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18 November 2005

Dear Mr Llewellyn

**Re: Consultation on the interim response to changes to ECGD's anti-bribery and corruption procedures introduced in December 2004**

F&C Asset Management, one of the UK's top five institutional investors, broadly welcomes the changes that are suggested in the ECGD's interim response. In particular, we believe that proposals such as removing the 5% threshold for disclosing Agents' details (paragraphs 57,58), and harmonising the audit provisions relating to both the obtaining and performance of contracts (paragraph 35), are appropriate revisions.

However, we are concerned that certain of the revisions do not adequately reflect the need for companies to implement a strong anti-corruption culture, in which companies conduct their operations on the basis that bribery & corruption are fundamentally antithetical to good business practice. Moreover, as the procedures become more specific and prescriptive, there is a danger that this will induce a compliance-based approach that focuses on the letter of the guidelines rather than their spirit.

Furthermore, we believe that, given the high profile the consultation has received, the significance of the revisions goes beyond their function within the due diligence policies of ECGD. As an agent of HM Government, the ECGD is regarded as a standard setter that influences practices throughout the business community, both in the UK and overseas. Its standards are watched closely by other export credit agencies, and its actions therefore have consequences that extend more widely than the Department's immediate remit might suggest. It is for this reason that this consultation has elicited such attention from a wide variety of actors from business, the investment community and civil society. F&C therefore considers it extremely important that the Department take a clear and principled, yet pragmatic, stance on the question of bribery & corruption.

As mentioned in our previous submission, we believe that anti-bribery & corruption measures are extremely important to shareholders and, ultimately, members of UK pension funds. Bribery &



corruption can distort and de-stabilise markets, create legal liabilities and reputational damage for companies, disadvantage non-corrupt companies and create additional risks for investors seeking investment opportunities.

We thus believe that where there is scope for further tightening of the provisions without damaging competitiveness, this should be undertaken, and that consideration should also be given to measures that will promote an anti-corruption culture in the companies involved. Specific areas in which these might happen are outlined below.

#### **64-66 Disclosure of agents' identities**

We favour the first solution proposed, i.e. that the names of agents be disclosed to ECGD. This is an area that is particularly vulnerable to corruption, and so should be subject to strict due diligence procedures that withstand ECGD scrutiny. We would refer you to the arguments outlined in our original submission.

However, we fully appreciate that this is commercially-sensitive information, and believe there is an onus on ECGD, in order to build trust with its customers, first to implement a robust mechanism for guaranteeing confidentiality before it is imposed on clients.

We have strong reservations about the second variant, which we consider to have weak deterrence value, insofar as there is no apparent penalty other than repayment of monies obtained from ECGD if the company is found to have committed Corrupt Activity.

#### **34-35 Powers of audit**

We are not qualified to comment on the ECGD's position as an investigatory agency, nor do we believe that the Department should undertake systematic audits of all customers for the purposes of finding evidence of Corrupt Activity. However, as a general principle, we believe that granting ECGD powers to audit contracts on a random basis, irrespective of whether or not there are grounds for suspicion, is part of the broader framework that may help to discourage corruption or lax business practices.

As mentioned in our previous submission,

- we are also aware of legitimate concerns by companies that the auditor, who would gain access to commercially-confidential information, should have no actual or potential conflicts of interest or be an inappropriate person or organisation. Providing a means could be found to allay this concern, we would support the ECGD obtaining such reinforced audit powers.
- it is reasonable to allow an adequate notice period for the period between the announcement of the audit and the audit taking place, in order to give companies adequate time to prepare for an audit – for example, by having the relevant personnel available.
- we note also the legitimate concern by companies that these auditing rights may not in reality be exercised on an occasional and random spot-check basis, but that certain high-profile companies may become subject to frequent and onerous auditing. We do not believe that the audit process should be used in this way, and companies should be given formal reassurance on this point.



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**Annex C(i)B paragraph 7.7 – Codes of Conduct**

To address our concern about ensuring that the company has an anti-corruption culture in place, you might consider, for instance, expanding this area of the application form. For example, the form might ask whether the Code of Conduct has sections on dealing with agents, political influence and facilitation payments; whether the company has a whistleblowing system in place; and whether all employees related to the contract have been trained in the Code of Conduct.

F&C would be happy to answer questions about its views, and for this letter to be made publicly-available.

With kind regards,  
Yours sincerely

A handwritten signature in black ink, reading 'Robert Barrington'. The signature is fluid and cursive, with a large initial 'R'.

Robert Barrington  
Director of Governance & Socially Responsible Investment