

CBI SUBMISSION TO ECGD ON SECURITY OF INFORMATION AND HANDLING ARRANGEMENTS FOR AGENTS' DETAILS

1. CBI is the UK's leading business organisation speaking for some 240,000 businesses that together employ around a third of the private sector workforce. It covers the full spectrum of business interests both by sector and by size.
2. It is important to re-state that CBI is against any form of bribery and corruption. UK business is subject to some of the world's most stringent anti-bribery legislation which provides severe sanctions applicable to both individuals and corporations. In addition to compliance with this legal and regulatory framework, UK companies are some of the world leaders in integrating anti-bribery policies into their management systems.

Use of agents

3. In making this submission commenting on the provisions for the security of information provided to ECGD, it should be noted that the use of agents is a perfectly normal business practice. Whilst there may be a misplaced perception remaining in some quarters that payment of commission or fees to agents is a method to pay bribes, this is not a reality for UK business in today's business environment. Applicants have been resistant to the requirement to divulge agents' details to ECGD because in some cases the information can be extremely commercially confidential. This is particularly relevant for the UK's largest exporters operating in a highly competitive environment for whom the identity of their overseas agents represents a significant commercial advantage.

Deterrence

4. Whilst CBI recognises that ECGD's processes should be consistent with wider Government policy, it is open to question what additional deterrence to bribery and corruption is provided by ECGD's latest proposed provisions over and above the very real deterrent which arises from current applicable legislation.
5. Nevertheless, in broad terms, and subject to the further comments set out in paragraphs 6-11 below, CBI believes that the procedures set out in the Final Response have the potential to be workable, and it supports the proposed process whereby exporters can elect to use the special handling arrangements and agree with ECGD the method of transmission of sensitive information.

Special handling arrangements

6. Paragraph 2.1 of Annex C of the Final Response suggests that special handling arrangements will only be invoked where an applicant specifically requests this and that they will only apply to the name(s) and address(es) of Agents. Other information relating to the use of Agents is to be provided on the Application Forms. However, other information relating to agents may be equally confidential and commercially sensitive. It is vital that there is provision for all information relating to Agents to be subject to special



handling arrangements and this includes, but is not limited to, amounts of commission paid, location of payment and contractual performance requirements.

Further enquires

7. It is unclear precisely what use ECGD will make of information which has been provided by applicants. In the first instance, and before ECGD makes any enquiries, there must be a discussion with the applicant to determine whether the applicants' due diligence procedures can assist in resolving any query or concern. If ECGD makes further enquiries about agents, and the enquiries reveal material information, this should be shared with the applicant.

Requests for information

8. CBI envisages that ECGD may receive requests for the names of companies that have used the provision to provide agents details only under the special handling arrangements. CBI believes that only aggregated statistical data should be released, as with, for example, the percentage or actual number of applications where such provisions were used.
9. Paragraph 3 of Annex C refers to the Freedom of Information Act 2000 (the Act) and to some relevant exemptions from disclosure, including "where information is protected by the law of commercial confidence." Given the acknowledged sensitivity of the information involved, it is vital that ECGD can assure exporters that information provided in confidence to ECGD by exporters will be treated as confidential by ECGD for the purposes of the Act. CBI is supporting an initiative to reach agreement between UK exporters and ECGD on how confidential information is to be treated by ECGD. In particular, we seek clarity on what ECGD believes does constitute information which is "properly protected" by the law of Commercial Confidence as indicated in paragraph 70 of the Final Response. The aim is that the agreement would be consistent with ECGD's obligations under the Act and would give exporters the assurances that they require. CBI urges ECGD to participate in this initiative.

Future changes of policy

10. In paragraph 4 of Annex C, ECGD state that they may amend arrangements simply by posting notice on their website. This is unacceptable. Firstly, there must be consultation with customers and, essentially, there must be no automatic retrospective application of any new procedures.

Solutions

11. Finally, we need clarity over what sanctions will be applied to officials or others who knowingly or inadvertently leak or release agents' names or other details provided to ECGD in confidence into the public domain.

April 2006