

Anti-Corruption Provisions in Existing and New EXIP Proposal Forms

The table below shows how the anti-corruption declarations in the existing proposal form for UK Export Finance's Export Insurance Policy (EXIP) have been reflected in our new form. The table identifies and explains the changes in detail. However, in brief:

- The declarations in the new form are now better grouped and written in a more straightforward way. This has made it possible to delete most of the definitions that appear in the current form.
- The declarations in the new form have been simplified by removing the exceptions to the concept of corrupt activity, such as admissions made under duress and convictions which have been obtained under retrospective legislation. The removal of these exceptions means that applicants will have to disclose all admissions of, or convictions for, corrupt activity. UK Export Finance believes that full disclosure of such matters is appropriate at application stage. However, it will take account of any factors covered by the current exceptions when considering whether to provide cover for any export contract(s).
- In the new form, applicants will have to identify all group companies involved in the export contract(s) for which insurance is requested (rather than making a declaration that they have made reasonable enquiries about their involvement). This should not be onerous for smaller exporters and this knowledge can be expected of more sophisticated exporters.
- Now that the Bribery Act 2010 has been in force for some time, the opportunity has been taken to limit the declarations in the new form regarding offences under s.7 of the Bribery Act to circumstances occurring during the 5 year period ending on the date on which the declarations are made. This brings them in line with declarations regarding previous convictions for other offences or black-listing.

Row	Location in existing form	Location in new form	Subject Matter	Comments
1.	Opening page, final para	Opening page, final para	Anti-corruption warning	The wording has been slightly rephrased and expanded by the addition of a sentence warning applicants of the present criminal sanctions for corrupt activity, in line with the OECD Recommendation on Bribery and Officially Supported Export Credits.
2.	Section 6	Section 11, 1st question		The existing wording has been reformatted so as to reduce the length of the section but there is no change to information requested. Certain parts of the wording have been made more concise, for example, by replacing the reference to “commission, fees or other remuneration” by “remuneration”. See also the comments in Row 5 on the definition of Agent.
3.	Section 7	Section 11 2 nd , 3 rd & 4th questions	Code of conduct	The questions regarding the code of conduct are substantially unchanged. Applicants without a code of conduct for combating corruption are now given a link to the Ministry of Justice’s guidance on that topic.
4.	Section 8	Section 11, 5 th & 6 th questions	Convictions and charges	To make the meaning of the question clearer, the phrase “within the last five years” has been moved to the end of the question.
5.	Section 12, para 2.1	Section 11, note to first question / Section 14, second footnote	Definition of Agent	The definition has been shortened by having part of the old definition moved into the body of the question. The information supplied in response to the question is cross-referenced in the declarations.
6.	Section 12, para 2.1	Section 8, final question	Definition of Consortium Partner	This definition is no longer required as the concept is covered by the added question in the new form. The information supplied in response to the question is then cross-referenced in the declarations.
7.	Section 12, para 2.3	Section 8, note to 9 th question	Definition of control	This definition is replaced by, and reflected in, the note to the ninth question in section 8 of the new form.
8.	Section 12, para 2.4	Section 14, para (3)(c)	Definition of Corrupt Activity (General)	The declarations in the new form have been simplified by removing the exceptions to the concept of corrupt activity for: admissions under duress; appealable convictions; and convictions under retrospective legislation or by a court lacking jurisdiction. Applicants will now have to disclose all admissions of, or convictions for, corrupt activity. UK Export Finance believes that full disclosure of such matters is appropriate at application stage. However, it will take account of any factors covered by the current exceptions when considering whether to provide cover for any export contract(s).

Row	Location in existing form	Location in new form	Subject Matter	Comments
9.	Section 12, para 2.4.1	Section 14, para (3)(c)(i)	Definition of Corrupt Activity (Civil cases)	The requirement for the corrupt activity in question to render an export contract void, voidable or unenforceable has not been included because, for the purposes of the application, UK Export Finance would wish to know of any instance of corrupt activity so that it could be taken into account when considering the application. That requirement will, however, be retained in the definition of corrupt activity which will be used in the clause of the EXIP which allows UK Export Finance to avoid the policy as a result of corrupt activity.
10.	Section 12, para 2.4.2	Section 14, para (3)(c)(iii)	Definition of Corrupt Activity (Admissions)	The new wording does not retain the existing reference to admissions by employees acting on behalf of the applicant (with its authority) because an admission by such a person would constitute an admission by the applicant. See also Row 8 about admissions under duress.
11.	Section 12, para 2.4.3	Section 14, para (3)(c)(i)	Definition of Corrupt Activity (Offences outside the UK)	See Row 8 about competent jurisdiction, appealable decisions and convictions under retrospective legislation.
12.	Section 12, para 2.4.4	Section 14, para (3)(c)(i)	Definition of Corrupt Activity (UK offences)	The concept of a Relevant Offence is now set out in paragraph (3)(c)(i) of section 14 of the new form. The express reference to a court in the UK has been removed as being superfluous given the references to UK offences. See also Row 8 about appealable decisions.
13.	Section 12, para 2.4, penultimate (un-numbered paragraph)	Not included	Definition of Corrupt Activity (Offences outside the UK)	Offences in jurisdictions outside the UK are now declarable if they involve bribery or corruption. There is no longer a requirement for them to correspond to an offence under the Bribery Act 2010 or its predecessor legislation.
14.	Section 12, para 2.4, proviso	Not included	Definition of Corrupt Activity (Excluded Persons)	The proviso to paragraph 2.4 of the existing application has been removed in line with the comment in Row 8 about convictions under retrospective legislation.
15.	Section 12, para 2.5	Section 14, first footnote	Definition of Directors	The definition has been expanded to include the wording in paragraph 2.16 of section 12 of the current form that, in the case of a partnership, a reference to directors is to be construed as a reference to the partners and, additionally, in the case of a limited liability partnership, its members or those members appointed to manage it.
16.	Section 12, para 2.6	Not included	Definition of Excluded Person	This definition has been removed in line with the removal of the corresponding exception to the concept of corrupt activity: see Rows 8 and 14.

Row	Location in existing form	Location in new form	Subject Matter	Comments
17.	Section 12, para 2.7	Section 8, ninth ⁿⁱ question	Definition of Group Company	This definition is no longer required as the concept is covered in the ninth question in section 8 of the new form. The information supplied in response to the question is cross-referenced in the declarations. See also Row 7.
18.	Section 12, para 2.8	Section 8, ninth question / section 14, footnote	Definition of Involved Group Company	This definition is no longer required as the concept is covered by the ninth question in section 8 of the new form. See also Row 17.
19.	Section 12, para 2.9	Not included	Definition of Project	This definition is not used in the current form and has therefore been deleted.
20.	Section 12, para 2.10	Section 14, para (3)(d)(i)	Definition of Related Agreement	This definition is no longer required. The concept of a related agreement is now covered in para 14(3)(d)(i) of the new form.
21.	Section 12, para 2.11	Section 14, para (3)(c)(i)	Definition of Relevant Offence	This definition is no longer required: see Row 12.
22.	Section 12, para 2.12	Section 14, paras (3)(b) & (3)(e)(ii)	Definition of Section 7 Offence	This definition is no longer required. The declaration in para (3)(b) of section 14 of the new form, which is cross-referenced in the declaration in para (3)(e)(ii) of that section 14, sets out the statutory reference to s.7 of the Bribery Act in full.
23.	Section 12, para 2.13	Section 14, second footnote	Definition of Senior Manager	No change.
24.	Section 12, para 2.14	Not included	Definitions of “we”, “us” etc	The Applicant is referred to as “you” throughout the new form and therefore this is not required in the new form.
25.	Section 12, para 2.15	Section 14, para (2)(d)	Knowledge attributed to applicant	No change.
26.	Section 12, para 2.16	Section 14, first footnote	Partnerships	See Row 15.
27.	Section 12, para 4	Section 14, para (2)(c)	Exception to disclosure for “tipping off”	The words “save where” have been replaced by “unless” and “argued” has been replaced by “considered”.
28.	Section 12, para 5.1.1	Section 14, para (3)(a)	Blacklisting (Exporter/directors)	The existing reference to being “debarred” from tendering has been replaced by reference to being “ineligible” to tender in line with the wording on the World Bank website.

Row	Location in existing form	Location in new form	Subject Matter	Comments
29.	Section 12, para 5.1.2	Section 14, para (3)(c)	Admissions of Corrupt Activity (Exporter/directors)	The exception for admissions made under duress has been removed for the reasons given in Row 8. The exception entitling applicants not to mention previously disclosed matters has been removed: applicants may easily cross-refer explicitly to disclosures made in previous applications.
30.	Section 12, para 5.2	Section 14, para (3)(b)	Section 7 Offence (Exporter/ directors)	The language has been reordered and the express reference to the UK courts removed as this is superfluous given the reference to a UK criminal offence. In addition, see Rows 8 and 22 about admissions under duress and previously disclosed matters.
31.	Section 12, para 5.3	Section 8, 9 th question	Identifying group companies involved in the export contract(s)	In the new form, applicants have to identify all group companies involved in the export contract(s) for which insurance is requested in response to a new question in the body of the form, rather than making a declaration that they have made reasonable enquiries about their involvement. This should not be onerous for smaller exporters and this knowledge can be expected of more sophisticated exporters.
32.	Section 12, paras 5.4 & 5.5	Section 14, paras 3(a) & (3)(e)(i) & (ii)	Blacklisting, convictions, admissions and Section 7 offences in relation to Agents, consortium partners, relevant group companies & senior managers)	The wording in the new form has been regrouped around common themes. The new form refers to the applicant having no reason to believe, after making reasonable enquiries, that the specified events have occurred but does not retain the reference to the applicant actually believing that fact. The latter phrase has been removed as being an unnecessary complexity. The exceptions for admissions made under duress and previously disclosed matters have been removed for the reasons given in Rows 8 and 29.
33.	Section 12, para 5.6	Section 14, para (3)(f)	Money laundering	No change.
34.	Section 12, paras 6.1 & 6.2	Section 14, para (3)(d)	Corrupt activity in relation to any export contract(s) to be insured (Exporter/directors)	The new wording is intended to capture the concept of acquiescence in plain English.

Row	Location in existing form	Location in new form	Subject Matter	Comments
35.	Section 12, paras 6.3 & 6.4	Section 14, para (3)(e)(iii)	Corrupt activity in relation to any export contract(s) to be insured (Agents, consortium partners, relevant group companies, senior managers)	See the second paragraph in Row 32.
36.	Section 12, paras 8.1, 8.2 & 8.3	Not included	Notification of anti-corruption provisions in the policy	In these paragraphs, the applicant acknowledges certain provisions which appear in the policy. A new form of letter enclosing the policy for signature will alert applicants to the presence of these provisions in the policy and there is therefore no need to set them out in full in the new form.