

## **BBA submission to ECGD on Bribery and Corruption Consultation**

We refer to ECGD's consultation paper dated 18<sup>th</sup> March 2005.

We have been asked to comment on whether the anti bribery and corruption procedures established in December 2004 have the effect of ensuring that as far as practicable

- i) Taxpayers money is not used to support transactions which are tainted by bribery and corruption
- ii) an undue burden is not placed on exporters and banks.

In responding to this question we need to consider the documentary requirements that were introduced in May 2004 and the changes that were made to them in arriving at the December 2004 texts.

The position of the banks is that there is already substantial regulation in place through the Public Bodies Corrupt Practices Act 1889, The Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, the Anti Terrorism, Crime and Security Act 2001, The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003. In addition the banking system is regulated by the FSA. The banks were concerned that the proposals as originally tabled by ECGD represented a further level of regulation by an entity who had no statutory authority to undertake such an activity.

We acknowledge ECGD's desire to be seen to be actively involved in combating Bribery and Corruption. We therefore sought to discuss these provisions with a view to complying with them within the bounds that were practical, legal and realistic bearing in mind the statutory position of ECGD.

The resultant December documents do, we feel, have the effect of ensuring that, as far as realistically possible, taxpayers money is not used to support transactions tainted by bribery and corruption. These provisions do place additional burdens on the banks which, whilst unwelcome in an increasingly regulated environment, can be managed through the establishment of additional procedures.

We remain of the opinion that it is the inherent quality of the institutions involved in these transactions that will provide an effective deterrent to bribery and corruption coupled with an understanding of the statutory environment in which we are all required to operate.

We would add the following observations in relation to those sections mentioned in Section 8 of the consultation exercise which impact on the banks. Those sections being Affiliate and Controlled Companies, Audit Provisions, Banks Letters of Undertaking and Money Laundering, Employees and Directors and the definition of 'To the best of our Knowledge and belief'.

The general views of the banks are that we are only able to provide certifications over matters where a bank has both the knowledge and the power to provide such certification. A breach of such certification would render our guarantees from ECGD invalid.

### Affiliates and Controlled Companies

We were originally asked to provide certification in relation to Affiliates which was broadly drafted. As originally drafted this definition would require us to certify in relation to companies over which we had no detailed knowledge (other than what might be in the public domain) and over which we exercised no management control. We were being asked to certify that such affiliate had not been engaged in or convicted of a corrupt activity, at any time in the past and anywhere in the world. The definition of Corrupt Activity was also widely drafted. We therefore felt that these provisions were unrealistic. The final provisions are realistic in that we are required to make certification in relation to companies over which we exercise management control. It needs to be recognised that these controlled entities could be domiciled in any part of the world where banks would be seeking to secure a mandate to arrange finance for a transaction.

### Audit Provisions

On buyer credit business (under which most major transactions are concluded) ECGD vet the loan documentation, conclude recourse agreements with the Exporter and oversee all the documentation in relation to the signature and clearance of the conditions precedent to the loan becoming effective.

ECGD already has authority to audit the financial returns that the banks make and to audit the transaction documentation presented by the exporter to the bank for payment. These audits are carried out at ECGD's discretion.

The May provisions sought to give ECGD unlimited powers to inspect all the banks internal and external documents (including those which were legally privileged). We were of the opinion that such access was unwarranted as it amounted to a licence to go fishing. In law, to achieve similar rights of access, a court case would need to be contemplated and rights of discovery sought from the courts.

We originally agreed to allow ECGD access to our files where a borrower had stated to ECGD that they were investigation possible bribery and corruption. This was subsequently eased for ECGD's benefit to cases where ECGD had reasonable grounds for suspecting that a Corrupt Activity had taken place.

### Bank Letters of Undertaking and Money laundering.

The main concerns of the banks related to the money Laundering Provisions pursuant to the Proceed of Crime Act 2002. Under this Act an advice to any party of a suspicion of money laundering (other than NCIS) can be regarded

as a 'Tipping Off 'offence which carries severe personal penalties. We believe that discussions between ECGD and NCIS failed to confirm that an advice to ECGD of a suspicion would not constitute a 'Tipping off' offence under the act.

#### Directors/ Employees

The May provisions required us to provide certification that no individual employed by the bank had ever been convicted of or had undertaken any Corrupt Activity at any unspecified time in the past (even before they had joined the bank in question) in any location in the world. This was an unrealistic request bearing in mind that the Banks employ many tens of thousands of people in many different countries. Banks do not maintain databases on this type of information on a global basis. We sought to refocus this requirement by time, physical location and relevant individuals. Banks have now to develop databases that capture this information for the relevant individuals.

#### Best of our Knowledge and Belief

Much has been made of this definition in various official enquiries in the changes to the interpretation to this definition. The banks sought legal advice as to the exact obligations which such an undertaking imposes and received a variety of different interpretations. In an effort to apply a common standard ECGD advised that banks and exporters should adopt the understanding that ECGD had issued several years before to Exporters. There was therefore no change to this understanding.

C G Jones

Chairman

British Bankers Association

Export Finance Committee

17<sup>th</sup> June 2005

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