topic. No problems have arisen in the practical application of those procedures in the context of the reinsurance scenarios described in paragraph 47 of the Document.

#### **Special Handling Arrangements**

**24** Nearly all the commercial consultees object to the proposed change to the Special Handling Arrangements (SHA) described in Annex F to the Consultation on the grounds that this did not offer the safeguards for the confidentiality of information supplied to ECGD inherent in the existing SHA.

#### **Government Response**

**25** This issue was not raised in the Document. However, since it was referred to in Annex F of the Document, and to avoid any misunderstanding, it is convenient for ECGD to confirm in this Response that it intends simply to substitute in the SHA the Business Manager (Product Development), who has policy responsibility for ECGD's anti-bribery policies, for the Head of the Business Principles Unit: both officers have the same level of seniority. All other recipients of the information remain unchanged.

## **OVERALL GOVERNMENT RESPONSE**

**26 The Government has considered all the representations of the Consultees referred to in paragraph 6.**

**27 In relation to the Interim Matters, it has decided that ECGD will make the modest changes proposed in the Consultation to its anti-bribery and corruption procedures but will otherwise maintain the regime it has applied since July 2006. These changes will have immediate effect.**

**28 The Government is pleased to note that no objections have been raised by consultees to the intended adoption by ECGD of the Government Code of Practice on Consultation. This will represent ECGD policy on consultation in future. The revision to the Business Principles insofar as they relate to Disclosure and Consultation will be promulgated in due course following a decision on the Reserved Matters and the publication of the Government's Final Response to the Consultation.**

**29 A Final Response will be published in relation to the Reserved Matters after consideration of submissions made in response to the Letter.**

**ECGD**

**19 March 2010**

**LIST OF RESPONDENTS TO ECGD CONSULTATION ON PROPOSED  
REVISIONS TO ECGD BUSINESS PRINCIPLES AND ANCILLARY POLICIES**

- 1 Thales UK
- 2 Aon Limited
- 3 Sovereign Star Trade Finance Limited
- 4 BNP Paribas
- 5 Interchange Solutions Limited
- 6 London and Scottish International Limited
- 7 British Exporters Association
- 8 Joint NGO Response: Amnesty International UK, Campaign Against Arms Trade, Jubilee Debt Campaign, Oxfam GB, The Corner House, WWF UK
- 9 Selex Galileo Ltd
- 10 Motorola Ltd
- 11 Airbus SAS
- 12 Alstom Ltd
- 13 Institute of Export & International Trade
- 14 BAE Systems Plc
- 15 Deutsche Bank AG
- 16 Confederation of British Industry
- 17 Société Générale
- 18 Rolls-Royce plc
- 19 Transparency International UK
- 20 WWF UK
- 21 Anti-Slavery International
- 22 British Bankers' Association