

Mr. Patrick Crawford
Chief Executive
Export Credits Guarantee Department
2 Exchange Tower
Harbour Exchange Square
London E14 9GS

18 November 2005

Re: Final stage of the consultation on changes to ECGD anti-bribery and corruption procedures

Dear Mr. Crawford,

UK members of the Publish What You Pay Coalition (PWYP) commented on the ECGD's consultation on the changes to its anti-bribery and corruption procedures in June. Now that the ECGD has published its Interim Response, we are concerned that by failing to include specific revenue transparency requirements for the extractive industries, the ECGD is missing an opportunity to strengthen its anti-bribery and corruption procedures.

In summary:

- While the Interim Response proposes a number of improvements to the December 2004 procedures, further changes are still needed to address weaknesses and reduce the risk that taxpayers' money may be used to underwrite contracts tainted by bribery. Here we fully support the concerns raised in the submissions of the Corner House and Transparency International UK.
- With respect to the extractive industries, revenue transparency should be a condition for all future export credit agreements. Despite the consultation process, the ECGD Interim Response does not even refer to the concerns PWYP raised regarding corruption and the extractive industries. Given changes in the practices of International Financial Institutions and the UK government's active international role in promoting transparency in the extractive industries, this is a significant weakness.
- As the ECGD is still finalising its response, it should act now to address this omission in its own anti-bribery and corruption procedures and take a leading role in encouraging other OECD Export Credit Agencies to do the same.

PWYP is a growing international coalition of over 300 anti-corruption and development non-governmental organisations. The coalition seeks greater transparency in the payment and receipt of extractive industry revenues in developing countries. Many of PWYP's members are Southern-based NGOs representing the concerns of citizens in resource-rich countries whose lives are directly affected by oil, gas or mining. Without clearer information about the revenues generated by natural resource exploitation and the conditions of contracts such as Production Sharing Agreements, it is almost impossible for

citizens to hold their governments accountable. In this situation corruption, poverty and conflict can flourish. Transparency International ranked the oil and gas sector the third most corrupt industry in its 2002 Bribe Payers Index.

In our submission to the consultation in June, we set out why the ECGD urgently needed to address the gap in its proposed anti-bribery and corruption procedures with regard to the extractive industries:

The ECGD's new procedures should be in step with the UK Government's own stated policy priorities. At Gleneagles in July 2005 the G8 committed to increase support for the Extractive Industries Transparency Initiative as part of work to combat corruption and increase transparency. The communique underlined that the World Bank, IMF and regional development banks should support resource-rich countries in implementing transparency principles. It also stated the need to strengthen anti-bribery requirements for those applying for export credits and credit guarantees.

The Commission for Africa Report included a clear recommendation that ECAs must do more to combat corruption and promote good governance: *“developed countries should encourage ECAs to be more transparent and require higher standards of transparency in their support for projects in developing countries.”* The UK Government has publicly endorsed the Commission's recommendations.

The World Bank, IMF and the EBRD have formally acknowledged that revenue transparency should be a fiduciary duty for all loans, investments, underwriting and technical assistance programmes to resource-rich countries. By September 2006 revenue transparency will be a condition of all MIGA insurance and guarantees to extractive sector projects. Given that the ECGD cites World Bank standards as a benchmark for its own monitoring and reporting in its “Case Impact Analysis Process”, its anti-bribery and corruption procedures must at the very least keep pace with those of the IFIs.

Investors recognise that greater revenue transparency in the extractive industries contributes towards a more stable investment climate. Institutional investors from Europe and the United States – representing some US\$8.3 trillion in funds – have highlighted that *“legitimate, but undisclosed, payments to governments may be accused of contributing to the conditions under which corruption can thrive. This is a significant business risk, making companies vulnerable to accusations of complicity in corrupt behaviour [and] rendering them vulnerable to local conflict and insecurity, and possibly compromising their long-term commercial prospects in these markets.”*

The example of **Kazakhstan** illustrates the need for ECGD to look proactively at its procedures for the extractive sector. Kazakhstan is viewed as a key source of future oil supplies to the west which means competition between companies for energy assets and contracts in the country is intense¹.

¹ “Kazakhstan is important to world energy markets because it has significant oil and natural gas reserves. After years of foreign investment into the country's oil and natural gas sectors, the landlocked Central Asian state has recently begun to realize its enormous production potential. With sufficient export options,

The country lies 107th out of the 159 countries ranked by Transparency International's Corruption Perceptions Index² – the same position as Zimbabwe - and 80th out of 177 countries for UNDP's human development index. With a gross national income (GNI) per person of US\$2,250 in 2004³, Kazakhstan remains a relatively poor country with the potential to bring significant development through the exploitation of its resources. It is critical that the benefits of those resources are directed to the population at large and are not lost to bribery or theft.

The largest ever US foreign corruption investigation directly relates to Kazakhstan. It involves a US merchant banker, James Giffen, and a scheme that he is alleged to have set up which, in the words of a US Grand Jury indictment, 'defrauded the Government of Kazakhstan of funds to which it was entitled from oil transactions and defrauded the people of Kazakhstan of the right to the honest services of their elected and appointed officials'.⁴ The alleged scheme was based around the country's President and its Oil Minister demanding that the oil companies pay fees on behalf of the Republic of Kazakhstan. If companies had been obliged to publish their payments to the Kazakh government, it is unlikely that the system of kickbacks and offshore money laundering alleged in the indictment could have come into being.

ECGD involvement in Kazakhstan

In 2004, the ECGD agreed to guarantee the convertibility of Kellogg Brown & Root's payment for providing various engineering services to Kazakhoil Aktobe LLP on its Alibekmola Oil Field in Kazakhstan.

Kazakhoil Aktobe, established in 1999, is a 50/50 joint venture between KazMunayGas and Nelson Resources Ltd. It is developing the Alibekmola and Kozhasay fields in the Aktobe Oblast region of Kazakhstan. Baltabek Kuandykov was president of Kazakhoil in 2000 when Kazakhstan's state-owned oil company sold Nelson its first oil field - Alibekmola.⁵ Mr. Kuandykov became Nelson president in 2001. Nelson Resources is listed on the Toronto stock exchange. Former Kazakh Oil Minister Nurlan Balgimbaev was on Nelson's board of directors from 2002 to 2004, and has been implicated in a corruption case that alleges he took bribes in the 1990s as Kazakhstan sold off oil assets⁶.

Kellogg Brown & Root is a subsidiary of Halliburton, the world's largest oil services company. Halliburton has been involved in a number of high profile corruption cases in the past, perhaps the most prominent being its activity in Nigeria, where the same Kellogg subsidiary was found by a Nigerian Parliamentary Enquiry to have been involved in paying bribes. In Kazakhstan, KBR became the target of a criminal probe over a customs dispute. Kazakh customs officials said the Houston-based company must pay \$230 thousand in customs fees after shifting imported equipment to operations that were not exempt from customs duties⁷.

Kazakhstan could become a major world energy producer and exporter over the next decade."
(<http://www.eia.doe.gov/emeu/cabs/kazak.html>)

² See www.transparency.org

³ Kazakhstan's World Bank Country Brief 2005

⁴ *United States District Court (Southern District of New York) Indictment against James H. Giffen*. p.3

⁵ See <http://www.aton.ru/en/news/publication.asp?id=110749>

⁶ See Global Witness 'Time for Transparency' 2004

⁷ See <http://www.mosnews.com/news/2005/06/11/kyrhalliburton.shtml> and also <http://www.kazinform.org/showarticle.php?lang=eng&id=126856>

PWYP are not suggesting that the ECGD is involved in corrupt practices in Kazakhstan but this example illustrates that it is already providing project support to a company which has been linked to corruption allegations in the past and which is operating in high risk areas. The ECGD is committed to doing all it can to avoid UK tax payers' money being used for transactions tainted by bribery. This means it cannot ignore the growing recognition by national governments, IFIs and private investors of the need for disclosure of revenue payments by extractive companies.

The consultation on changes to ECGD anti-bribery and corruption procedures therefore represents a timely opportunity to develop a fuller, formal policy on revenue transparency for extractive project financing. The question which the ECGD invited representations on was:

“Do the changes made to ECGD’s anti-bribery and corruption procedures in December 2004 have the effect of ensuring that, so far as practicable, (1) taxpayers’ money is not used to support transactions tainted with bribery and/or corruption; and (2) an undue burden is not placed on exporters and/or banks?

If you consider that these changes do not possess this balance, please indicate what changes you think would do so.⁸”

In the light of this, we are surprised and disappointed that the ECGD’s Interim Response does not even acknowledge the issues around corruption in the extractive industries that PWYP raised in its submission. In fact the Response actually redefines the scope of the consultation to exclude the request for additional changes which respondents think are necessary to ensure that taxpayers’ money is not used to support transactions tainted with bribery and/or corruption.

This is the final stage of the consultation but there is still a window of opportunity. PWYP asks the ECGD to ensure that its anti-bribery and corruption procedures for extractive sector projects match standards of best practice, as illustrated by the IMF Supplementary Code on Fiscal Transparency, the World Bank Group's new transparency standards for project financing and Save the Children UK’s standard for measuring transparency in the sector. It should develop a policy which imposes full revenue transparency requirements, including disclosure of payments and contracts, on all applicants from the extractive sector as a pre-condition for future export-credit agreements.

Further work will also be needed on the ECGD’s sustainable development indicators to include an assessment of performance on transparency and disclosure. Here PWYP believes Save the Children UK’s framework of indicators measuring the progress of governments and companies on transparency in the sector would be a useful resource.

Looking beyond these changes to its own procedures, ECGD should also work proactively with other ECAs through the OECD Working Group on Export Credit and Export Credit Guarantees to develop a common policy on transparency requirements. This is concrete way for the ECGD to live up to its Business Principles commitment of working “*for the*

⁸ ECGD March 2005, ‘Consultation on changes to ECGD’s anti-bribery and corruption procedures introduced in December 2004’

establishment of a multilateral framework of common guidelines for assessing environmental and social issues related to project implementation.”

PWYP believes that these actions are essential if the ECGD is to meet its own commitment to “do all it reasonably can to avoid taxpayer’s money being used to support transactions tainted with bribery and corruption, and to support wider efforts to deter these practices.”

Yours sincerely,



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