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Dear Mr Hildyard,

ECGD's Letter of Credit Guarantee Scheme (the "LCGS")

Thank you for your letter of 15 September 2009, issued on behalf of The Corner House and Jubilee Debt Campaign.

At the second page of your letter, you suggest that the Exporter's Undertaking should permit ECGD, first, to obtain basic information regarding the relevant export contract after the related letter of credit has been made subject to a Master Guarantee Agreement ('MGA') in order to confirm whether any of the warranties in that Undertaking have been breached and, second, to carry out monitoring and audits.

I respond below.

First, with regard to the application of anti-corruption procedures:

- The principal purpose of taking information on an application form for support from ECGD for exports of capital goods and services is to give ECGD some opportunity to consider whether the contract is one which it is appropriate for it to support.
- This purpose cannot be achieved under the LCGS for the reasons given in the Government's Response to the Public Consultation on the LCGS of 7 August 2009 (the 'Government Response'). Unlike the other forms of guarantee or insurance which ECGD currently provides, a participating bank can, by serving notice upon ECGD, make a letter of credit subject to the guarantee contained in the MGA between that bank and ECGD as long as that letter of credit satisfies the requirements of the LCGS. The way that this product will operate, as you note on the second page of your letter, means that it is impracticable for ECGD to give, before it is

committed, the consideration that it would to capital goods and services exports.

- After ECGD has granted support, ECGD's standard anti-bribery and corruption procedures provide, consistent with the relevant OECD Recommendation, that there shall be recourse rights if the transaction does prove to have been tainted by corruption and ECGD suffers financial loss as a result. Under the LCGS scheme, ECGD will have similar rights.
- It is not appropriate to make the exercise of those rights turn upon merely the fact that: "there is evidence that the warranty in relation to corruption and bribery has been breached or where there are breaches of required standards on environmental or social impact". First, it is upon proof or admission of corruption that a recourse right should depend, not allegation or only partial evidence. Second, it is neither fair to an exporter or a bank nor practicable to make the existence of a recourse right depend on a judgement formed by ECGD as a result, at least initially, of a small amount of information, presumably, in your view, of the nature described in your first numbered paragraph on your second page. It is not the function or role of ECGD to act as a law enforcement agency and it is not equipped to do so.
- This is even more true if, as would appear from your third numbered point on your second page, your suggestion is not that ECGD should take recourse rights but that it should revoke its support; and more true still given that this support is provided to a bank which, on the hypothesis which we understand you to make, is innocent of the breach of the "no corruption warranty" by the exporter.

Second, with regard to the application of procedures for assessing the environmental, social and human rights impacts of any project to which an ECGD-supported contract relates:

- In the Government Response, the Government concluded that it would be impracticable to apply any such procedures in the context of the LCGS. To a large extent, this would be the case even if those procedures were applied after the guarantee had come into effect in respect of a particular letter of credit under the LCGS, given:
 - (i) the length of time it could take to complete them relative to the likely duration of many of those letters of credit;
 - (ii) in many cases, exporters may well not know the identity of the project for which their goods may be ultimately destined; and
 - (iii) the possibly large number of contracts which may be supported.
- There is also an issue of proportionality, as contracts supported under the LCGS may, in terms of value and importance, represent a small part of the project to which they relate.

- The arguments set out above regarding the purpose of ECGD's anti-corruption procedures apply equally to its environmental, social and human rights procedures, given that the principal purpose of those procedures is to enable ECGD to withhold support for a project if it does not materially comply with international standards or incorporate appropriate safeguards or remedial work. As stated above, this purpose cannot be achieved in the context of the LCGS.
- Undertakings relating to environmental, social and human rights impacts are typically taken from the overseas borrower which is performing the project in question and contained in the loan agreement which ECGD guarantees, thus enabling drawings to be suspended if the undertakings are breached. This will not be the case on the LCGS, as neither ECGD nor the confirming bank which benefits from ECGD's guarantee will have any contractual relationship with the overseas buyer. Taking undertakings from the exporter regarding the performance of the project for which its goods are destined would not be appropriate, as it will have no control over that project's performance.
- In the circumstances, as indicated in the Government Response, we do not propose to take undertakings from the exporter regarding the environmental, social and human rights impacts of the project to which its contract relates; and, for the reasons given above, we do not intend to undertake an assessment of those impacts after a letter of credit has been guaranteed under the LCGS.

With regard to the suggestion at the third page of your letter, I confirm that the form of Exporter's Undertaking contained in the draft MGA in fact provides for the undertakings in it to be enforceable by ECGD by virtue of the Contracts (Rights of Third Parties) Act 1999.

You have requested a copy of the current draft of the MGA so that you may consider it and make further suggestions as to its terms. The appropriate vehicle for interested parties to make suggestions on the terms of the LCGS was the recent Public Consultation. Although that consultation closed several weeks ago, we have nevertheless responded in detail to your letter.

As the negotiation of terms of the MGA is a matter for ECGD and the banks participating in the LCGS at the outset, and as that process has been informed by the results of the Public Consultation, it is not appropriate to involve other consultees in that negotiation. As promised in the Government Response, we will publish a copy of the MGA once it has been finalised and the LCGS is launched. We expect this to occur shortly.

Yours sincerely,

Patrick Crawford

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