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EXPORT CREDITS GUARANTEE DEPARTMENT: PROPOSED CHANGES TO ECGD'S ANTI-BRIBERY AND CORRUPTION PROCEDURES

Draft Final Regulatory Impact Assessment

1. Proposal

- 1.1 To consider the regulatory impact of proposed changes to ECGD's anti-bribery and corruption procedures against those in place in May and December 2004. This RIA refers to the main points in issue and does not refer to each and every cost and benefit in issue.

2. Issue

- 2.1 ECGD has a statutory duty to make arrangements for the facilitation of exports. ECGD has in place anti-bribery and corruption procedures to try to avoid putting at risk taxpayers' money by inadvertently supporting export contracts which have been won as a result of corrupt practices. ECGD also plays what part it can in the implementation of the Government's policy to deter wrong-doing in international business transactions.
- 2.2 In December 2004, ECGD revised the anti-bribery and corruption procedures it had introduced in May 2004 after it received representations from exporters, trade and banking associations. ECGD now proposes to make further changes to its procedures.

3. Objective

- 3.1 To ensure that, as far as is practicable, ECGD's anti-bribery and corruption procedures remain robust while not placing an undue burden on industry.

4. Options

- 4.1 ECGD's options in considering the future form of each of the provisions of its procedures are to:
- i.) Retain the provisions introduced in December 2004;
 - ii.) Revert to the provisions introduced in May 2004; or
 - iii.) Amend the provisions in some other way

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5. **Background**

- 5.1 ECGD set out what it believed to be the principal changes to its procedures between the May 2004 and December 2004 procedures at Annex A of its partial RIA (attached for reference at Appendix A). This draft final RIA should be read in conjunction with the consultation document and ECGD's Interim Response to the consultation.
- 5.2 Within its partial RIA, ECGD sought to outline areas where regulatory impacts caused by the changes to the procedures may have occurred, and invited comments on the associated costs and benefits of those impacts. ECGD requested representations concerning the RIA to be submitted alongside consultees' responses to the consultation document, and encouraged the provision of further information, including that relating to the monetary impact of the changes.
- 5.3 ECGD received only two direct representations on its partial RIA. In addition, a number of representations to the consultation contained information which related to the impacts of the changes to the procedures. This draft final RIA seeks to outline what ECGD believes, based on its analysis of the information provided, to be the costs and benefits of the impacts of the main changes to the procedures proposed in the Interim Response, as compared to those introduced in May and December 2004. Further analysis of these proposed changes can be found within the Interim Response to the consultation.
- 5.3.1 None of the representations on the RIA, or on the consultation, attempted to quantify other than in the broadest terms what the impact of the changes introduced in December 2004, or of other changes proposed, might be. It has therefore not been possible, when identifying where impacts may occur, to quantify what their monetary or other impacts might be.

6. **Costs and Benefits**

6.1 **Analysis of the Costs and Benefits**

- 6.2 The costs and benefits of the proposed changes to ECGD's anti-bribery and corruption procedures are assessed within this draft final RIA relative to those introduced in May and December 2004. The definitions of what is a cost and what is a benefit are defined as follows:

6.3 **Benefits**

- 6.4 Benefits are taken to mean the efficacy of ECGD's policy to deter bribery and corruption. The benefits of this policy are twofold:

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6.5 Reducing the financial risks to ECGD

6.5.1 There are significant financial risks to ECGD, and therefore the UK taxpayer, in the event that ECGD supports a contract tainted with corruption. In the event that a bribe is proven to have been paid, the contract is capable of being terminated for illegality by the buyer. Where ECGD is guaranteeing an export finance loan, it must still compensate the bank under that guarantee for any loss which the bank sustains as result of the borrower not repaying that loan. ECGD may be able to recover some of this compensation through the exercise of its recourse rights against the exporter in these circumstances.

6.5.2 Helping to mitigate the social and economic impacts of bribery and corruption

6.5.3 The Government has committed itself to play its part in the reduction and ultimately the elimination of bribery and corruption in international trade transactions. Whilst it is difficult to quantify the financial benefit to the UK of achieving this aim, it is ECGD's view, shared by countries in the OECD and others, that bribery and corruption distorts free trade and can result in inappropriate purchasing decisions.

6.6 Costs

6.6.1 Costs are taken to mean the administrative, financial and legal burdens applicants face in complying with ECGD's procedures.

6.6.2 Within this draft final RIA, ECGD has tried to assess what these costs would be for a well-managed company, who, either for their own reasons or possibly pursuant to the US Foreign Corrupt Practices Act, would take appropriate steps in order to try to ensure that they are not involved in a contract tainted by corruption.

6.7 ECGD would welcome further representations on the relative impact of the costs and benefits of the proposed changes to its procedures.

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7. The costs and Benefits of the changes proposed in the Interim Response

7.1 Banks' Letter of Undertaking and Money Laundering

7.2.1 Proposal

7.2.1.1 Banks are required to represent that they are regulated by the Financial Services Authority in relation to, amongst other things, money laundering Regulations. Banks are also required to represent and warrant that they are not aware or, alternatively, have no reason to suspect that the Supply Contract had been used for the purposes of money laundering or that they have complied with their obligations under the Proceeds of Crime Act 2002; (continuation with the December 2004 provision).

7.2.1.2 ECGD believes that the form of the banks' letter of undertaking introduced in December 2004 has the same effect as that introduced in May 2004 but the provisions of the former are less burdensome than the latter. ECGD therefore does not believe that there are any cost or benefit implications in the proposal.

7.3 Employees / Directors

7.3.1 Proposal

7.3.1.1 To require applicants to make absolute representations in respect of (i) directors and (ii) named senior executives responsible for obtaining the contract of the applicant and its controlled companies. To require applicants to make qualified declarations in respect of the Board Directors of co-venturers.

7.3.2 Comparison of the costs and benefits of the proposal with the May 2004 and December 2004 provisions

7.3.3 May 2004

7.3.3.1 The benefits could be reduced in that there may be an increased risk of ECGD supporting a transaction tainted with corruption. The costs could be reduced in that there may be a lessening in the administrative and legal burdens on applicants to comply with the procedures.

7.3.4 December 2004

7.3.4.1 The benefits could be increased in that there may be a smaller risk of ECGD supporting a transaction tainted with corruption. The costs could be increased in that

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there may be an increase in the administrative and legal burdens on applicants to comply with the procedures

7.4 Replacement of the Concept of Affiliate

7.4.1 Proposal

7.4.1.1 To require applicants to make qualified representations in respect of co-venturers. To require representations made in respect of applicants and their controlled companies to be absolute.

7.4.2 Comparison of the costs and benefits of the proposal with the May 2004 and December 2004 provisions

7.4.3 May 2004

7.4.3.1 The benefits could be reduced in that there may be an increased risk of ECGD supporting a transaction tainted with corruption. The costs could be reduced in that there may be a lessening in the administrative and legal burdens on applicants to comply with the procedures.

7.4.4 December 2004

7.4.4.1 The benefits could be increased in that there may be a smaller risk of ECGD supporting a transaction tainted with corruption. The costs could be increased in that there may be an increase in the administrative and legal burdens on applicants to comply with the procedures.

7.5 Audit provisions

7.5.1 Proposal

7.5.2 ECGD to have audit rights relating to the obtaining of the contract supported only where it has reasonable suspicion of corrupt activity and on 5 day's notice (continuation with the December 2004 provision).

7.5.3 Comparison of the costs and benefits of the proposal with the May 2004 provisions

7.5.3.1 The benefits could be reduced in that there may be an increased risk of ECGD supporting a transaction tainted with corruption. The costs could be reduced in that there may be a lessening in the administrative and legal burdens on applicants to comply with the procedures.

7.6 Details of Agents

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- 7.6.1 Proposal relating to information other than that relating to agents' identities.
- 7.6.1.1 To require applicants to make ECGD aware of agent's information (May 2004 provision)
- 7.6.2 Comparison of the costs and benefits of the proposal with the December 2004 provisions
- 7.6.3 The benefits could be increased in that there may be a smaller risk of ECGD supporting a transaction tainted with corruption. The costs could be increased in that there may be an increase in the administrative and legal burdens on applicants to comply with the procedures.
- 7.7 Proposal relating to the identity of agents
- 7.7.1 (1) To require applicants to make ECGD aware of agent's identities (re-instatement of May 2004 provision),
- or
- (2) Where an agent has not been identified to ECGD, to provide a warranty obliging the applicant to repay any monies which ECGD should be obliged to pay in relation to the transaction if an agent concerned, with or without the knowledge, consent or acquiescence of the applicant, has committed corrupt activity (new provision).
- 7.7.2 Comparison of the costs and benefits of the proposal 1 with the December 2004 provisions
- 7.7.2.1 If an applicant opts for 1, the benefits could be increased in that there may be a smaller risk of ECGD supporting a transaction tainted with corruption. The costs could be increased in that there may be an increase in the administrative and legal burdens on applicants to comply with the procedures.
- 7.7.3 Comparison of the costs and benefits of proposal 2 with the May 2004 and December 2004 provisions
- 7.7.3.1 May 2004
- 7.7.3.1.1 If the applicant opts for 2, the benefits could be increased in that there is a smaller risk of financial loss to ECGD in the event that a bribe is proven to have been paid without the applicant's authority or knowledge; the costs could be neutral in that similar costs may be incurred in giving and policing the warranty as may be caused by the administrative and

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legal burdens connected with the May 2004 procedures.

7.7.3.2 December 2004

7.7.3.2.1 The benefits could be increased in that there may be a smaller risk of ECGD supporting a transaction tainted with corruption. The costs could be increased in that there may be an increase in the administrative and legal burdens on applicants to comply with the procedures.

8 Business sectors affected

8.1 Amendments to any of ECGD's procedures affect those UK exporters and their financing banks that use ECGD's services. These include those in civil business sectors (such as power generation and transmission, energy and transport) as well as those in the defence and aerospace sectors.

9. Environmental Impacts

9.1 ECGD does not believe that the changes to ECGD's anti-bribery and corruption procedures implemented as a result of this consultation will have any environmental impacts.

10. Social and Economic Impacts

10.1 The Government considers that corruption in international trade transactions distorts free competition and can result in inappropriate decisions by buyers. Such activity adversely impacts the social and economic equilibrium of the UK and of the country of the buyer. As a result, the Government considers it important that ECGD should play a part, to the extent that it is able, in the wider government effort to combat corruption. ECGD's role in this respect is set out in paragraph 21 of the Interim Response.

11. Competition assessment

11.1 ECGD provides support for exporters and investors overseas. The competition assessment is not designed to consider whether proposals will affect the ability of UK firms to compete outside the UK, but rather seeks to consider the potential impact on UK competitiveness arising from changes to regulations within the UK market. ECGD's major customers are some of the UK's largest manufacturers, who between them enjoy a significant proportion of UK market share in their respective fields. The changes to ECGD's procedures as a result of this consultation should not:

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- affect firms in any particular sector more greatly than others;
- change the number or size of firms operating in the UK;
- lead to high ongoing costs for new or potential firms that existing firms do not have to meet;
- restrict the ability of firms to choose the price, quality, range or location of their products.

12. **Small businesses: The Impact Test**

12.1 ECGD underwrites very few transactions for small businesses. However, the CBI considered the impact of ECGD's anti-bribery and corruption procedures on businesses generally and has stated that it believes the changes made in the December 2004 provisions would lessen the administrative burden resulting from the May 2004 procedures. ECGD considers that the impact of the proposed amendments to ECGD's procedures as a result of this consultation should not greatly increase the impact of the procedures on small businesses.

13. **Enforcement and compliance**

13.1 ECGD believes that, although the precise terms of the representations made by applicants could change as a result of the proposed changes in its Interim Response, the liability that companies will be under for misrepresenting information in application or proposal forms has not changed; nor have the types of contractual liability that applicants will be under by virtue of ECGD's standard forms. Where, however, an exporter chooses to give a warranty rather than disclose its Agent's identity, it will incur significantly greater liability for the acts of that Agent in that the warranty will provide that, if an agent acts corruptly and ECGD suffers loss as a result, the exporter will make good that loss to ECGD whether or not the exporter had authorised, or was aware of, that corrupt activity.

14. **Implementation and delivery plan**

14.1 [Completion of this section will be undertaken when the final Government Response to the consultation is issued.]

15. **Monitoring and review**

15.1 ECGD carries out regular reviews of its anti-bribery and corruption procedures. ECGD intends to carry out a further review of its anti-bribery and corruption procedures within three years.

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16. Summary and recommendation

16.1 ECGD concludes that the benefits of each of the proposed changes to its procedures outlined above, and in the Interim Response document, justify the costs.

**ECGD
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