

**BAE SYSTEMS  
REGULATORY IMPACT ASSESSMENT**

1. This part of the document represents BAE Systems Regulatory Impact Assessment of the changes proposed in ECGD's Interim Response.

**Controlled Company**

2. The proposed change of definition of Controlled Company to ownership "of 50% or more of the voting share capital of that company" could include joint venture companies where there is no clear management control by virtue of share ownership or contractual arrangements. Compliance with the requirement to make declarations about such joint venture companies would not be possible or would only be prohibitively burdensome. Potentially, such definition would also lead to two parent companies being regarded as having control of the joint venture, resulting in potential duplication of declarations.

**Consortium Partner**

3. The introduction of "Consortium Partner", and the consequential enquiries an Applicant must complete before making declarations about that Consortium Partner, offer an acceptable balance, and do not result in a significant increase or decrease in the burden placed on the Applicant by the regulatory changes. This is, however, subject to confirmation that a Consortium Partner relates to companies who own a joint venture company or partnership in conjunction with the Applicant or a Controlled Company.

**Board Directors**

4. The proposed requirement to include non-executive directors in declarations about the Board Directors significantly increases the numbers of individuals about whom checks need to be conducted. For publicly listed companies, it is not unusual for the numbers of non-executive directors to exceed the number of executive directors. Such additional enquiries would not significantly increase ECGD's confidence that the Applicant is not engaged in Corrupt Activity as the non-executive directors do not exercise executive powers in the control of the Applicant company.

**Senior Managers**

5. As currently defined, the proposed requirement on the naming of Senior Managers is unacceptably burdensome. There may be a large number of individuals with authority to negotiate aspects of a Supply Contract, both within the Applicant and its Controlled Companies. Not all such employees will have authority to bind the company, so providing such information about a large number of employees will not significantly increase ECGD's confidence that the Applicant is not engaged in Corrupt Activity.
6. The provision of names of Senior Managers to ECGD raises issues of data protection for Applicants. Applicants will need to take additional steps to ensure that, by providing names of individuals to ECGD, it is not in breach of

its data protection obligations. Further, once ECGD has received names of Senior Managers from Applicants, it will need to consider what steps it must take to comply with the Data Protection Act, in particular whether it complies with the eight Data Protection Principles.

### **Qualification of Declarations**

7. The deletion of the phrase “to the best of our knowledge and belief” will have a significant impact on Applicants. The deletion of this phrase without the substitution of an acceptable substitute results in undertakings that cannot be meaningfully given by Applicants without making extensive and detailed investigations into the activities of its Board Directors, Senior Managers and other employees associated with the Supply Contract. Further, Applicants will need to make similar enquiries of Controlled Companies. The regulatory impact of this change is to place a significant and unacceptable burden on Applicants

### **Details of Agents**

8. BAE Systems notes that there will be increased costs on business where a company decides to pass agents identities to ECGD.
9. In the case where companies agree to repay ECGD any monies which ECGD is obliged to pay and this is required as a result of action by an agent without the knowledge, consent or acquiescence of the applicant the potential cost on business is unacceptable in cases whether the agent has acted without the consent of the Applicant. It is significant that ECGD is seeking to impose a financial penalty on Applicants where the Applicant has not committed any offence, and may have actively sought to prevent Corrupt Activity on the part of the agent, without giving the Applicant any opportunity to mitigate the impact of the breach by the agent.