

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

Final Regulatory Impact Assessment

This Final RIA has been produced in collaboration with the Better Regulation Executive

1. Objective

- 1.1. To ensure that, as far as is practicable, The Export Credits Guarantee Department's (ECGD's) anti-bribery and corruption procedures remain robust while not placing an undue burden on industry.

2. Issue / background

2.1. ECGD is the UK's official Export Credit Agency (ECA). It is a Department of State whose existence and powers are governed by the Export and Investment Guarantees Act 1991. Its core statutory powers are to facilitate the export of goods from the United Kingdom and to insure overseas investment made by United Kingdom entities.

2.2. ECGD also takes into account wider Government policies relating, amongst other things, to the deterrence of bribery and corruption; although such policies are not expressed to be part of its statutory functions. Bribery and corruption now constitute crimes in the UK even when the acts in question are committed abroad, provided that the acts would constitute a corrupt offence if done in the United Kingdom and provided that the acts are committed either by UK nationals or bodies incorporated under the law of any part of the United Kingdom. The enforcement of the criminal law is a matter for agencies charged with the investigation and prosecution of offences and equipped with the powers which enable them to carry out those duties. ECGD has no such statutory duty and has no statutory investigatory power. It is, however, HMG policy that ECGD should play what part it can in

detering the commission of such offences. It is also in the interests of ECGD and the taxpayer that ECGD should not support transactions which are tainted with corrupt practices. ECGD seeks financial redress from exporters should it suffer loss in respect of a contract proven to have been subject to corruption.

2.3. Broadly the measures ECGD uses in pursuit of the objective described above involve the following three stages:

- Information is sought upon application for ECGD support together with written assurances regarding the applicant's behaviour;
- The information is assessed and further enquiries made or additional details requested where considered necessary;
- ECGD's contracts of support are worded in ways which allow financial recourse action to be taken where problems or misrepresentations are subsequently discovered.

2.4. The basis of the current provisions, designed to minimise the chances of ECGD supporting corrupt activity with taxpayers' money, was created in arrangements introduced in September 2000. There have been a number of revisions since that time. One such revision took effect in May 2004 (the May 2004 provisions).

2.5. The introduction of the May 2004 provisions was welcomed by some NGOs, but drew complaint from exporters and banks, which felt that a number of the new proposals were impractical and in some respects could not be complied with for contractual or other reasons. They were also said to place unnecessary regulatory difficulties on exporters and the banks.

2.6. On receipt of these complaints, which were supported and amplified by various representative bodies, ECGD held discussions with the complainants and their representatives. ECGD took the view, having

heard and read the representations made to it by the complainants that, in all the circumstances, the December 2004 provisions were the appropriate provisions to introduce and on the 5 November 2004 it announced those revised provisions would take effect as from 1 December 2004.

2.7. On 19 November 2004, The Corner House, an NGO, applied for a judicial review of ECGD's decision to promulgate the December 2004 provisions on the basis that no sufficient public consultation had taken place for their promulgation.

2.8. On 13 January 2005 a settlement was agreed with The Corner House, terms of which included an agreement by ECGD, without admission of any obligation so to do, to undertake this consultation.

3. The Changes to the procedures

3.1. The principal changes between the May 2004 provisions and the December 2004 provisions were:

- (i) the replacement of the concept of "Affiliate" and the reduction of an Applicant's obligations in respect of an "Affiliate";
- (ii) the reduction in the number of occasions upon which Applicants were requested to state whether an agent or an intermediary has been used and the introduction of a possibility for an Applicant to persuade ECGD that the circumstances of the application were such that they justified the Applicant not providing ECGD with the name of the agent;
- (iii) the restriction of ECGD's contractual right to inspect documents relating to the obtaining of a Supply Contract to circumstances where it has confirmed in writing that it has reasonable grounds for suspecting Corrupt Activity;
- (iv) a change in the Letter of Undertaking received from a Bank guaranteed by ECGD so that the Bank ceased to represent and

warrant that it had not engaged and would not engage in money laundering offences and instead represented and undertook that it was regulated by the Financial Services Authority in relation to, amongst other things, Money Laundering Regulations and that it was either not aware or had no reason to suspect that the Supply Contract had been used for the purposes of money laundering or that it had complied with its obligations under the Proceeds of Crime Act 2002;

- (v) a reduction in the number of employees in respect of whose past behaviour in regard to acts of bribery and corruption representations of fact were required in application forms.

3.2. A description of the individual provisions in place in May and December 2004, as well as those others to be adopted as a result of this consultation, can be found in the costs and benefits section (section seven) below. In general, the amendments made to the procedures in May and December 2004, and those others to be adopted as a result of this consultation, represent changes in the nature of the pre-contractual representations and amount of information required from Applicants, the number of people/entities declarations are required in respect of (including the steps Applicants must take to ensure the declarations are correct) and changes to ECGD's audit rights.

4. The Consultation

4.1. ECGD launched its 12 week consultation on the 18 March 2005.

4.2. The question on which it invited representations was:

Do the changes made to ECGD's anti-bribery and corruption procedures in December 2004 have the effect of ensuring that, so far as practicable, (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?

If you consider that the changes do not possess this balance, please indicate what changes you think would do so.

- 4.3. Within the partial RIA that accompanied the consultation document, 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.
- 4.4. ECGD received 28 written responses to its consultation by the 18 June 2005 deadline. Responses were received from a number of different entities, including companies, representative trade associations, individuals and NGOs. ECGD also held three meetings with consultees during the consultation period. A list of the consultees in question, copies of all the responses received and copies of the minutes of the meetings can be found on ECGD's website at www.ecgd.gov.uk or may be obtained by application to ECGD.
- 4.5. ECGD received only two 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.
- 4.6. 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.

4.7. As a result of careful consideration of the representations, certain provisional conclusions emerged on which it was considered helpful and appropriate to invite further comments from interested parties before a final decision was made and a final Response issued. On 21 October 2005 ECGD published an Interim Response document which outlined these provisional conclusions.

4.8. The draft final RIA that accompanied the Interim Response document sought to outline what ECGD believed, based on its analysis of the information provided up to that point, 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.

4.9. ECGD received 16 responses to its Interim Response by the 18 November 2005 deadline. One consultee commented directly on the RIA.

4.10. ECGD received a further 9 responses by the 18 December deadline to a letter of the 5 December 2005 about the qualification of statements.

5. Changes to ECGD's procedures made as a result of this consultation

5.1. ECGD is adopting a number of changes to its procedures as a result of this consultation. These are set out in Section 7 below.

6. Options

6.1. ECGD's options in considering the future form of each of the provisions of its procedures were 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

7. Costs and Benefits

7.1. Analysis of the Costs and Benefits

7.2. The definitions of what is a cost and what is a benefit can be defined as follows:

7.3. Benefits

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

7.3.2. Reducing the financial risks to ECGD

7.3.2.1. 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.

7.3.3. Helping to mitigate the social and economic impacts of bribery and corruption

7.3.3.1. 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.

7.4. Costs

7.4.1. Costs are taken to mean the administrative, financial and legal burdens applicants face in complying with ECGD's procedures. The costs of the December 2004 procedures currently in place are not considered to represent an undue burden.

7.4.2. Within this 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, irrespective of whether they were applying for ECGD cover, take appropriate steps in order to try to ensure that they are not involved in a contract tainted by corruption.

7.5. Wider costs

7.5.1. For the last year (Financial Year 2003/04) for which an estimate exists, ECGD supported approximately 1.2 per cent of all UK exports. If ECGD introduced procedures so burdensome that UK exporters could no longer access ECGD support, and if export contracts were lost as a result, then this could present costs both to UK exporters and the wider UK economy. It should be noted, however, that ECGD does not believe that the procedures it is to introduce represent such a burden.

8. The costs and benefits of the options proposed

8.1. The intrinsic costs and benefits of the provisions currently in place (the December 2004 provisions) - the 'do nothing' option, are expressed first within the analysis below. The costs and benefits of the options

for changing ECGD's anti-bribery and corruption procedures are then assessed relative to the provisions currently in place. In considering options for changing the provisions, a judgement has been made about whether any additional benefits can be gained without placing undue costs upon exporters.

8.2. In order to help to provide an indication as to the relative costs and benefits of the options considered for each of the provisions, a hypothetical transaction has been devised, for which the actions required of the "applicant" can be compared in each case. For the purposes of this hypothetical transaction, the applicant for ECGD support controls five companies, two of which were materially involved in obtaining the contract. The applicant belongs to a corporate Group with ten other companies not under its control, two of which were materially involved in obtaining the contract. The applicant has formed a consortium partnership with two companies in respect of the transaction. The applicant employed a sales agent whose fee does not form part of the contract but is equivalent to 2% of the contract price, which will not be supported by ECGD. Two of the UK lending Bank's group companies were involved in winning the mandate from the applicant for the transaction.

8.3. Banks' Letter of Undertaking and Money Laundering

8.3.1. Option I: December 2004 provision

8.3.1.1. Banks are required to represent that they are regulated by the Financial Services Authority in relation to, amongst other things, the 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 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. laundering or that they have complied with their obligations under the Proceeds of Crime Act 2002.

8.3.1.2. In the hypothetical example cited in para 8.2, the Bank would not have to make enquiries about any of the companies within its group.

8.3.2. Benefits

The provisions, in ECGD's opinion, go some way towards enabling ECGD to satisfy itself that taxpayer's money is not being used to support transactions tainted with corruption.

8.3.3. Costs

There are some financial, administrative and legal burdens associated with making these representations.

8.4. Option II: May 2004 Provision

8.4.1. Banks to represent that in connection with obtaining the mandate to finance the Supply Contract or its subsequent financing under the Loan Agreement neither the Bank nor to the best of its knowledge and belief any of its Affiliates nor anyone (including any of its or their employees) acting on its or their behalf with due authority or with its or their prior consent or subsequent acquiescence has engaged or will engage in any money laundering.

8.4.2. In the hypothetical example cited in para 8.2, the Bank would not have to make enquiries about any of the companies within its group.

8.4.3. Benefits

The benefits would remain the same in that both the May 2004 and the December 2004 provisions achieve the purpose of enabling ECGD to

satisfy itself as far as it can that it is not supporting a transaction tainted with corruption.

8.4.4. Costs

The costs could be increased in that there may be an increase in the administrative and legal burdens on Banks to comply with the procedures.

8.5. Option III

8.5.1. Banks are required to represent that they are regulated by the Financial Services Authority in relation to, amongst other things, the 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 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. UK Banks further represent that they have made reasonable enquiries about group companies (whether or not controlled by the relevant bank) in order to ascertain those which have had a material involvement in obtaining the bank's mandate to finance the contract (and that those enquiries do not give the bank cause to believe that any of those companies has committed corrupt acts in relation to the obtaining of that mandate.

8.5.2. In the hypothetical example cited in para 8.2, the UK Bank would have to make reasonable enquiries about the two companies within its group with a material involvement in obtaining the Bank mandate.

8.5.3. Benefits

The benefits could be increased in that declarations are required about a greater number of companies, which may reduce the risk of ECGD supporting a transaction tainted with corruption.

8.5.4. Costs

Declarations are required about a greater number of entities. The costs could therefore be increased in that there may be an increase in the administrative, financial and legal burdens on applicants in complying with these declarations.

8.5.5. Conclusion

8.5.5.1. Option adopted: Option III

In order to reduce the risk to ECGD of supporting a transaction tainted with corruption, declarations should extend beyond the UK Banks and include Group Companies. The costs to Banks of these additional representations will vary depending on the contractual structure, but have been minimised by limiting representations to only those companies materially involved in obtaining the bank mandate and by requiring only 'reasonable enquiries' to be made by the applicant bank about them. The Government therefore does not believe that the additional cost of making such representations would represent an undue burden. Option III is therefore considered to be the best provision to adopt.

8.6. Employees / Directors

8.6.1. Option I: December 2004 provisions

8.6.2. Applicants to represent to “best of their knowledge and belief” that the board directors of the applicant and any controlled companies have not freely admitted to, or been convicted of, corruption in past 5 years or appears on the World Bank List of Debarred Firms.

8.6.3. In the hypothetical example cited in para 8.2, the applicant may have to make enquiries about the Board Directors of controlled companies, and would not have to make any enquiries about any of its group companies or Consortium Partners.

8.6.4. Benefits

These representations provide a measure of assurance to ECGD that the contract will not be the subject of corrupt activity.

8.6.5. Costs

There are some financial, administrative and legal burdens associated with making these representations.

8.7. Option II: May 2004 Provisions

8.7.1. Applicants to represent to “best of knowledge and belief” that the directors and all employees of the applicant and any affiliate have not freely admitted to or been convicted of corruption or appear on the World Bank List of Debarred Firms.

8.7.2. In the hypothetical example cited in para 8.2, the applicant may have to make enquiries about the Board Directors and all employees of the five companies it controls and ten group companies, in addition to its two consortium partners.

8.7.3. Benefits

The benefits could be increased in that declarations are required about a greater number of individuals, which may reduce the risk of ECGD supporting a transaction tainted with corruption.

8.7.4. Costs

Declarations are required about all of the applicant's employees as well as those of affiliates. The costs are therefore increased in that there is an increase in the administrative, financial and legal burdens applicants face in complying with this representation. All consultees agree that requiring declarations about all employees is too wide a test as this is considered too burdensome and because many employees will not be able to influence the terms of any contract.

8.8. Option III

8.8.1. Each applicant will be required to make absolute representations (both with regard to previous corrupt activity and corrupt activity in relation to the relevant contract) in respect of itself and its directors. Each applicant will also have to make qualified representations (on the basis of reasonable enquiries) regarding previous corrupt activity on the part of its senior managers who have the power to bind the applicant in relation to the contract. Applicants will be required to make qualified representations in respect of the directors of Consortium Partners and applicants' Group Companies (both those controlled and not controlled by the applicant) materially involved in obtaining the contract.

8.8.2. In the hypothetical example cited in para 8.2, the applicant would have to make reasonable enquiries about the Directors of the two companies it controls and two group companies that were materially involved in obtaining the contract, in addition to the Directors of its two consortium partners.

8.8.3. Benefits

The benefits could be increased in that declarations are required about a greater number of individuals, including those who have negotiating authority in relation to the obtaining of the contract in question. This should reduce the risk of ECGD supporting a transaction tainted with corruption.

8.8.4. Costs

The additional declarations, some of them absolute in respect of the applicant and its Group Companies involved in the contract about Directors and senior executives of the applicants and qualified declarations required in respect of Directors of co-venturers, means that costs could be increased in that there may be an increase in the administrative, financial and legal burdens on applicants in complying with these representations.

8.9. Conclusion

8.9.1. Option adopted: Option III

Requiring declarations about all employees (Option II) is considered too burdensome and because many employees will not be able to influence the terms of any contract. In order to reduce the risk to ECGD of supporting a transaction tainted with corruption, declarations in respect of the Applicant and Group Companies should however extend beyond Board Directors and at least to those senior managers within the applicant's company who have had negotiating authority in relation to the obtaining of the contract in question as well as about consortium partners and their Directors. The costs of these additional representations will vary depending on the contractual structure, but have been minimised by limiting representations to only those companies materially involved in obtaining the contract and by requiring only 'reasonable enquiries' to be made about

them. The Government therefore does not believe that the additional cost of making such representations would represent an undue burden. Option III is therefore considered to be the best provision to adopt.

8.10. Replacement of the Concept of Affiliate

8.10.1. Option I: December 2004

8.10.1.1. Qualified representations required in respect of controlled companies and an undertaking by applicants to notify ECGD if they become aware of corruption by joint venture / consortium companies involved in the performance or financing of the contract.

8.10.1.2. In the hypothetical example cited in para 8.2, applicants may have to make enquiries about its five controlled companies and would not have to make any enquiries about its Group Companies or Consortium Partners.

8.10.2. Benefits

There is a smaller risk of ECGD supporting a transaction tainted with corruption in respect of the people and entities declarations are required in respect of.

8.10.3. Costs

There are some financial, administrative and legal burdens associated with making these representations.

8.10.4. Option II: May 2004

8.10.4.1. Qualified representations required regarding affiliates which include any joint venture or consortium partners as well

as companies within the same group of companies as the applicant.

8.10.4.2. In the hypothetical example cited in para 8.2, applicants may have to make enquiries of all five of its controlled companies, all ten group companies and two consortium partners, regardless of their material involvement in obtaining the contract or not.

8.10.5. Benefits

The benefits could be increased in that declarations are required about a greater number of entities, which may reduce the risk of ECGD supporting a transaction tainted with corruption.

8.10.6. Costs

Declarations are required about a greater number of entities. The costs could therefore be increased in that there may be an increase in the administrative, financial and legal burdens on applicants in complying with these declarations.

8.10.7. **Option III**

8.10.7.1. Each applicant will be required to make qualified representations (on the basis of reasonable enquiries) regarding previous corrupt activity and corrupt activity in relation to the relevant contract in respect of Consortium Partners and in respect of each company which is in the same group as the applicant and which has been materially involved in obtaining the contract.

8.10.7.2. In the hypothetical example cited in para 8.2, applicants would have to make reasonable enquiries of the two controlled companies and two group companies materially

involved in obtaining the contract, in addition to its two consortium partners.

8.10.8. Benefits

The benefits could be increased in that declarations are required about a greater number of entities, which may reduce the risk of ECGD supporting a transaction tainted with corruption.

8.10.9. Costs

The costs could be increased in that there may be an increase in the administrative, financial and legal burdens on applicants in complying with these declarations.

8.11. Conclusion

8.11.1. Option adopted: Option III

HMG believes that the touchstone of what constitutes an acceptable burden on applicants in requiring representations about other entities is whether they have been involved in the transaction; this test encompasses those entities about whom HMG is most concerned. Option III therefore best balances the need to try to avoid ECGD involvement in a transaction tainted with corruption whilst not placing undue burdens upon applicants for support.

8.12. Audit provisions

8.12.1. Option I: December 2004 provisions

ECGD to have audit rights relating to the obtaining and the performance of the supply contract. The rights relating to the obtaining of the supply contract to be exercisable by ECGD where it has confirmed in writing that it has reasonable grounds for suspecting corrupt activity and with 5 days notice with the audit being carried out by an independent third party acceptable to the applicant.

8.12.2. Benefits

The ability to audit documentation, even though limited in respect of contract award, may reduce the chances of cover being sought from ECGD for a transaction tainted with corruption.

8.12.3. Costs

There are some financial, administrative and legal burdens associated with an applicant allowing ECGD to audit its documentation.

8.13. Option II: May 2004 provisions

ECGD to have audit rights relating to the obtaining and performance of the supply contract. These rights to be exercisable by ECGD at any time but with 5 days notice.

8.14. Benefits

The benefits could be increased in that there may be a smaller risk of ECGD being asked to support a transaction tainted with corruption as a result of those more extensive audit rights.

8.15. Costs

The costs could be increased in that such audits will be carried out without ECGD requiring reasonable grounds for suspecting corrupt activity and could thus be more frequent thereby increasing the associated financial, administrative and legal burdens.

Option III

ECGD will have audit rights in respect of records held by the exporter which relate to the obtaining and performance of the supply contract. These rights will be exercisable by ECGD at any time on 5 days notice. Audit powers in respect of records relating to the obtaining of the contract may be used only for the purpose of verifying the accuracy of information given to ECGD in the exporter's application.

8.16. Conclusion

8.16.1. Option adopted: Option III

Option III represents the best balance between the need to ensure, taking into account ECGD's non-investigatory role, that, so far as is practicable, taxpayer's money is not used to support transactions tainted with corruption and that an undue burden is not placed upon applicants.

8.17. Details of Agents

8.18. Proposal relating to information other than that relating to agents' identities.

8.18.1. Option I: December 2004

8.18.2. Information about agents, including their existence, would be required if agents' commissions were part of the contract ECGD was being asked to support and, if not part of the contract, the commission was more than 5% of the contract value.

8.18.3. In the hypothetical example cited in para 8.2, applicants would not have to provide to ECGD details about its sales agent.

8.18.4. Benefits

There is a smaller risk of ECGD supporting a transaction tainted with corruption in respect of transactions about which information is provided.

8.18.5. Costs

There are some financial, administrative and legal burdens associated with making these representations.

8.18.6. Option II: May 2004

8.18.6.1. To require applicants to make ECGD aware of agent's information in all cases.

8.18.6.2. In the hypothetical example cited in para 8.2, applicants would have to provide to ECGD details about its sales agent.

8.18.7. Benefits

The benefits are increased in that there is a smaller risk of ECGD supporting a transaction tainted with corruption.

8.18.8. Costs

The costs could be increased in that there may be an increase in the administrative, financial and legal burdens in providing information about agents in all cases. The cost is not believed to be significant, however; submissions to the Interim Response either welcomed this option or did not refer to the issue of the disclosure of agent's information.

8.18.9. Conclusion

8.18.9.1. Option Adopted: Option II

Option II reduces the risk of supporting a transaction tainted with corruption. ECGD does not consider the regulatory burden of extending requests regarding details of agents (whatever form those requests may take) to all applications for ECGD support to be sufficient to justify the retention of the exceptions in place under option I.

8.19. Proposal relating to the identity of agents

8.20. Option I: December 2004

8.20.1. All applicants required to provide ECGD with agents' identities prior to ECGD's decision on cover unless either (i) any agents' commission were not part of the contract ECGD was being

asked to support and such commission did not exceed 5% of the contract value or (ii) the applicant provides a convincing justification for not doing so.

8.20.2. In the hypothetical example cited in para 8.2, applicants would not have to provide to ECGD with information about its agent's identity.

8.20.3. Benefits

There is a smaller risk of ECGD supporting a transaction tainted with corruption in respect of transactions about which information is provided.

8.20.4. Costs

There are some financial, administrative and legal burdens associated with providing this information.

8.21. Option II: May 2004

8.21.1. Applicants will be required to provide ECGD with details of the arrangements with their agents' information in all cases.

8.21.2. In the hypothetical example cited in para 8.2, applicants would have to provide to ECGD with information about its agent's identity.

8.21.3. Benefits

The benefits are increased in that there is a smaller risk of ECGD supporting a transaction tainted with corruption

8.21.4. Costs

The costs could be increased in that there may be an increase in the administrative, financial and legal burdens on applicants in having to disclose an agent's identity in all cases.

8.22. Option III

Where the applicant is unwilling to provide the identity of the agent, to provide to ECGD a warranty obliging the applicant to repay any monies which ECGD has been obliged to pay in relation to the transaction where the agent concerned, with or without the knowledge, consent or acquiescence of the applicant, has committed corrupt activity.

8.22.1. Benefits

The benefits could be increased in that the risk of financial loss to ECGD in the event that an agent engages in corrupt activity is passed to the applicant. There should also, therefore, be a smaller risk of ECGD supporting a transaction tainted with corruption.

8.22.2. Costs

The costs could be increased in that there may be an increase in the administrative, financial and legal burdens on applicants in complying with these requirements in that the applicant must either disclose the agent's identity or provide a warranty.

8.23. Conclusion

8.23.1. Option Adopted: II

The provision of this information, which enhances the transparency of applicants' representations, is of value to ECGD in meeting its objective of avoiding giving support to contracts tainted by bribery or corruption and has some value in deterring corruption. ECGD is confident that its procedures will prevent inadvertent disclosure, but it will be seeking comments from consultees on its proposed internal handling arrangements for information about agents' identities. The Government therefore does not believe that the additional cost of making such

representations would represent an undue burden. Option II is therefore considered to be the best provision to adopt.

9. Business sectors affected

9.1. ECGD issued 113 guarantees in 2004/5. 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 – amounting to 30% of ECGD's business in 04/05) as well as those in the defence (38%) and aerospace sectors (31%).

10. Environmental Impacts

10.1. 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.

11. Social and Economic Impacts

11.1. 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.

11.2. Competition assessment

11.2.1. 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:

- 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 amendments to ECGD's procedures as a result of this consultation, including those who supply goods and services to UK exporters receiving ECGD support, should not greatly increase.

13. Enforcement, sanctions and monitoring

13.1. Enforcement of ECGD's anti-bribery and corruption policies to ensure compliance will be undertaken by ECGD in the first instance. The information provided to ECGD is assessed and further enquiries made or additional details requested where considered necessary. It is ECGD's policy, in the event of a suspicion of corrupt activity, to inform the relevant criminal investigatory authorities.

13.2. The application of sanctions will be administered by ECGD. ECGD's contracts of support are worded in ways which allow recourse action to be taken where problems or misrepresentations are subsequently discovered. An applicant's conviction for corrupt activity is also a *prima facie* reason to refuse further cover.

13.3. 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.

14. Implementation and delivery plan

14.1. Example of standard ECGD documentation reflecting the changes made to the procedures is available on the Department's website at www.ecgd.gov.uk. Queries about the changes ECGD is introducing to its anti-bribery and corruption procedures, can be made to Roy Donovan on 0207 512 7346; roy.donovan@ecgd.gsi.gov.uk. In accordance with consultation guidance, the new procedures will come into effect on the 1 July 2006.

15. Summary and recommendation

Provision	Option selected	Details
Bank's LOUs	Option III	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. UK Banks further represent that they have made reasonable enquiries about Group Companies with a material involvement in obtaining the bank mandate (both those controlled and not controlled by the bank) and that those enquiries do not give it cause to believe that they have

		committed corrupt acts.
Employees/ Directors	Option III	Each applicant will be required to make absolute representations (both with regard to previous corrupt activity and corrupt activity in relation to the relevant contract) in respect of itself and its directors. Each applicant will also have to make qualified representations (on the basis of reasonable enquiries) regarding previous corrupt activity on the part of its senior managers who have the power to bind the applicant in relation to the contract. Applicants will be required to make qualified representations in respect of the directors of Consortium Partners and applicants' Group Companies (both those controlled and not controlled by the applicant) materially involved in obtaining the contract.
Affiliates	Option III	Each applicant will be required to make qualified representations (on the basis of reasonable enquiries) regarding previous corrupt activity and corrupt activity in relation to the relevant contract in respect of Consortium Partners and in respect of each company which is in the same group as the applicant and which has been materially involved in obtaining the contract.
Audit	Option III	ECGD will have audit rights in respect of records held by the exporter which relate to the obtaining and performance of the supply contract. These rights will be exercisable by ECGD at any time on 5 days notice. Audit powers in respect of records relating to the obtaining of the contract may be used only for the purpose of verifying the accuracy of information given to ECGD in the exporter's application.
Agents' information	Option II	Applicants will be required to provide ECGD with details of the arrangements with their agents' information in all cases.
Agents' identities	Option II	Applicants will be required to provide ECGD with details of their agents' identities in all cases.

15.1. In all cases, the options selected offer the best balance between the benefits in terms of reducing the financial risks to ECGD and helping to mitigate the social and economic impacts of bribery and corruption, without placing undue administrative, financial and legal burdens upon applicants.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Alan Johnson

Secretary of State for Trade and Industry

13 March 2006