



UK Export  
Finance

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## **Triennial Review of the Export Guarantees Advisory Council**

March 2014

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## Introduction

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1. This document is the report of the 2013 Triennial Review of the Export Guarantees Advisory Council (EGAC), a Non-Departmental Public Body (NDPB) of UK Export Finance (UKEF) formally the Export Credits Guarantee Department (ECGD)<sup>1</sup>.

## Triennial Reviews

2. It is Government policy that the functions of NDPBs, the appropriateness of their delivery mechanisms and governance arrangements should be reviewed every three years.
3. The two principal aims<sup>2</sup> for Triennial Reviews are to:
  - challenge the continuing need for individual NDPBs – both their functions and form; and
  - ensure governance is in line with current practice (where it is agreed NDPBs should remain).
4. Triennial Reviews involve two stages to address these two principal aims:
  - Stage 1 examines the key functions of the NDPB, how these contribute to the core business of the sponsor Department and whether the functions are still needed and, where so, consider alternative delivery options of those functions; and
  - Stage 2 considers the control and governance arrangements to ensure the NDPB is operating in line with Cabinet Office principles of corporate governance (where the outcome of Stage 1 is that the NDPB should continue).
5. Cabinet Office guidance states that reviews should offer value for money and be appropriate for the size and nature of the NDPB in question.

<sup>1</sup> UK Export Finance is the operating name of the Export Credits Guarantee Department, a Ministerial Department of the Secretary of State for Business, Innovation and Skills. The operating name UKEF was adopted in November 2011. ECGD remains the department's statutory name. References to ECGD dating before November 2011 have been retained.

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf)

## EGAC and the Triennial Review Process

6. The Triennial Review of the EGAC was announced to Parliament by the Minister of State for Trade and Investment, Lord Green, on 9 October 2013.
7. A list of contributors is at Annex A.
8. The EGAC contributed views, as recorded at Annex B, while recognising it had no part to play in making recommendations about its future to Ministers.
9. Interested parties were invited to make representations. Five submissions were received which are reproduced at Annex C.
10. UKEF's Management Board and UKEF officials who interact with the EGAC were consulted.
11. The Business, Innovation and Skills Select Committee was informed of the Review. No comments were received.
12. The Review was led by Pat Cauthery, Head of the Chief Executive's Office at UKEF and conducted by UKEF officials. No external consultants were engaged. The direct costs were met by UKEF and are estimated to be less than £1,000.

## EGAC

### What is EGAC?

13. The EGAC is a statutory body that provides advice to Ministers responsible for UKEF. Its existence is derived from the Export and Investments Guarantee Act 1991 (as amended) as follows:

#### **13**

- (2) There shall continue to be an Export Guarantees Advisory Council.
- (3) The function of the Council shall be to give advice to the Secretary of State, at his request, in respect of any matter relating to the exercise of his functions under this Act.
- (4) In exercising his duty under section 11(2) [Reinsurance] of this Act, the Secretary of State shall consult the Export Guarantees Advisory Council.

14. The EGAC's current remit was established following a Mission and Status Review of UKEF, published in 2000, which recommended changes to UKEF's governance and accountability as follows:

*"In order to provide assurance of its revised systems and the wider policies and principles which it will adopt in future, ECGD needs to draw upon a wider range of external advice and expertise. This approach is wholly consistent with the principles of the Modernising Government agenda, and the requirements for Government Departments to implement the principles of the Turnbull Committee. This will be achieved by the appointment of outside Directors to ECGD's Management Board; outside Directors will participate in key operational committees and will provide the chair and main membership of the Audit Committee."*

*"At the same time the role of the statutory Advisory Council will be radically changed. Its role will dovetail with that being adopted by new outside Directors. Its new role will be to advise on the underlying policies and principles which ECGD needs to follow in order to achieve its new Mission, particularly how it takes account of the wider impact of projects on overseas countries. With the appointment of outside Directors to advise on risk and control, the Council will not be asked to give advice on individual markets [as it had historically done]. Its membership will be revised to bring in outside expertise on the new areas in ECGD's Mission – taking greater account of the needs of smaller exporters, the developmental benefits of projects it supports and their environmental and other impacts. New appointments will be made in accordance with the established procedures for public appointments."*

15. In consequence, Ministers agreed substantial changes to the EGAC's terms of reference and membership.

### **How EGAC operates**

16. The EGAC's current terms of reference (Annex D) focus on providing advice on UKEF's ethical policies and practices when doing business, principally those relating to:
- environmental impacts and human rights
  - anti-bribery and corruption
  - sustainable lending

- openness and disclosure (freedom of information)
17. The Secretary of State has a statutory duty to consult the EGAC on matters related to the provision of reinsurance by UKEF to the private credit insurance market. This duty came about through the passage of the Export and Investment Guarantees Act 1991, which facilitated the privatisation of UKEF's Insurance Services Group that provided credit insurance for exports sold on short terms of credit. The purpose of the duty was to address Parliament's concern that there should be no loss of support to exporters as a consequence of the privatisation. In practice, the Government has not had to consider the provision of reinsurance to the private market for over a decade and, therefore, the EGAC's advice has not been sought<sup>3</sup>.
  18. The EGAC's role is advisory. It advises on UKEF's ethical policies and practices, including post facto examination of export transactions supported to understand the application of those policies. The EGAC has no powers to perform executive functions; it is not involved in decision-taking on policies or exports/projects that UKEF is asked to support.
  19. Presently, the EGAC has eight members. Ministers appoint members, including the Chairman, in line with the rules of the Office of the Commissioner for Public Appointments. Members are normally appointed for an initial three year term which may be extended for further terms up to a maximum of ten years. Members are recruited on the basis of their knowledge, skill and experience in ethical matters and, presently, have backgrounds in trade and industry, development finance, law and academia. The members are unpaid.
  20. Typically, the EGAC meets four times a year. UKEF officials attend EGAC meetings although they normally commence in camera. The EGAC decides the agenda for each of its meetings, taking account of the need to respond to any specific requests from Ministers and UKEF for advice and consider matters to fulfil its terms of reference.
  21. The EGAC has adopted a practice of meeting with interested parties, principally exporters, exporter representative bodies and NGOs, usually without UKEF officials being present. The discussions help shape its agenda and provide lines of inquiry which inform its work and advice.

<sup>3</sup> The EGAC no longer has a member with reinsurance expertise, but will draw upon external expertise if the need arises to give advice.

22. Ordinarily, the EGAC gives advice through officials. The EGAC meets with the Minister once a year, usually at a dinner hosted by the Minister. This allows the EGAC to impart advice directly to the Government; it provides an opportunity for discussion and debate of issues of interest and concern.
23. The minutes of its meetings record the subjects considered, its deliberations and the advice proffered. The minutes are made public. The EGAC also publishes an annual report of its activities. Its report for 2012-13 is reproduced at Annex E.

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## Review Stage One: Function

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### Function

24. Stage 1 considers the function of the EGAC, whether it is still required and, if so, whether being a statutory advisory NDPB is the best model for delivery of its function.
25. The EGAC's function is to give advice on matters related to the operations of UKEF; in particular, UKEF's ethical policies and how these are applied in practice. Therefore, the main issue is whether there is a need for the Secretary of State to continue to have access to an independent body for such advice.
26. The Review also considers whether the role of the EGAC should be changed.

### Is the Function still required?

#### The context in which the EGAC operates

27. UKEF operates in line with international agreements<sup>4</sup> that apply to the operations of Export Credit Agencies (ECAs). These are principally those of:
  - the World Trade Organisation (WTO) - the *Agreement on Subsidies and Countervailing Measures*;
  - the Organisation for Economic Co-operation and Development (OECD) - the *OECD Arrangement on Officially Supported Export Credits* and related agreements; and
  - the European Union (EU) - the *Short Term Communication* and the *Medium and Long Term Harmonisation Directive*.
28. In regards to UKEF's ethical policies and practices, it operates the following international agreements:
  - bribery and corruption - the *OECD Council Recommendation on Bribery and Officially Supported Export Credits*, ("the Bribery Recommendation");

<sup>4</sup> Treaty obligations of HMG and agreements incorporated into EU law.



- environmental, social and human rights impacts - the *OECD Council Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence* (“the OECD Common Approaches”); and
  - sustainable lending - the *OECD Principles and Guidelines to Promote Sustainable Lending Practices and the Provision of Official Export Credits to Low Income Countries*, (“the Lending Principles”).
29. In regard to openness and disclosure, this principally relates to the fulfilment by UKEF of its obligations under the Freedom of Information Act (2000) and the Environmental Information Regulations (2004).
30. The adoption by UKEF and other ECAs of ethical policies, together with the need to respond to demands for greater openness of governments, has been incremental over the past decade or so. This came about as governments recognised that support for exports by their ECAs should not only take account of the financial risks but other matters such as the need to:
- protect against potential avoidable harm to the environment and human rights in respect of projects they are asked to support;
  - assist efforts to combat the corrosive effects of bribery by taking measures to help deter corrupt activity;
  - help poorer, heavily indebted, countries avoid building-up levels of external debts that cannot be serviced by supporting those exports/projects that contribute to sustainable economic growth; and
  - respond to demands from the public for access to information thereby helping to improve the accountability of ECAs and their support for exports, while balancing this against the need to preserve legitimate confidential interests of the parties involved in export transactions.

### **External scrutiny of UKEF**

31. UKEF has developed and adopted ethical policies and practices against a background of debate amongst exporters and lobby groups as to the role it can and should play in addressing these issues, and how far such policies and practices should extend, taking into account its remit i.e. to respond to demand from exporters (and banks that provide finance for exports) for risk protection, in order to assist them win business often against fierce competition and provide such support in line with its statute, international

regulation, the policies set for it by the Government including financial risk standards and financial objectives.

32. Particular issues have arisen as to how far UKEF should lead and set the pace internationally on the adoption of ethical policies and practices while at the same time ensure British exporters are able to compete on a level playing field. UKEF has often found itself balancing conflicting interests between exporter representative bodies and Non-Governmental Organisations (NGOs) as to how it should address, on the one hand, meeting the needs of exporters operating in a competitive environment and, on the other hand, acting responsibly in regards to the ethical matters.
33. In order to take account of different interests, UKEF has engaged with interested parties through a number of public consultations to help formulate policy and practice. These have sometimes exposed highly polarised views and, occasionally, been sufficiently contentious that attempts have been made to seek Judicial Review of decisions made.
34. These matters have also led to an increase in Parliamentary scrutiny of UKEF's ethical policies and practices. A number of Select Committees have conducted reviews and produced reports. Most recently, the All Party Parliamentary Group (APPG) on International Corporate Responsibility produced a report on UKEF that included recommendations related to UKEF's approach to ethical policies, which generated a great deal of debate.

### **The work of the EGAC**

35. It is against this background that the EGAC has advised UKEF and its Ministers. In terms of policy, the EGAC has advised on a range of issues. Examples include:
  - the adoption of new anti-bribery rules;
  - proposals to change UKEF's foreign content policies;
  - proposals to revise UKEF's Business Principles;
  - proposals to revise the OECD Common Approaches;
  - implementation of the Coalition Government's commitments related to support for green exports and dirty fossil fuel projects;
  - implementation of the commitment in the 2012 OECD Common Approaches on ways to address due diligence on human rights; and

- policy on the recovery of sovereign debts.
36. The EGAC has advised on reports which have covered UKEF's ethical policies. Examples include:
- Parliamentary Select Committees e.g. the Environmental Audit Committee report - *Export Credits Guarantee Department and Sustainable Development*; the Joint Committee on Human Rights - *Any of our business? Human Rights and the UK private sector*;
  - the APPG on International Corporate Responsibility - *Exploring the tensions between trade and responsibility*;
  - Industry e.g. the Annual Benchmarking reports by the British Exporters' Association; and
  - NGOs e.g. Amnesty International - *UKEF and Human Rights: A history of neglect* June 2013; Jubilee Debt Campaign - *The Department for Dodgy deals: ending the UK's support for toxic debt* January 2011; and WWF-UK - *Green Exports: Is the UK getting left behind?* March 2011.
37. The EGAC also routinely considers export transactions/projects supported by UKEF to understand how its ethical policies have been applied in practice in the provision of that support. The EGAC considers projects categorised 'A' (projects with potentially high environmental, social and human rights (ESHR) impacts) and 'B' (projects with medium ESHR impacts) as defined by the OECD Common Approaches, to examine how UKEF concluded they met the requirement to achieve international ESHR standards. It also reviews projects where UKEF support has been provided, to examine the effectiveness of the arrangements to monitor ongoing compliance with international ESHR standards during the construction and operational phases.
38. The EGAC reviews the application by UKEF of its anti-bribery policies and the OECD Bribery Recommendation. From time to time, it examines export transactions that have been supported to understand how the requirements placed on UKEF are addressed and to advise on the application of policy.
39. The EGAC also examines the application of the OECD Lending Principles. From time to time, it examines export transactions that have been supported to understand how the requirements placed on UKEF are addressed.

40. The EGAC reviews how UKEF addresses openness and its performance in making information public in response to requests for disclosure under the Freedom of Information Act and the Environmental Information Regulations.

### **Need for the EGAC**

41. Against this background, the Review assesses the need for the EGAC, taking into account submissions from interested parties. They have mixed views about the EGAC and a range of options are suggested about its future which, broadly, are that it should be:
- abolished, and its functions performed by UKEF's Management Board and the Non-Executive Directors (NEDs);
  - retained, and continue as is, in particular that it should not assume any executive powers and functions; and
  - enhanced, and its role expanded to include new responsibilities, including the exercise of executive powers and functions.

There was a call for an independent review to be carried out.

42. The need for the EGAC has to be considered against UKEF's governance arrangements as follows:
- Ministers, who are accountable to Parliament for UKEF, including the policies that it operates. The ethical policies largely emanate through the United Kingdom's membership of international bodies, principally, in these matters, the OECD and also EU/domestic legislation relating to open government;
  - the Accounting Officer (Chief Executive), who is personally responsible and accountable to Ministers and Parliament for the day-to-day executive functions and decisions of UKEF including the application of its ethical policies and practices;
  - HM Treasury, which gives Consent<sup>5</sup> for UKEF to carry out its business and within financial objectives;
  - the Management Board, composed of Executive Directors i.e. senior officials of UKEF, and NEDs from outside of UKEF that have knowledge, skill and experience of international finance and risk management, to

<sup>5</sup> The Export and Investments Guarantee Act 1991 provides that UKEF operates under the Consent of HM Treasury.

advise the Accounting Officer in the exercise of his responsibilities. It is a non-statutory body although it is practice for Government Departments to operate with Management Boards<sup>6</sup>; and

- EGAC, a separate body to UKEF both legally and constitutionally, that statutorily responds to advice sought by *Ministers*, albeit that its advice is usually provided through UKEF.
43. The Management Board also performs an advisory role but it acts as an oversight body for the benefit of the *Accounting Officer*. The Management Board is particularly concerned with strategy, governance and operational risk, credit risk policy, financial performance, accounting policies and the production of the Accounts; its remit covers the full spectrum of UKEF's activities i.e. the policies and practices it operates, the exports/projects it supports, the financial risks it bears and the financial objectives<sup>7</sup> it has to achieve, etc. In contrast, the EGAC's remit is far narrower, being focussed upon UKEF's ethical policies and practices.
44. The EGAC's detachment from UKEF means that it brings an outside perspective of UKEF's ethical policies and the application of those policies. Given that it does not have responsibility for the primary function of providing support for exports, the EGAC's advice is offered dispassionately, unencumbered by the day-to-day responsibilities of managing UKEF's operations and the decisions UKEF takes on support for export transactions.
45. This relies on the EGAC operating at arm's length to UKEF by not being engaged in day-to-day oversight and decision-taking. It also relies upon a relationship with UKEF that is open, in the sense that UKEF is willing to volunteer, and respond to, requests for information in order that the EGAC can properly fulfil its remit. UKEF has supplied information requested; the EGAC has not expressed dissatisfaction with UKEF's provision of information and data, or experienced a lack of candour and frankness.
46. The value the EGAC brings, therefore, is its independence which is possible because there is a separation between it and those that exercise executive functions and/or oversee decision-taking. Against a background of much controversy about the conduct by UKEF of its ethical policies and practices, the EGAC is able to bring a degree of additional and outside scrutiny to the application by UKEF of its ethical commitments both at a policy and case level. This creates a degree of external accountability on UKEF.

<sup>6</sup> The Management Board is chaired by a Non-Executive Director; Boards of other Departments are normally chaired by Ministers.

<sup>7</sup> set by HM Treasury.

47. Because the EGAC is free of the political interests of lobby groups, each with their differing aims and objectives, it can also independently advise on the veracity of claims made by interested parties to help separate fact from fiction and address assertions made about UKEF's behaviour. All this provides Ministers with independent assurance of UKEF's performance in abiding by its policies to a degree and frequency that is not practical for others e.g. the National Audit Office, Parliament, etc. to provide.
48. An option could be to merge the EGAC and the Management Board. It would simplify UKEF's governance structure. If it were to proceed, it would be desirable to appoint NEDs with knowledge, skill and experience of ethical issues but who also have a wider perspective of UKEF's role and remit i.e. to support the Government's export strategy taking into account that UKEF complements the private market while at the same time ensuring the contingent financial liabilities it bears are consistent with the need to achieve the financial objectives set by HM Treasury. However, the Executive Directors in particular are involved in decision-taking on applications for support which would mean they would advise on, and be judge and jury of, their own decisions.
49. A variant to the merger option could be for the NEDs to perform the EGAC's function. However, NEDs are members of a unitary body i.e. the Management Board; it is a team whose membership comprises Executive Directors and NEDs that operates collegiately to advise the Accounting Officer in carrying out his responsibilities. In any event, such a change would lead to a loss of external perspective, together with a source of separate impartial advice and assurance on the application of its ethical policies that has been of intense concern to some interested parties.
50. A consideration is whether the EGAC's role should be widened by it becoming involved in transactions *before* decisions are made on the provision of support and operating an ombudsman function to address grievances in respect of exports/projects that are supported by UKEF. If it did so, the EGAC would assume an executive role. Legislation would be necessary as the EGAC does not possess executive powers. However, it would almost certainly result in a clash of role and responsibility between the Management Board and the EGAC and, thereby, confuse the governance of UKEF.
51. The cost-effectiveness and value for money of the EGAC is not an issue given that its members are unpaid and its direct running costs are nugatory.
52. In the light of the foregoing, the Review concludes that, on balance, there is a requirement for the function of the EGAC to continue.

53. A call was made for an independent review to be carried out with the objective of broadening the EGAC's functions. This Review does not find any compelling reasons to justify another separate review being undertaken, taking into account that relatively recently the Government was not persuaded to expand the EGAC's role as recommended by the APPG on International Corporate Responsibility in its report on UKEF

## **Delivery Models**

54. This section considers possible alternative delivery models for the function performed by the EGAC, taking account of the range of delivery models set out in the Cabinet Office guidance.

### **Bring the EGAC function "in-house"**

55. This delivery model would involve the EGAC's function being performed by UKEF. The Review does not consider this option should be adopted. It would give rise to conflicting responsibilities. Moreover, it would also increase the cost to the taxpayer because of the need to replace unpaid EGAC members with paid Civil Servants.

### **Move the EGAC function out of central government**

56. This delivery model would involve the EGAC's function being carried out by local government, the private or voluntary sectors.
57. With respect to local government, the nature of UKEF's role is inherently international. Therefore, this option is dismissed.
58. With regard to moving the function into the private sector, the Review does not consider this to be feasible. No organisation could be identified that might carry out such a role and it would cost more to operate. Moreover, a number of the EGAC members are drawn from the private sector.
59. With regard to moving the function to the voluntary sector, the EGAC is, in effect, a voluntary body. There would be no obvious benefit to an alternative voluntary organisation delivering the EGAC's function.

### **Merge the EGAC with another body**

60. The Review considers whether the EGAC could be merged with UKEF's Management Board but for reasons explained rejects this option. No other body has been identified with whom the EGAC could be merged.

### **Deliver the EGAC's function through a New Executive Agency**

61. The EGAC has no executive powers. This option would not be appropriate.

### **Deliver the EGAC's function by an advisory NDPB**

62. This option is to keep the status quo i.e. that the EGAC should continue to operate as a NDPB. This model combines independence, expertise and credibility at very low cost to the taxpayer. This option is advocated by the Review, subject to an assessment against the "three tests" (below) as prescribed by the Cabinet Office guidance.

### **The Three Tests**

63. One of the requirements of the Triennial Review process is an assessment against the Government's "three tests" for delivery of functions by an NDPB:
- Is this a technical function (which needs external expertise to deliver)?
  - Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
  - Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

#### **Is it a technical function?**

64. The EGAC provides advice on the application of UKEF's ethical policies in a technical area i.e. the provision of support for exports and projects by UKEF in the form of contracts of insurance, guarantees to banks or direct loans. Accordingly, its members are appointed on the basis of assembling the right mix of knowledge, skill and experience to provide advice on these matters. The EGAC meets this test.

#### **Is political impartiality needed?**

65. The EGAC's advice is sought in relation to matters on which the Government is lobbied and on which there are often opposing views held by exporter representative groups and NGOs. Political impartiality is required. The EGAC meets this test.



**Is independent delivery to establish facts and/or figures with integrity needed?**

66. The role of the EGAC involves giving advice on matters of fact in relation to the application of UKEF's ethical policies. That advice must be given with integrity so that Ministers can be assured that UKEF is fulfilling its responsibilities. If the EGAC had reason to doubt the veracity of facts and figures, it can comment when giving advice. However, unlike other NDPBs, the EGAC is not asked to establish and report facts and/or figures and in this particular respect the EGAC does not meet this test.

**Stage 1: Conclusion**

67. Having assessed possible delivery models, the Review finds that the advisory NDPB model is most suitable. The EGAC meets two of the tests for NDPB status.

<p><b>Recommendation A: the EGAC's functions are required and the advisory NDPB model continues to be the best way to deliver them.</b></p>
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## Review Stage 2: Governance

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68. Having concluded that the EGAC should remain an advisory NDBP, Stage 2 of the Review considers how far its practices align with principles of good governance.
69. This stage draws on a recent audit conducted by UKEF's Internal Audit and Assurance function which examined the EGAC's corporate governance arrangements against the arrangements recommended by the Cabinet Office. A summary is below, with more detail set out in Annex F.

### Accountability

70. The Minister appoints the members of the EGAC. Constitutionally, the EGAC reports directly to the Minister, although in practice its advice is normally provided through UKEF. The Minister is accountable to Parliament for the activities of the EGAC.
71. The EGAC is publicly accountable and the minutes of its meetings are published which inform the issues it considers, the deliberations it makes and the advice it proffers.
72. The EGAC produces an Annual Report which is published and presented to Parliament alongside UKEF's Annual Report. In line with Cabinet Office guidance, the content includes most, but not all, of the requirements. Past reports have not described how the work of the EGAC supports the Government's objectives and policies, provided details of members' remuneration and a contact point for further information. These details should be included in future reports.

<b>Recommendation B: the EGAC's annual report should include more details to fully comply with the Cabinet Office guidance.</b>
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## Role of UKEF

73. UKEF provides a secretariat function. It supplies the EGAC with information to assist the fulfilment of its terms of reference. UKEF officials attend EGAC meetings. The deliberations of the EGAC are routinely reported to UKEF's Management Board.
74. In line with Cabinet Office guidance, the Management Board should annually evaluate the performance of the EGAC and its Chairman, to be satisfied that the EGAC continues to fulfil its Terms of Reference and that they remain appropriate. This evaluation should be a standing item on the agenda of the Management Board as part of its end-year assurance process and the production of UKEF's Governance Statement.

**Recommendation C: Annually, the Management Board should review the EGAC's terms of reference and evaluate the performance of the EGAC and of the Chairman. The Chairman of EGAC and the Non-Executive Chair of the Management Board should meet at least once a year.**

## Roles of the Chair and Board Members

75. The EGAC Chairman sets the agenda for each meeting, chairs meetings and leads the annual meeting with the Minister.
76. The Chairman informally assesses the performance of members as part of the process to determine if appointments should be extended. The Cabinet Office principles require that this assessment is undertaken annually.
77. The Chairman participates in the recruitment by UKEF of members to obtain the necessary specific knowledge, skills and experience to fulfil the EGAC's role.
78. The roles and responsibilities of the Chairman and members are set out in letters of appointment. Members receive induction training on appointment. Additional training is provided on an ad hoc basis as the need arises.

**Recommendation D: Annually, the EGAC Chairman should assess the performance of individual members of the EGAC.**

## **Communications**

79. The Cabinet Office guidance states that NDPBs should engage and consult with the public on issues of real public interest or concern. The EGAC does not perform a role that requires engagement with the general public. However, the EGAC engages directly with interested parties and its meetings with them are a means by which the EGAC is informed of issues of concern which help shape its agenda.
80. The EGAC publishes minutes of its meetings and an annual report.
81. The EGAC website has a telephone number and email address so it can be contacted.

## **Conduct and Behaviour**

82. The EGAC Terms of Reference and letters of appointment state that members must follow the seven principles of public life (the “Nolan principles”). Conditions relating to members’ political activity are included in appointment letters. A register of members’ interests is reviewed at every meeting to address potential conflicts of interest.
83. The role of the EGAC is advisory; it does not perform executive functions. In practice, the EGAC reviews decisions by UKEF after they have been made. Therefore, members cannot influence decision-making on the provision of support for specific export transactions.

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## Conclusions and Recommendations

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85. The Review finds that the role performed by the EGAC is still required. It has considered possible alternative delivery models and finds the NDPB model is the most suitable. (Recommendation A).
86. EGAC's governance largely complies with Cabinet Office's principles of corporate governance, subject to small enhancements in its reporting. (Recommendations B, C and D).

**Recommendation A: the EGAC's function is required. The advisory NDPB model continues to be the appropriate means to deliver it.**

**Recommendation B: the EGAC's annual report should include more details to fully comply with the Cabinet Office guidance.**

**Recommendation C: Annually, the Management Board should review the EGAC's terms of reference and evaluate the performance of the EGAC and of the Chairman. The Chairman of EGAC and the Non-Executive Chair of the Management Board should meet at least once a year.**

**Recommendation D: Annually, the EGAC Chairman should assess the performance of individual members of the EGAC.**

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## ANNEX A: Contributors

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### **Export Guarantees Advisory Council**

Andrew Wiseman (Chair)

Gillian Arthur

Alastair Clark

Alexandra Elson

Chris Fitzpatrick

Neil Holt

John Newgas

Anna Soulsby

### **Interested Parties**

Amnesty International UK

British Exporters' Association

Campaign Against Arms Trade

The Confederation of British Industry

The Corner House

Jubilee Debt Campaign

Siemens Plc

Sovereign Star Trade Finance Ltd

### **UKEF**

Chief Executive

Director, Business Group

Director, Human Resources

Head of Internal Audit and Assurance

EGAC Secretary

**EXPORT GUARANTEES ASDVISORY COUNCIL**

**MINUTES OF SPECIAL MEETING HELD ON 12 NOVEMBER 2013**

**Present:**                **Mr Andrew Wiseman (Chairman)**

**Mr Alastair Clark**

**Ms Alexandra Elson**

**Mr Chris Fitzpatrick**

**Mr Neil Holt**

**Mr John Newgas**

**Apologies**            **Ms Anna Soulsby**

**Ms Gillian Arthur**

**In attendance**      **Mr Pat Cauthery UKEF - Lead, Triennial Review**

**Secretary**            **Mr Laurence Lily**

1        The purpose of the special meeting was to consider the Triennial Review of the Council. Mr Cauthery explained the background, process and timetable for carrying out the review.

**Triennial Review question: Is the function still required?**

2        The Council noted that the future of the Council would be decided by Ministers as advised by UKEF.

3        The Council noted that interested parties had been invited to contribute views to help inform the future of the Council.

4 The Council recognised it would not be appropriate to advise Ministers on its own future but wished to share views on its role and remit to help inform UKEF's recommendations to Ministers.

5 The following points arose in discussion:

(i) the Council's direct running costs were very low (under £3000 in 2012-13) excluding internal cost to UKEF to serve the work of the Council. Therefore, the Council did not pose a financial burden on the taxpayer and would not expect cost to be a significant factor in a decision on its future;

(ii) the Export Investment and Guarantees Act (EIGA) 1991 was silent on the nature of the advice the Secretary of State could seek from the Council, except that he had a duty to consult the Council on the provision of reinsurance to the private sector. That duty was largely historical, related to the privatisation of the Insurance Services Group which the passage of the EIGA had facilitated. There had not been an occasion in recent years to seek advice in this regard which resulted in the Council no longer having a member with private reinsurance market knowledge and experience. The Council had decided with UKEF that should a request be made by the Secretary of State, the Council would obtain specialist reinsurance expertise at the time to inform its advice;

(iii) in practice the Council operated to terms of reference agreed with Ministers that, presently, focussed on UKEF's ethical policies and practices. In general, the Council imparted its advice through UKEF. However, there were occasions when Ministers had sought specific advice from the Council, most recently to monitor the impact of the changes made to the application by UKEF of the OECD Common Approaches on environmental and social due diligence following a change of policy, as informed by a Public Consultation on proposals to revise UKEF's Business Principles which had resulted in divergent and polarised views as between industry and NGOs. The annual meeting with the Minister provided an opportunity to engage directly with the Government.

(iv) the Council considered that it operated as a buffer between external parties, UKEF and Ministers against a background where there were often divergent and contentious views about UKEF's ethical policies and their application;



- (v) the Council recognised that the credibility of its advice was dependent upon the knowledge, skill and experience of the members. The Council included members with a mix of backgrounds and range of experience which meant it could bring some expertise to the ethical issues it was asked to consider;
- (vi) the Council acknowledged there was a tension between its independence while at the same time being reliant on UKEF to supply the information in order to form its advice. The relationship had to be based on trust and openness;
- (vii) the Council's practice of meeting directly with interested parties to inform its agenda and shape its advice was vital which avoided issues being funnelled solely through UKEF;
- (viii) the Council considered its role was different to the Non-Executive Directors of UKEF's Management Board. The Council did not have accountability for governance, policy and operations and because it was not encumbered with these responsibilities it could take an external perspective free from day-to-day operational responsibility. The Council noted that the European Bank for Reconstruction and Development (EBRD) operated with an Environmental and Social Advisory Council along similar lines.

**Triennial Review question: Consider how the function could be best delivered, including consideration of whether it could be delivered by the voluntary or private sector, or whether it could be merged with another body, or delivered directly by UKEF.**

6 The Council made the following points:

- (i) there appeared to be no benefit in transferring the Council's role to the voluntary sector; Council members were unpaid and its running costs were minimal;
- (ii) no existing organisation from either private or voluntary sector was known to be interested in fulfilling the Council's role and, in any event, a transfer would almost certainly prejudice the independence of the advice proffered;
- (iii) merging the Council with UKEF Management Board would confuse roles and responsibilities and Ministers would lose a source of independent advice; the Council provided a degree of external accountability and assurance;

(iv) the existing model meant that the Council had direct access to Ministers and could provide advice that could challenge UKEF's approach and/or decisions.

**Triennial Review question:** If it is decided that EGAC should remain as an advisory NDPB, then consider the extent to which it meets the government's tests for arms length bodies:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts and or figures?

7 The Council agreed that:

- (i) the Council provided a technical function.
- (ii) the Council had to be politically impartial (although individual members may have political affiliations) and was subject to the principles of public life; its advice had to be consistent irrespective of the political complexion of the Government and its meetings with lobby groups had to be conducted dispassionately.
- (iii) the Council was dependent upon UKEF to provide it with accurate facts and figures, but it could independently question and test the information (UKEF had others e.g. external auditors, that established the veracity of facts and figures in relation to its business).

## **Conclusions**

8 The Council concluded it should consider the views of interested parties that contributed to the Triennial Review at its meeting on 9 December and reflect on its effectiveness and governance in light of the conclusions of the Review. It asked to be informed of the views of UKEF and Ministers on its work.

**Larry Lily**

**Secretary**

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## ANNEX C: Submissions from Interested Parties

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### **Submission to the Triennial Review of the Export Guarantees Advisory Council (EGAC) conducted by UK Export Finance (UKEF)**

From:

**Amnesty International UK**  
**Campaign Against Arms Trade**  
**The Corner House**  
**Jubilee Debt Campaign**

To: **Pat Cauthery**  
**Lead Reviewer**  
**Head of Chief Executive's Office**  
**UK Export Finance**

Date: 12 November 2013



Thank you for inviting views from the members of the Clean Up Britain's Exports (CUBE) Network on the future of the Export Guarantees Advisory Council (EGAC).

Rather than address the five questions outlined in the review documentation we have chosen to outline what we consider is required by way of a review of EGAC.

We view the Council's current role as far too restrictive to properly oversee UKEF's activities. A body with more relevant expertise, greater investigative powers and access to key documentation would be required to exercise effective oversight over UKEF.

Our experience of meetings with EGAC is that the Council Members have limited knowledge of the wider context in which UKEF operates with regards to many issues of concern, including the practice of other export credit agencies, and lack of understanding, from the perspective of those affected, of the adverse impacts of UKEF supported projects.

Our view is that EGAC should not continue in its current form. An *independent* review is urgently needed of how EGAC might be reformed or replaced with a body that is better able to fulfil its statutory role of advising the Secretary of State. As part of that independent review consideration should be given, amongst other things, to broadening EGAC's remit and empowering it to do some or all of the following:

- Ensure that EGAC has the resources to undertake independent analysis of UKEF's activities and impacts, including field visits;
- Ensure that EGAC has access to the full documentation it might require to assess the impacts of UKEF's activities;
- Empower EGAC to intervene in 'live cases';
- Enable EGAC, or its successor body, to hear complaints and grievances about UKEF supported transactions, receive evidence, and investigate those complaints and grievances and make enforceable determinations;
- Enable EGAC to be informed of all applications for support at the time that the support is sought and to seek details about the basis for any categorisation decisions, in time to request reconsideration of any decision;
- Assess the case for the establishment of an independent compliance officer for UKEF, along the lines of the International Finance Corporation's Compliance Advisor Ombudsman (CAO). The reporting lines of UKEF's 'CAO' would need to be established in such a way to ensure its independence was preserved;
- Consider giving EGAC, or its successor body, a mandate to challenge UKEF to meet relevant international standards with regard to the State duty to protect human rights as set out in the UN Guiding Principles and Framework and other international standards endorsed by the UK
- Consider providing full transparency for the actions and advice of any resulting body or function that was established



# BRITISH EXPORTERS ASSOCIATION

Mr Pat Cauthery  
Chief Executive's Office  
UK Export Finance  
1 Horse Guards Road  
London  
SW1A 2HQ

11th November 2013

Dear Pat,

**Export Guarantees Advisory Council (EGAC)  
Triennial Review: questions for respondents to consider  
British Exporters Association (BExA) Responses**

BExA welcomes the opportunity to provide an input into the triennial review of EGAC. BExA has a strong interest in and maintains a focus on the valuable work of UK Export Finance (UKEF) in the context of wider Government support to achieving the ambitious targets of the National Export Challenge. It is vital that UKEF's available product range supporting UK exporters remains competitive with that offered by other OECD Export Credit Agencies (ECAs) and that the management and operations of UKEF are focussed on delivering UKEF's products into the market.

BExA has met with EGAC from time to time and used such meetings to express members' views on the broad spectrum of UKEF activity, including product range, processes, accessibility, application of the OECD Common Approaches and the need for UKEF to be competitive in the international ECA arena. In so doing we have sought to highlight the broad scope of UKEF activity and exporter needs so as to put in context EGAC's advisory role on UKEF's policies, including as they relate to the environmental and social issues, anti-bribery and sustainable lending. BExA has, during meetings, aired the same issues and topics that we raise with others such as the Trade Minister, HM Treasury and indeed UKEF management.

1. Is the existing function of EGAC still required?

BExA believes that the advisory role currently provided by EGAC on environmental and social matters, anti-bribery, sustainable lending issues plus reinsurance retains some value to the extent that it offers interested parties with the opportunity to discuss these issues with a long established and independent statutory body, which was formalised under the Export and Investment Guarantees Act in 1991. However BExA would not, if Government decides to retain the advisory body, support any widening of EGAC's remit or vesting any form of management responsibilities with EGAC.

2. How should the function be best delivered?

UKEF has for a number of years operated with a Management Board that includes a number of non-executive directors (currently one non-executive Chairman and four non-executive Directors). Given this streamlined management structure, the existence of a separate advisory body focussed on specific areas of UKEF operations is somewhat anachronistic. The Management Board should retain sole responsibility for the governance and oversight of UKEF operations, subject only the oversight responsibilities of the Department for Business, Innovation and Skills and HM Treasury. Accordingly the Management Board should retain responsibility for all aspects of UKEF operations including the implementation of international agreements such as the OECD Common Approaches, OECD Bribery recommendations (although in the light of the introduction of the UK Bribery Act in 2011 BExA believes that

UKEF's processes and requirements could be streamlined in this area) and the OECD Principles on Sustainable Lending.

3. Does EGAC benefit from the advantages of being an arms-length body, such as having the ability to act independently to establish facts and to be politically impartial?

Whilst EGAC does operate at arms-length from the day to day management of UKEF, and as such can be and is seen as being politically independent, the independent nature of its work could equally be delivered by UKEF's non-executive directors. These activities would be a natural fit into the role of the non-executive directors.

If Government decides to retain EGAC as a separate body from the Management Board, BExA is of the strong opinion that EGAC should remain as an advisory body without any executive role or responsibilities. EGAC should not become an additional party to UKEF's decision making processes on support for export contracts as this would indeed de facto compromise EGAC's independent role.

4. How well is EGAC delivering its function?

BExA has always valued the opportunity to meet with EGAC. As an advisory body EGAC has consistently approached such meetings in an open and unbiased manner and has sought to understand the issues raised by BExA. We do not know how useful EGAC has been in giving advice to the Secretary of State or how the Secretary of State views the function of EGAC, but would again suggest that UKEF's Management Board can provide this advice supported, as and when appropriate, by further engagement with relevant Ministers and organisations such as BExA.

5. What other possible delivery options are there for EGAC's function?

BExA's preferred option for delivering the defined EGAC's function would be to merge the Management Board and EGAC. BExA believes that this could be done either by abolishing EGAC or by retaining EGAC and have it deliver independent observations through reporting to the non-executive directors. In either event such governance activities should be set in the context of the National Export Challenge and focus on the necessity of widening UKEF's role in supporting SMEs and micro exporters. Furthermore, and in any case, BExA believes that there should be a far greater degree of exporter representation amongst both the non-executive Directors and EGAC (if retained).

BExA understands that the abolition of EGAC as a separate body may require a change to the 1991 Act. Whether EGAC continues or not, BExA, in representing the exporting community, would expect to be afforded opportunities to meet with UKEF's Management Board on a regular basis in order to air views and concerns to assist in the formulation of products, policies and processes, in compliance with international agreements and standards, to the benefit of exporters.

We trust BExA's views will be taken into account as part of the current review process.

Yours sincerely,



Jon Coleman  
Chairman

### **CBI response to the triennial review of the Export Guarantees Advisory Council**

1. The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi the CBI communicates the British business voice around the world.
2. The CBI welcomes the opportunity to reflect on the role of the Export Guarantees Advisory Council (EGAC) in supporting British exporters. But as we have had limited engagement with the Council itself, we would prefer to be removed from any further discussions on the future of the EGAC.
3. This submission makes the following points:
  - UK Export Finance (UKEF) provides essential support for the UK's exporters, but must increase businesses' awareness of its services and the support it provides for key groups, in particular small and medium-sized businesses.
  - To successfully reach its potential, UKEF must have clear internal processes and systems that allow it to facilitate the increase of exports, while ensuring it meets international standards.

### **As the UK's Export Credit Agency (ECA), UKEF provides products that bridge the gap between exporter demand and the risks that banks or insurers are willing to cover.**

4. These products provide necessary support for the UK's exporters. Through UKEF's short-term and long-term products, UK exporters receive support including loan guarantees and bonds.
5. Although UKEF's support has increased over the past few years, more can be done to fill the gap in available export finance and insurance. In a recent CBI survey, export finance was identified as the top business priority for government action to boost exports.<sup>1</sup>
6. With the launch of the Direct Lending Scheme and the pending Export Refinancing Facility, UKEF should be increasing its offering to more of the UK's businesses.
7. Although in FY 2012-2013 UKEF funding reached its highest level in a decade, only 52 SMEs received direct support from the agency.<sup>2</sup> UKEF therefore needs to dramatically accelerate its support for the UK's smaller exporters.
8. With two-thirds of medium-sized businesses (MSBs) not being aware that UKEF exists, raising visibility and awareness is a critical next step for increasing the number of businesses supported.<sup>3</sup>

### **To successfully reach its potential, UKEF must have clear internal processes and systems that allow it to facilitate the increase of exports, while ensuring it meets international standards.**

9. The EGAC is a statutory non-Departmental Public Body (NDPB) and its primary function is to give advice to Ministers that have responsibility for UKEF on matters relating to the

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<sup>1</sup> CBI Export Survey, January 2013

<sup>2</sup> UKEF data, FY 2012-2013

<sup>3</sup> CBI M-Clubs surveys, 2012

performance of its statutory role and functions. Its terms of reference confine this role to advising on the implementation by UKEF of its ethical policies, particularly those derived from the OECD agreements that relate to member Export Credit Agencies as to how they should address anti-bribery, environment and human rights and sustainable lending in respect of the exports they are asked to support.

10. UKEF is also governed by a Management Board that is responsible for overseeing all operations. Membership on this board includes Executive Directors (senior officials) and non-Executive Directors (from the private sector with experience of banking and industry) and is led by a non-Executive Chairman. The Management Board oversees all the operations of UKEF which, it is presumed, also includes its implementation of international agreements on ethical issues.
11. At face value, it would appear that there are two bodies with oversight of the same issues. Whereas the Management Board has a wider scope of responsibility and authority, the EGAC is independent and operates at arm-length from UKEF. The EGAC also has members with particular experience in the issues over which it has oversight, including ethical issues e.g. environment.
12. This dual arrangement invariably results in unnecessary duplication and waste, which in turn raises operating costs and generates additional administrative burdens.
13. Ministers are the beneficiaries of EGAC advice and must decide its value in the exercise of their responsibilities for UKEF and, in particular, whether it is necessary to receive advice independently of UKEF and others with vested interests.
14. The CBI does not have a view on whether or not the EGAC should be retained.
15. If it is decided to abolish the EGAC, while it would simplify the governance arrangement of UKEF it would be worthwhile for the Management Board to co-opt non-Executive Directors that can give authoritative advice on the issues that EGAC review to ensure that they understand the implications of any debates. It should also adopt the practice of the EGAC to periodically meet directly with stakeholders to help inform its views and decision-taking.
16. If it is decided to retain the EGAC, it should remain an advisory body and not assume any executive functions. Otherwise, it would confuse the respective roles of the EGAC and the Management Board and, potentially, give rise to disputes.





Mr P Cauthery  
UK Export Finance  
1 Horse Guards Road  
London  
SW1A 2HQ

23<sup>rd</sup> October 2013

Dear Mr Cauthery,

I write in response to your letter to me dated 9<sup>th</sup> October about the review of the Export Guarantees Advisory Council. I assume I have been invited to give views as I have previously met with the Council albeit that this was a number of years ago (although I am still involved with the British Exporters Association and I am aware it has met with the Council more recently). I also write in my capacity as Executive Director of Sovereign Star which supports exports, usually by SMEs, whose buyers require medium term finance to purchase goods and services from Britain ; ECGD support is vital to assist such exports.

I understand the Council exists by reason of statute and its statutory function is to give advice to ECGD's Ministers if they ask for it. I further understand that Ministers are compelled to seek the Council's advice if ECGD is to provide reinsurance to the private sector. The Council's Annual Report ( published with ECGD's Annual Report and Accounts) makes clear that in practice the focus of the work of the Council is to provide advice to Ministers on the policies that ECGD applies when doing business, particularly its " ethical policies " related to bribery, environment, social and human rights, sustainable lending, openness and transparency, etc.

I am aware that the Council publishes minutes of its meetings which give public insight of the issues it considers and ,I assume, on which it gives advice to Ministers. I understand the Council formally meets with the Minister at least once a year. I also note from the Council's Annual Reports that it also meets with interested parties to understand their issues of interest in ECGD to " help shape the Council's agenda ".

Insofar as the Council has a role to assist Ministers in carrying out their responsibilities for ECGD, it follows that Ministers are best placed to decide whether such a role is beneficial to them in fulfilling their responsibilities. An obvious question is if the Council were to be abolished, would it have a detrimental impact on ECGD and its Ministers ? As the Council's members are not remunerated for the provision of their services, cost should not be an issue. Also, as the Council's membership comprises people with knowledge and experience of the ethical issue on which it focuses much of its time, then it seems to me that it must have some added value for Ministers because the Council is i) independent of ECGD and ii) a body to whom ECGD can be externally accountable for the implementation of its ethical policies in accordance with the relevant ethical international agreements it is supposed to follow.

It seems to me that this external accountability is especially important because ECGD is the subject of particular interest and scrutiny by Non-Governmental Organisations who are concerned about issues related to its support for arms sales, sovereign debt, anti-bribery, environment and human rights, etc. These organisations have vested interests ( as, of course, so does exporter lobby groups) which means the Council can play a useful role in providing independent advice on these issues of concern to interested parties.

This point can best be illustrated by the recent publication from Amnesty International of a report on ECGD entitled " A History of Neglect – UK Export Finance and Human Rights ". The very title gives away its prejudice and the content includes a number of unsubstantiated assertions about the behaviour of ECGD. The Council can perform a useful role to sort our fact from fiction when ECGD is misrepresented, usually, in my opinion, because it is misunderstood.

For these reasons, it seems to me entirely appropriate for the Council to meet with interested parties to help shape its agenda which should, hopefully, mean the advice it proffers to Ministers has been shaped by listening, probing and challenging interested parties about their concerns and issues. Clearly ,this accountability would be lost if the Council did not exist.

I would add that although Ministers are accountable to Parliament for ECGD, a number of recent Parliamentary reports on ECGD have been heavily influenced by Non-Governmental Organisations. My view is that a number of the recommendations made by Select Committees and, most recently, by the All Party Parliamentary Group on Corporate Responsibility in its report on ECGD, often lack reality of the practicality of recommendations made; if they were implemented, it would detrimentally impact on exporters who have to compete to win business for Britain. There is a lack of understanding that Britain trades with countries that operate to different rules and practices and, therefore, it would be discriminatory to British exporters to unilaterally toughen the rules under which they obtain ECGD support. It is vital that ECGD acts multilaterally so that there is a level playing field for British exporters to compete. The council is well placed to give objective advice on these matters that is not politically influenced and motivated to the benefit of Ministers.

In the light of my comments, my judgement is that if the Council is to continue, there should be no change in its current role.

Yours sincerely,



CFJ. Siegel

**Subject:** RE: UK Export Finance: Review of Advisory Council  
**Date:** 18 October 2013 10:13:30

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Thank you for your e-mail, below. We have consulted internally within Siemens UK, and have the following comments in respect of the questions raised in respect of EGAC.

Please come back to me if you require anything further.

**1. Is the existing function of EGAC still required?**

Yes, in fact probably more so now than ever. Although there has been some positive work to re-industrialise the country under the leadership of BIS, it is vital that in difficult market sectors and territories that we maintain our presence during difficult economic times. With the absence of ability, or willingness, of the banks to support lending in the export market, it remains vital that there is support from the government, and that any relaxation in this support is subject to review or question by EGAC as a direct conduit from exporters and other interested groups. We believe that although the basic terms of reference are important, there is a need to broaden the terms of reference in line with the above.

**2. How should the function best be delivered?**

The format is adequate on the basis that there is a close connection between Industry, the Banks, other groups and EGAC, to take on the views of the exporters and to counter balance the requirements of other government departments such as the Treasury.

**3. Does EGAC benefit from the advantages of being an arms-length body, such as having the ability to act independently to establish facts and to be politically impartial?**

Yes, provided those selected are a balanced group from a broad range of market sectors and experiences.

**4. How well is EGAC delivering its function?**

As with everything, there is always room for improvement. However, having said that, we have seen some improvements already. The extent to which these improvements are attributable to EGAC, or otherwise, is unclear to us.

**5. What other possible delivery options are there for EGAC's function?**

Trade associations, or potentially direct election to the board of ECGD.

Siemens plc

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## ANNEX D: The EGAC's Terms of Reference

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### **Purpose and Objectives**

The Export Guarantees Advisory Council is established under Section 13 of the Export and Investment Guarantees Act 1991 as amended by the Industry and Exports (Financial Support) Act 2009.

The statutory purpose of the Council is to give advice to the Secretary of State, at his request, in respect of any matter relating to the exercise of his functions under the Act. In particular, the Secretary of State is required to consult the Council in exercising his duty under Section 11(2) of the Act (in relation to the provision of reinsurance to the private sector in the national interest).

The Council is an advisory body. It does not perform executive functions or take decisions on UKEF's activities.

### **Activities**

The Council normally provides advice to the Secretary of State through UKEF officials, usually at meetings attended by UKEF's Chief Executive. The Council addresses its views directly to the ministers on any subject where it deems it appropriate to do so. It meets with the Minister once a year.

The main areas on which ministers seek advice are on UKEF's policies relating to:

- environmental, social and human rights impacts
- anti-bribery and corruption
- sustainable lending
- disclosure through its obligations under information legislation

The Council gives advice on other issues as requested by Ministers, and on the provision of reinsurance as necessary.

UKEF informs the Council of developments related to relevant international agreements and policies set by Ministers which guide UKEF's operations so that these can be taken into account by the Council in providing its advice.

The Council meets with interested parties i.e. exporters, banks, trade associations, special interest groups, to help inform its work.

## **Members and Chairperson**

Council members are appointed by Ministers, one of whom is appointed as Chairperson, in conformance with the recruitment policies and procedures of the Office of the Commissioner for Public Appointments.

A member of UKEF's Management Board usually attends Council meetings as an observer to provide a link between UKEF's Management Board and the Council.

## **Quorum**

A quorum will be the Chairperson, or his nominee, and two other members.

## **Secretariat**

The Council's secretariat is provided by UKEF. The Secretary is responsible for organising meetings, producing agendas, providing papers, producing minutes of meetings.

## **Reporting**

Minutes of each meeting are produced and published. The Council produces an annual report of its activities which is published in the UKEF annual review and accounts.

## **Public service values**

Council members are expected to:

- observe the highest standards of impartiality, integrity, and objectivity in relation to the advice they provide
- be accountable to the Secretary of State for the Council's activities and for the standard of advice they provide
- follow the seven principles of public life set out by the Committee on Standards in Public Life

## **Declaration of interests**

Council members declare directorships and executive appointments held, and any substantial shareholding or interest held including any held by immediate family members. a register of interests is held by the Secretary.

## **Legal Proceedings**

Although legal proceedings by a third party against individual board members or advisory bodies are very exceptional, a Council member may be personally liable if a fraudulent or negligent statement is made which results in a loss to a third party. If a Council member has provided advice honestly, reasonably, without negligence and in good faith UKEF will provide an indemnity against personal civil liability.

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## ANNEX E: The EGAC's Annual Report 2012-13

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The Export Guarantees Advisory Council is a Non-Departmental Public Body. The remit of the Council is defined by the Export and Investment Guarantees Act 1991. Its Terms of Reference, the minutes of meetings and a register of members' interests are available on ECGD's website.

The Council's broad remit is to provide advice to Ministers on the policies that ECGD applies when doing business, particularly its ethical policies related to:

- environmental, social and human rights;
- anti-bribery and corruption;
- sustainable lending; and
- obligations under information legislation.

Ministers have a statutory duty to consult the Council on matters related to the provision of reinsurance by ECGD to the private credit insurance market.

The Council does not provide advice on decisions ECGD makes to support individual export transactions and projects, although it does carry out retrospective reviews of business it has supported to understand how ECGD's principles and policies are applied in practice and, as appropriate, gives advice on how these might be further developed.

### Chair

**Andrew Wiseman** (Partner, Head of Environmental Law, Stephenson Harwood LLP)

### Members

**Gillian Arthur** (Head of Philanthropy Services, Sanne Group)

**Alistair Clark** (Corporate Director, Environment and Sustainability Department, European Bank for Reconstruction and Development)

**Alexandra Elson** (Policy Manager, Shell Plc)



**Chris Fitzpatrick** (Director, Elements of Sherwood Ltd; Non-Executive Director, UKTI)

**Neil Holt** (Director, Ethics and Business Conduct, CH2M HILL Group)

**John Newgas** (Consultant, Sagwen Computer Consultancy)

**Anna Soulsby** (Associate Professor of Organisation Behaviour, Nottingham University Business School)

The Council met four times during 2012-13. Separately, it met with the Minister for Trade and Investment.

At each of its meetings ECGD's Chief Executive informed the Council of ECGD's business activities, new initiatives and other developments that were relevant to its remit and which informed the issues upon which it could provide advice to Ministers. The Council also met interested parties to understand their issues of interest in ECGD to help shape the Council's agenda.

During 2012, the OECD revised its *Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence* (the Common Approaches) which informs the way in which member Export Credit Agencies (ECAs) should address the environmental, social and human rights (ESHR) impacts of the projects they are asked to support. This was the culmination of work by the OECD over a number of years and followed the revisions made by the International Finance Corporation (IFC) of the World Bank Group to its Performance Standards which are used by ECAs to benchmark the ESHR impacts of projects. The Council monitored the work carried out by ECGD to help shape the new OECD Common Approaches and also its contribution to the IFC's review of its Performance Standards.

The revised OECD Common Approaches includes a commitment to give further consideration to the issue of human rights, particularly to establish how project-related human rights impacts should be addressed in relation to the provision of officially supported export credits. This will take into account the UN Guiding Principles on Business and Human Rights (the 'Ruggie framework') which specifically identifies ECAs as agents that can affect the business and human rights agenda. The OECD has mandated the Environmental Practitioners Group to consider this commitment and report back to its Export Credits Group within two years. The Council has been briefed on the work of this Group in which ECGD is playing a leading role.

During the year the Council met Amnesty International. Amnesty has a particular interest in the application by ECGD of human rights issues in its policy-making and

also its support for export transactions. It has called for ECGD to apply the OECD Common Approaches to all the business put to it for support, not solely for projects that fall within the ambit of the OECD Common Approaches.

The All Party Parliamentary Group (APPG) on International Corporate Responsibility conducted an inquiry into ECGD. I gave oral evidence on the role and work of the Advisory Council. The Group's report made a number of recommendations including that ECGD should extend the application of the OECD Common Approaches to all its business, introduce a mediation mechanism and make public its ESHR reviews. The Council advised on each of these recommendations. The Council advised that consideration should be given by ECGD to publishing a document to communicate the process for screening, reviewing and assessing projects for their potential ESHR impacts as there appears to be some misunderstanding about the application of the OECD Common Approaches to projects that ECAs are asked to support.

The Council's advice in relation to extending the scope of the OECD Common Approaches was to fulfil the remit from the Government for the Council to consider the outcome of the change to ECGD's policy, adopted in April 2010 following a Public Consultation, to follow international agreements related to ethical policies which apply to the operation of ECAs and not additionally create, and separately operate, its own policies which go beyond those agreements. The change of policy meant that certain export transactions, normally supported under ECGD's Export Insurance Policy, and projects under £10 million not near a sensitive site, for which ECGD support was sought, were no longer normally reviewed by ECGD for their ESHR impacts. The Council considered the outturn of the change of policy in 2011-12 and advised that it did not consider a review of the change of policy was warranted, but requested to be consulted again in 2012-13 so that it could assess the impact further, taking account of the widening of ECGD's business domain and demand for support under the newly introduced Short-Term products. The Council remained of the view that no change of policy was warranted. The revised OECD Common Approaches now specifically excludes from its scope some of the new Short-Term products of the type that ECGD has introduced.

The Council routinely examines new projects that ECGD has supported to understand how its ethical policies have been applied. In 2011-12, it reviewed the support it had provided for a line of credit of up to US\$1 billion for the development by Petrobras of offshore oil and gas fields off the coast of Brazil. It was classified 'Category A' by ECGD, i.e. as a project having potentially high ESHR impacts, as defined by the OECD Common Approaches. The Council reviewed the process by which the project had been screened, classified and assessed by ECGD's Environmental Advisory Unit (EAU) and the conclusion that the project would meet international ESHR standards. The Council was satisfied that ECGD had properly categorised the project and benchmarked it against the IFC Performance Standards. ECGD's review of the project, which has been made public, demonstrated the

comprehensiveness of its ESHR due diligence. The Council had confidence in ECGD's ESHR due diligence practices.

The Council also considered the arrangements ECGD puts in place to monitor projects it has supported during their construction and operating phases where ECGD has extant liability. The purpose of this monitoring is to track performance against international standards, identify any areas where performance has been deficient and ensure remedial action is taken where necessary. ECGD normally requires post-issue monitoring arrangements to be put in place for Category A prospects and sometimes for Category B, i.e. projects having medium potential ESHR impacts, depending upon the nature of the project. Having examined the arrangements, the Council was satisfied that ECGD is tracking performance of projects against relevant international standards.

The Council carried out a review of the application of ECGD's anti-bribery and corruption policies taking account of ECGD's obligations under the *OECD Recommendation on Bribery and Officially Supported Export Credits*. The Council will be monitoring how ECGD's anti-bribery due diligence practices operate in relation to business conducted under the Short-Term products given the materially shorter commercial deadlines to decide support for this class of exports as compared to project exports.

The Council reviewed ECGD's handling of information requests made under the Freedom of Information Act and the Environmental Information Regulations. The Council noted that in 2011-12 ECGD had received its highest number of information requests since the FOI regulations came fully into force in 2005. There was a significant number of requests seeking information about sovereign debts owed to ECGD. The Council welcomed the publication by ECGD of sovereign debt data in respect of those countries which defaulted on their debt obligations because of balance of payments difficulties, including those guaranteed and insured by ECGD, which resulted in them being rescheduled and where repayments to ECGD are still outstanding. While recognising the complexity of some of the information requests made, and the need to consult external parties, the Council encouraged ECGD to improve its timeliness in handling requests.

The Council reviewed the activities of the Environmental Analysis Unit (EAU) during 2012. The Council noted that the workload of the EAU had continued to increase as a result of rising demand for ECGD support and also the increase in the number of projects that are now subject to monitoring following the provision of support. The EAU has arrangements in place to obtain advice where specialist ESHR knowledge is required and to provide additional resource to manage peaks in workload. These arrangements had worked effectively.

I thank ECGD for the support it provides to the work of the Council and its willingness to supply the Council with all the information it requires to assist its deliberations. The Council is also grateful for the information provided to it by interested parties.

A handwritten signature in black ink, appearing to read 'Andrew Wiseman', with a long, sweeping horizontal line extending to the right.

**Andrew Wiseman**  
**Chair**

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## ANNEX F: Review against principles of good governance

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*Recommendations are in italics*

ACCOUNTABILITY	
PRINCIPLE: The Minister is ultimately responsible to Parliament and the public for the overall performance and continued existence of the advisory NDPB	
The Minister and sponsoring Department should exercise appropriate scrutiny and oversight of the advisory NDPB, including any monies spent for, and on behalf of, the body.	The EGAC meets with the Minister annually. The UKEF Chief Executive's Office provides oversight of the EGAC's operations and costs. It monitors the EGAC's expenses within a separate budget.
Appointments should be in line with any statutory regulations and with the Code of Practice issued by the Commissioner for Public Appointments.	Members are appointed in line with the Code of Practice.
The Minister should normally appoint the Chair and Board Members, and be able to remove individuals whose performance or conduct is unsatisfactory.	The Chair and Members are appointed by the Minister.
The Minister should meet the Chair on a regular basis.	The Minister meets the EGAC annually.
Parliament and the public should be informed of the NDPB's activities in an annual report proportionate to its role.	<p>The EGAC produce an Annual report. It is laid before Parliament (within the UKEF Annual Report) and published on the EGAC's website.</p> <p>The content of the report aligns with the Cabinet Office requirement but, <i>in future, should also additionally include information on:</i></p>

	<ul style="list-style-type: none"> <li>• <i>the history of the EGAC;</i></li> <li>• <i>how the EGAC's work supports the governments objectives and policies;</i></li> <li>• <i>members remuneration; and</i></li> <li>• <i>a contact point for further information.</i></li> </ul>
The NDPB must be compliant with Data Protection legislation.	The EGAC complies with Data Protection Legislation.
The public body should be subject to the Public Records Acts 1958 and 1967.	The EGAC records are held by UKEF on its filing systems. UKEF is subject to the Public Records Acts.

<b>ROLES &amp; RESPONSIBILITIES</b>	
SPONSORING DEPARTMENT	
<b>PRINCIPLE: The Department's Board should ensure there are appropriate governance arrangements in place for the NDPB and that there is a team in the sponsor Department that provides appropriate oversight and scrutiny of, and support and assistance to, the NDPB.</b>	
The agenda of the sponsoring Department should include scrutiny of the NDPBs performance.	The UKEF Accounting Officer attends each EGAC meeting. An oral report of the meeting is provided to UKEF's Management Board to facilitate oversight of EGAC's performance.
The Terms of Reference of the NDPB should be accessible and understood by the sponsoring Department, Chair and Members of the NDPB. They should be regularly reviewed and updated.	The EGAC's Terms of Reference exist and are published on its website. UKEF and EGAC members understand the role and remit of the EGAC. <i>In future, the Terms of Reference should be subject to a formal annual review.</i>

There should be a dedicated sponsoring team in the Department with a clearly defined role.	The Chief Executive's Office of UKEF is the sponsoring team with a clear role to support the work of the EGAC.
There should be regular and on-going dialogue between the Department and the NDPB.	There is regular dialogue between the EGAC Chair and UKEF.
There should be an annual evaluation of the performance of the NDPB, including the chair and individual members.	As part of the re-appointment process, the EGAC Chairman evaluates the performance of members (facilitated by UKEF Human Resources) that addresses contribution and effectiveness. <i>In future, there should be an annual evaluation of the performance of the EGAC and of the Chairman by UKEF's Management Board. There should be an annual evaluation of the performance of individual members of the EGAC by the EGAC Chairman.</i>

CHAIR	
<b>PRINCIPLE: The Chair should be responsible for the leadership and overall effectiveness of the NDPB.</b>	
The NDPB should be led by a Non-Executive Chair.	The EGAC Chairman is non-executive.
There should be a formal, rigorous and transparent process for the appointment of the Chair, compliant with the CPA code of practice. The Chair should have a role in the appointment of NEBMs.	The Chair is appointed in line with the Code of Practice of the Commissioner for Public Appointments. The Chair is involved in the appointment of EGAC members.
The duties, role and responsibilities, terms of office and remuneration of the Chair should be formally defined in line with Cabinet Office guidance and any statutory requirements.	These are defined in an appointment information pack and letter of appointment.

<p>The Responsibilities of the Chair will normally include:</p> <ol style="list-style-type: none"> <li>1. Representing the NDPB in any discussions with Ministers</li> <li>2. Advising the Department and Ministers about appointments and performance</li> <li>3. Ensuring Members know and understand their roles and responsibilities, including ensuring new Members undergo a proper induction and undertaking annual performance assessments</li> <li>4. Ensuring NDPB decisions take proper account of guidance provided by Department or Ministers</li> <li>5. Ensuring the NDPB carries out its business efficiently and effectively</li> <li>6. Representing the views of the NDPB to the public when required</li> </ol>	<p>The Chair leads discussions with the Minister.</p> <p>The EGAC Chair provides feedback on appointment renewal and length of appointment.</p> <p>There is an established induction plan for new Members in which the Chair participates.</p> <p>The EGAC provides advice in line with its Terms of Reference.</p> <p>The EGAC reviews performance against a scorecard at each meeting.</p> <p>The Chair of EGAC leads meetings with business organisations and NGOs. He also represents the EGAC in public.</p>
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<b>OTHER MEMBERS</b>	
<b>PRINCIPLE: The Members should provide independent, expert advice.</b>	
<p>There should be a formal, rigorous and transparent process for Member appointment which is compliant with CPA code of practice.</p>	<p>The Members are appointed in line with the Code of Practice of the Commissioner for Public Appointments.</p>



Members should be independent of the Department and of any vested interest.	EGAC Members are independent of UKEF. Their interests, including any significant shareholdings, are listed on the EGAC website.
Members should be drawn from a wide range of diverse backgrounds, but should have knowledge and expertise in the field within which the body has been set up to advise Ministers. NDPBs should have balance of skills, experience, independence and knowledge.	Members are appointed who have the knowledge, skill and experience to fulfil the EGAC's Terms of Reference drawn from a wide variety of background to achieve the right balance of expertise to give advice.
The duties, role and responsibilities, terms of office and remuneration should be defined in writing. Terms and conditions should be in line with Cabinet Office guidance and statutory requirements.	These are defined in an appointment letter and information pack in line with Cabinet Office guidance.
All members must allocate sufficient time to the NDPB to discharge their responsibilities effectively.	Attendance is recorded in the minutes of the meeting.
There should be an induction process for new members led by the chair, who should regularly review training and development needs of members.	There is an established induction plan for all new Members in which the Chair participates.

All Members should ensure that high standards of corporate governance are observed at all times, This should include ensuring that the advisory NDPB operates in an open, accountable and responsive way.	The minutes of EGAC meetings are published. The EGAC publishes an Annual Report.
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<b>COMMUNICATIONS</b>	
<b>PRINCIPLE: The advisory NDPBs should be open, transparent, accountable and responsive</b>	
The NDPB should operate in line with the requirements and spirit of the 2000 Fol Act.	The EGAC operates in line with freedom of information legislation.
The NDPB should make an explicit commitment to openness in all its activities. It should establish clear and effective channels of communication with key stakeholders. It should engage and consult with the public on issues of public interest of concern e.g. through open meetings, or annual public meetings. The results of reviews/enquiries should be published.	The EGAC Terms of Reference commit to publishing the minutes of each meeting and an annual report of its activities. It also states that EGAC members are expected to follow the seven principles of public life as set out by the Committee on Standards in Public Life. The EGAC declares its members' directorships and executive appointments held, and any substantial shareholdings. The EGAC meets with interested parties to inform its work and fulfil its remit. It does not meet with members of the general public.
NDPB should proactively publish agenda and minutes of meetings.	The minutes of EGAC meetings are published.
There should be robust and effective systems to ensure the NDPB is not, and is not perceived to be, engaged in political lobbying, including restrictions on members attending Party Conferences in a professional capacity.	On appointment, Members are given guidance on political lobbying and are reminded annually of the restrictions on members attending Party Conferences in a professional capacity.

<b>CONDUCT &amp; BEHAVIOUR</b>	
<b>PRINCIPLE: Members should work to the highest personal and professional standards. They should promote the values of the NDPB and of good governance through their conduct and behaviour.</b>	
A code of conduct must be in place setting out the standards of personal and professional behaviour expected of members as per the Cabinet Office Code. Members should be aware of the Code. The Code should be part of members' terms and conditions.	A copy of the Code is provided to Members on appointment/reappointment.
There should be clear rules and procedures in place for managing conflicts of interest, including a regularly updated publicly available register of members' interests.	Members are prompted to update the register of interests prior to every meeting.
There should be clear, published rules governing the claiming of expenses, and effective systems in place to ensure compliance.	Members' appointment letter states that member can reclaim travel expenses for attending meetings. These are managed through UKEF expenses rules and procedures.
There should be clear rules and guidelines in place on members' political activity, and effective systems in place to ensure compliance.	Members' political activities do not preclude their involvement with the EGAC but must be declared to avoid any conflicts of interest.
Effective and enforced rules in place re members' acceptance of appointments or employment after resignation / retirement from the NDPB.	Not relevant to the EGAC.