

Representation to ECGD November 2005
By John Burbidge-King MCIM

Background

1. This further representation is in respect of ECGD's Interim Response on Anti Bribery and Corruption Procedures Introduced in December 2004 dated 21st October 2005.

Export Credit Guarantee Department (ECGD)

2. ECGD is the UK's Export Credit Agency (ECA) and a Department of State. Its core statutory powers are to facilitate the export of goods from the UK and to insure overseas investment made by UK entities. In May 2004, ECGD changed its procedures in relation to disclosure. Some of ECGD's clients and other interested parties resisted those changes. The changes which related to enforcing a stronger anti-bribery regime and included disclosure of agents, were modified in December 2004. As a consequence The Corner House¹ (an NGO) instituted legal proceedings against the UK's Secretary of State for Trade and Industry, Ms Patricia Hewitt and an out of court settlement was reached whereby it was agreed to instigate a public consultation on ECGD's changes to its anti-corruption rules. An interim response to those consultations was issued to previous respondents 21st October 2005.

The Respondent

3. John Burbidge-King was until 2004 Director of Key Accounts for the British company De La Rue plc². A part of his responsibilities was to initiate and deliver a consistent process across all operating divisions for the appointment, management, renewal and termination of third party partners; namely agents, consultants and distributors, mostly based overseas. He has also presented externally on this subject.

4. Third party partners were an essential component of De La Rue's indirect sales channels. As De La Rue's business activities expanded in the 1990's along with the need to ensure compliance with the Anti Terrorism, Crime and Security Act 2000, John initiated the steps to ensure that De La Rue's partner processes were robust, accorded good governance, provided clear accountability, appropriate visibility and business advantage. The process was internally hosted on a secure web portal. It provided an audit trail of the company's business connection and performance of all its third party partners worldwide, including many in developing countries.

5. John has now established a start-up company, Interchange Solutions Limited, which as part of its overall customer offering, a module called Network Partners™, will provide both the training and on/offline software system for the B2B management and governance process for third party partners.

Further Response.

6. This further response is framed around the initial recommendations submitted to ECGD 16th June 2005. Since that date the Independent Inquiry Committee into the United Nations Oil for Food Programme³ published its results on 27th October 2005. It

¹ www.thecornerhouse.org.uk

² www.delarue.com

³ <http://www.iic-offp.org/story27oct05.htm>

has shown that more than 2253 companies worldwide including some based in Britain had knowingly or otherwise given what it terms “kickbacks” to the former Iraqi regime to obtain contracts. Some British companies were listed in the findings of the Report.

7. The recommendations submitted on 16th June 2005 were:-

7.1. ECGD and the DTI have laid themselves open to challenge from NGO's and public bodies such as the House of Commons Trade and Industry Committee. ECGD has a duty to taxpayers to insist on the highest levels of good governance from its clients, without compromise. It is the responsibility of client companies to put their house in order where necessary, to comply with ECGD's requirement.

~ In the OECD's United Kingdom Phase 2 report dated 17th March 2005, it states in paragraph 15 “that there had been no significant progress in the implementation of the conclusions under the Phase 1bis examination which gave rise to the lead examiners' concerns about the level of implementation of the OECD Convention by the UK authorities”. Some of the measures in the Interim Response, if implemented will act to deter acts of bribery and corruption but there is still room for companies to manoeuvre within the area of disclosure as stated later. ECGD is duty bound to ensure the highest standards of governance from its clients, whatever their lack of process or commitment to work within the law.

7.2. ECGD must insist on the full disclosure of agent's details regardless of any rate of commission. Commissions below 5% may in totality be above the amount that banks would normally be required to disclose under FSA rules in regard to money laundering. Given appropriate company culture and process disclosure this should not compromise the client's confidentiality.

~ ECGD's recommendation in paragraph 58 of the Interim Response is strongly supported as is the first variant in paragraph 65: But **not** the “second variant” in paragraph 66 in relation to the disclosure of the identity of the agent. The second variant leaves plenty of room for a client to “take a chance”. It is a weak deterrence to bribery especially taking into account the time it will take for any allegation to surface (if ever), for investigation and a successful prosecution. There remains no commercial reason whatsoever for non-disclosure of identity and address. If it is that sensitive from a competitive standpoint, then a client should sign a Non-Disclosure Agreement with ECGD and any other party relevant to the Buyer Insurance. If it remains a sensitive issue, then doubt has to be cast on the nature of the arrangement and the purpose of the commission payment or a part thereof (especially if the client has put in place a prior non- disclosure of details arrangement with the Agent). The half way house in paragraph 66, does not demonstrate a strengthening of resolve by ECGD to protect the taxpayers interests and address the broader criticisms of OECD.

7.3. ECGD should be advised of the arrangements a client has with all third parties in connexion with the contract/project regardless of whether covered or not.

~ This recommendation is part incorporated in Annex C under “Agents” Section 7 sub paragraph 7.1. It is further recommend that after Agents include “(s)” to remind ECGD clients that they should disclose one or more; i.e. **Agent(s)**

7.4. In Annex C “Proposal for an Export Insurance Policy” paragraph 13, Code of Conduct and where relevant, insert in other documentation: “briefly outline the nature

(and if applicable supplier of the system) of your system/process for the appointment, management and payment of commission to agents/third party partners” and, “who in your company (name/position) approves and authorises the appointment of said agent and the payment of commissions”.

~ It is recommended that Annex C sub paragraph 7.7 should read:

“Does your company have a Code of Conduct and a business process in place to discourage and prevent corrupt activity (as defined in paragraph 4.6 of this Application) and to document and approve all transactions in the process of appointing, managing and terminating Agents?”

None of the above recommendations and their revisions put any undue burden or cost on either the taxpayer or the client, and thank you for providing a further opportunity to respond.

John Burbidge-King
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