



F&C Asset Management plc

Exchange House
Primrose Street
London EC2A 2NY

Telephone +44 (0)20 7628 8000
Facsimile +44 (0)20 7628 8188

Ben Llewellyn
Export Credits Guarantee Department
PO Box 2200
2 Exchange Tower
Harbour Exchange Square
London E14 9GS

By e-mail to: ben.llewellyn@gsi.gov.uk

18 June 2005

Dear Mr Llewellyn

Re: Consultation on changes to ECGD's anti-bribery and corruption procedures introduced in December 2004

F&C is a UK top 5 institutional investor, representing funds of £125.3¹ billion, including a large number of UK pension funds. We are a significant investor in FTSE-350 companies, and over 3,000 companies worldwide.

We believe that anti-bribery & corruption measures are extremely important to shareholders and, ultimately, members of UK pension funds. Bribery & corruption can distort and de-stabilise markets, create legal liabilities and reputational damage for companies, disadvantage non-corrupt companies and reduce transparency for investors seeking investment opportunities.

Against this background, we believe that it is important for the ECGD procedures to provide a strong anti-corruption framework. This should not just be in the form of penalties for those who are caught breaking the rules; but also to signal clearly to actual and potential applicants for ECGD credits, and associated parties, that lax business practices that may encourage, condone or permit corrupt activity are not acceptable.

However, it is clear that if the framework were to become too onerous, it could damage the competitiveness of the companies in which we invest, and preclude their participation in profitable ventures, an outcome that would benefit neither companies and their investors, nor the effort to curb corrupt behaviour. It is for this reason that we favour a firm but realistic approach that will lift standards of practice while still taking account of what is practicable.

¹ As at 31 March 2005



Our overall view is that the December provisions could be further tightened without unduly damaging competitiveness, but that any further modifications should nevertheless take proper account of potential impacts on competitiveness.

In terms of specific areas highlighted by the consultation, the views of F&C are outlined below.

8.6 Disclosure of agents' details

This is an area of very genuine concern to companies as both the names and fees paid to agents can be commercially sensitive information.

However, if disclosure of the name or fees (or fees as a percentage of a contract) enables the ECGD to identify cases or patterns of corrupt behaviour, there is a case for such details to be disclosed, provided their confidentiality can be guaranteed. Moreover, the requirement to disclose may act as a disincentive to appoint agents that are or have been involved in corrupt activity.

F&C therefore supports the proposal that the agents' names and fees should be disclosed to the ECGD if commercial confidentiality can be guaranteed. We note that companies have a strong concern that confidentiality will not be safeguarded, and so we believe the mechanism for guaranteeing confidentiality needs to be entirely robust, and have the confidence of the participating companies, before companies are required to reveal these details.

8.7 Audit provisions

With regard to section 8.7, i.e. whether or not the ECGD should have additional powers to audit contracts on a random basis, irrespective of whether or not there are grounds for suspicion, our view is that giving the ECGD such a right is part of the broader framework that may help to discourage corruption or lax business practices.

However, we are also aware of legitimate concerns by companies that the auditor, who would gain access to commercially confidential information, should have no actual or potential conflicts of interest or be an inappropriate person or organisation. Providing a means could be found to allay this concern, we would support the ECGD obtaining such reinforced audit powers.

In addition, it is reasonable to allow a standard notice period to be agreed for the period between the announcement of the audit and the audit taking place, in order to give companies adequate time to prepare for an audit – for example, by having the relevant personnel available.

We note also the legitimate concern by companies that these auditing rights may not in reality be exercised on an occasional and random spot-check basis, but that certain high-profile companies may become subject to frequent and onerous auditing. We do not believe that the audit process should be used in this way, and companies should be given formal reassurance on this point.

8.9 Representations

F&C believes that companies should, at minimum, be expected to make representations relating to previous involvement in bribery & corruption about the following categories of employees and related parties:

- All the company's directors



- All employees of the company who are in a position that may be vulnerable to participation in corrupt activity [we note that for practical reasons it is likely that the client companies themselves will need to define which personnel fall within this category].
- All the directors of joint-venture partners and those senior employees within a joint-venture that are directly involved in the contract that is subject to ECGD review (i.e. the directors of the business entity that is the direct joint-venture partner, rather than its parent or holding company).
- All directors of sub-contractors.

The nature of these representations should be agreed with the ECGD's client companies to ensure that they are adequately stringent without being commercially unviable. However, we believe that such controls are likely to be part of the standard Human Resources management, appointments and internal training processes of a well-managed company, as well as the due diligence involved in the appointment of sub-contractors and joint-venture partners, and so in principle should not prove overly onerous.

We also note that, since individual personnel change, it is necessary to ensure that the company, its sub-contractors and joint-venture partners have adequately robust management systems: due diligence should be on practices not solely individuals

Levels of due diligence

We understand that there has been debate about whether disclosures and due diligence by companies should be made 'to the best of our knowledge and belief' or 'having made all reasonable enquiries.'

With respect to the level of due diligence that should be expected of companies in the selection of consultants, sub-contractors and joint-venture partners, we believe this should reflect the standard of 'having made all reasonable enquiries', rather than 'to the best of our knowledge and belief'. However, we also suggest that ECGD should produce guidance notes that define, or illustrate by example, what it would find acceptable as a 'reasonable enquiry', and agree such definitions or procedures with the companies concerned.

F&C would be happy to answer questions about our views, and for this letter to be made publicly-available.

With kind regards,
Yours sincerely

Robert Barrington
Director of Governance & Socially Responsible Investment