



**From the Institute for Public Policy Research (ippr)**

**June 2005**

**Response to the ECGD consultation on changes to ECGD's anti-bribery and corruption procedures introduced in December 2004**

Introduction

The ippr welcomes the consultation undertaken by the ECGD and the opportunity to feed into this process. The Institute for Public Policy Research (ippr) is the UK's leading progressive think tank. A charitable organisation, ippr was established in 1988 to contribute to public understanding of social, economic, environmental and political questions through research, discussion and publication. ippr established a new International Programme in July 2002. Since its establishment, the Programme has looked at both the problems and potential of ECAs (and the ECGD in particular) in curbing corruption and bribery internationally.

The Programme recently completed a 12-month research project examining G8 policy towards Africa. The final report, *Putting Our House in Order – recasting G8 policy towards Africa*, looked critically at existing G8 policies that are damaging and disadvantaging Africa, including in the areas of corruption involving G8 companies. In 2004, ippr published a major report entitled *Human Rights and Global Responsibility*, which examined the debate around corporate social responsibility. In 2002, ippr produced a report, *The Missing Link in Labour's Foreign Policy*, which analysed ways to improve the UK's controls over arms exports. These reports are available to the ECGD on request.

The issue of corruption is central to the work of the International Programme as the costs to developing countries are too high to ignore. The direct costs of corruption obviously include the diversion of resources from more productive to less productive activities. The indirect costs include diminished incentives for domestic and inward investment. But corruption also has serious implications for political governance, particularly in developing countries. Government officials may spend public resources on large projects such as defence contracts – which are more amenable to corruption – than on, say, increasing teachers' salaries. Corruption also undermines the democratic process when agreements between authorities and businesses are bought, rather than being the result of a democratic decision-making process. Corruption also facilitates other forms of illicit activity, including

money laundering, the drugs and arms trade, and the establishment of illegal and legal companies engaged in this trade. And it facilitates the growth of transnational crime. Corruption is therefore wholly inconsistent with UK Government stated priorities on international development, human rights and combating transnational crime.

#### ippr's position on changes to ECGD procedures

The ippr believes that the changes made in December 2004 significantly weaken the ECGD's capacity to identify and tackle bribery and corruption. The changes therefore increase the risk that UK taxpayers' money is used to support transactions tainted with bribery and/or corruption.

Before going into the specific areas of concern, we would like to address an issue underpinning many of the subsequent points. This relates to the ECGD definition of "to the best of our knowledge and belief" that was introduced in December 2004 and is used when companies sign off on a number of documents such as the no-bribery guarantee. The definitions of both 'knowledge' and 'belief' do not require the company to make enquiries prior to signing a document. Companies can therefore sign important documents pertaining to corruption without conducting any serious anti-corruption due diligence. This goes against many good business practices recommended in many international initiatives.

The ippr therefore recommends that the definition be changed to demand that reasonable enquiries have been made to ensure that the 'knowledge and belief' are correct when a company signs a document.

The other three areas that concern the ippr are details of agents, the concept of an affiliate, and the investigatory powers and sanctions available to the ECGD.

#### Details of Agents

It has been well established and is common knowledge that agents are used by companies to reduce their liability, particularly in the case of paying bribes (see Control Risks Group's work on this). Given that this is the case, it was surprising and concerning that the December 2004 changes significantly reduced the disclosure requirements by companies of their agents.

A key aspect of tackling corruption is to increase transparency in business transactions. It therefore seems in contradiction to ECGD's responsibilities of combating corruption that applicants to the ECGD no longer have to provide details of agents used under the December 2004 changes, including the relations between agent and purchaser. The details of commissions paid have also been differentiated between those as part of a contract underwritten by ECGD and those that form part of a related agreement or undertaking. The ECGD must have information of agents' commission if it is to ensure that it is not being used for corrupt purposes. Details of agents used should not be too onerous for companies to access as most companies would practice due

diligence on agents. Industry concerns of providing commercially sensitive material could be avoided if the ECGD were to implement special confidentiality measures for details of agents provided to it.

The ippr therefore recommends that companies should provide details of agents used. It also recommends that details of commissions should be provided for related agreements or undertakings, not simply for contracts underwritten by the ECGD.

### Concept of Affiliate

The concept of an affiliate has been replaced with two distinct concepts – an Associate (joint venture partner) and a Controlled company (controlled subsidiary). Under this change, applicants no longer need to declare that their affiliates, such as joint venture partners, have not previously been convicted or blacklisted because of corrupt activity. The anti-corruption requirements of affiliates from May 2004 now seem in many cases to apply to controlled subsidiaries but not to associates, such as joint venture partners.

Joint venture partners are frequently used in overseas business and due diligence on them is an important part of good business practice. Indeed, some recent corruption scandals have involved joint venture partners. It seems logical therefore that the ECGD revert back to the all-encompassing term affiliate to include joint venture partners and non-controlled subsidiaries with controlled subsidiaries.

### Investigatory powers and sanctions

In May 2004, an audit clause gave the ECGD powers to inspect contract documentation, such as agency commission, in order to monitor compliance with anti-bribery warranties. The December changes heavily reduce the scope of audits and it now means that ECGD cannot conduct random audits. It appears that some parts of industry feared sharing commercially sensitive information. Again, this should not be an issue if the ECGD implements special confidentiality measures.

The ECGD has very limited powers in terms of the sanctions it can impose on companies convicted for bribery. This should change. There is a particular concern that companies that have been prosecuted for overseas corruption can still bid for government procurement contracts. The ECGD should have the power to debar companies thereby disqualifying them from bidding for government contracts or export credits. This idea was supported in the report of the Commission for Africa, which the Prime Minister, the Chancellor of the Exchequer and the Secretary of State for International Development all signed up to.

### Conclusion

The ippr believes that the December 2004 changes significantly weaken ECGD's anti-bribery and corruption procedures. We believe that the ECGD

must strengthen this by reviewing the December changes on the issues of agents, affiliates, and investigatory powers and sanctions.

James Lorge, Research Fellow, ippr