



GOVERNMENT RESPONSE ON UK EXPORT FINANCE'S ANTI-BRIBERY AND CORRUPTION POLICY

INTRODUCTION

1. This is the government's response to the public consultation launched by UK Export Finance (UKEF)¹ on 20 March 2015 which sought the views of interested parties on proposals regarding:
 - a. simplification of the anti-bribery and corruption declarations and undertakings ("D&Us") which currently appear in UKEF's application forms and product documentation;
 - b. adaptation of those provisions and the anti-bribery and corruption procedures that UKEF applies, in relation to any new products which are not linked to a specific export contract; and
 - c. UKEF's future approach to holding public consultations with interested parties on changes to its anti-bribery and corruption provisions and procedures.
2. The consultation document outlined the background to UKEF's current anti-bribery and corruption policy, principles and practices and the rationale behind the proposals.
3. Responses were invited from interested parties by 15 May 2015. Ten responses were received, including from financial institutions, consultancies, Non-Governmental Organisations (NGOs) and one law firm.

¹ UK Export Finance is the operating name of the Export Credits Guarantee Department.

4. The respondents are listed at Annex A and their submissions are reproduced at Annex B. The government is grateful for these contributions which have been taken into account as appropriate in formulating this response.
5. A number of the submissions expressed concerns about wider issues relating to UKEF's approach to supporting exports. These are outside the scope of the public consultation and are disregarded for the purposes of making the government's response.

Simplification of the "D&Us"

6. There was widespread support for the proposal to simplify the existing D&Us, in order to make them easier to understand by those required to make them.
7. A number of respondents made specific suggestions about the proposed wording of the D&Us in the EXIP Proposal Form and Policy Document, or sought further clarification on related issues. These are addressed below.

SPECIFIC SUGGESTIONS ON WORDING

EXIP Proposal Form: Covering page

8. The British Exporters' Association (BExA) suggested that the anti-corruption warning on the covering page of the EXIP Proposal Form should refer to the Prevention of Corruption Acts as well as to the Bribery Act and the Money Laundering Regulations.
9. The purpose of the warning is to draw the attention of applicants to the current laws relating to bribery, corruption and money laundering. The offences in the Prevention of Corruption Acts were replaced by those in the Bribery Act in 2010. Accordingly, although it is possible that prosecution could occur under the Prevention of Corruption Acts, it is unlikely in relation to a new export contract which forms the subject of an application for UKEF support. In the circumstances, the government will not adopt this suggestion.

EXIP Proposal Form: Section 11

Definition of “Agent”

10. BExA suggested amending the definition of “Agent” in section 11 of the EXIP Proposal Form, to clarify that an Agent is a person instructed to “assist, guide, or support sales and marketing activity”. The government believes this wording would be duplicative, given that the question is already directed at Agents “...involved in the process of tendering for, or seeking the award of, the export contract...”. It is persons with that involvement which the question is intended to capture, irrespective of whether they are ostensibly employed in a marketing or non-marketing role.
11. The government will not take up this suggestion.

Foreign Public Officials

12. BExA suggested widening the questions in section 11 of the EXIP Proposal Form that refer to bribery of foreign public officials so they refer to bribery generally.
13. The current wording follows the OECD Recommendation on Bribery and Officially Supported Export Credits (the OECD Bribery Recommendation) that UKEF is committed to follow and which specifically refers to bribery of foreign public officials.
14. In order to ensure there is no confusion over whether UKEF’s interest is exclusively in the bribery of foreign public officials, the questions will be amended to make clear they include such bribery, but do not exclude other forms of bribery.

Deferred Prosecution Agreements (DPAs) and Civil Forfeiture Orders (CFOs)

15. Sullivan and Worcester questioned how DPAs and CFOs would be addressed and whether any D&Us in relation to these would be required.
16. The government agrees that UKEF should be made aware of DPAs and CFOs being made against applicants or anyone acting on their behalf. The final question in section 11 of the EXIP Proposal Form will be amended to include CFOs and DPAs within its scope.

17. **EXIP Proposal Form: Section 14**
18. Debarment lists
19. Sullivan and Worcester further suggested that the D&Us should more closely follow the requirements of the OECD Bribery Recommendation, in particular by referring to an applicant's (and related parties') appearance on "publically available debarment lists" of the international financial institutions named in that Recommendation rather than, as at present, appearance on any list of contractors or individuals who are "ineligible to tender for, or participate in, projects funded by any multi-lateral agency". They considered such a change would clarify the due diligence which applicants are expected to undertake in this regard.
20. Although the phrase "ineligible to tender" is that which appears on the blacklist page of the World Bank website, "debarment" is the expression used in the OECD Bribery Recommendation.
21. The government accepts the suggestion and the declaration in paragraph 14(3)(a) of the EXIP Proposal Form will be expanded so as to include an express reference to debarment lists.

Qualifications

22. BExA suggested the inclusion of certain qualifications to the D&Us concerning convictions for, or admissions of, corrupt activity in section 14 of the EXIP Proposal Form. These qualifications are as follows:
 - a) the declaration in paragraph 14(3)(c)(i) regarding whether an applicant or any of its directors has been found guilty by any court of offences, other than those specified under relevant UK legislation, should be restricted to convictions for "any equivalent offence...under the law of any competent jurisdiction outside the UK";
 - b) the declaration in paragraph 14(3)(c)(ii) regarding the applicant or its directors having been found "by any court to have engaged in any bribery or corrupt activity" should be deleted;

- c) the declaration in paragraph 14(3)(c)(iii) regarding admissions of engaging in corrupt activity should be limited to admissions made “formally” and should refer only to admissions, rather than to having engaged in bribery or corrupt activity; and
 - d) the declaration in paragraph 14(3)(d)(i) regarding the applicant having “engaged in, authorised or consented to any bribery or corrupt activity” should be limited to bribery or corrupt activity “which would amount to an offence under the Bribery Act”
23. The government is of the view that where export contract insurance cover is involved UKEF should be told of any admission or judicial finding of bribery or corrupt activity by the applicant or its directors (and that applicants should also make enquiries as to the existence of any such admission or judicial finding in relation to other relevant parties). When disclosing such information, applicants are free to draw UKEF’s attention to any facts which they consider relevant so all the information can be taken into account by UKEF in its due diligence and decision-making.
24. In addition, the exclusion of admissions which are not “formal” lacks clarity as it begs the question of when an admission should be regarded as being formal. Moreover, the OECD Bribery Recommendation does not make any such distinction regarding formal or informal admissions.
25. The government does not accept the suggested qualifications.

Consortium Parties

26. BExA suggested removing all “Consortium Party” references in the declarations in section 14 of the EXIP Proposal Form because it contains no definition of that term.
27. This is not the case: the definition of that term appears in a footnote to section 14 of the EXIP Proposal Form and cross-refers to section 8.
28. In any event, the government considers it is appropriate that, where UKEF is providing support in relation to specific export contracts, it should be made aware

if the applicant is exporting as part of a consortium. It also considers that, in these circumstances, it is appropriate to require the applicant to make reasonable enquiries regarding its consortium partners to be satisfied they have not engaged in corrupt activities in relation to an export contract for which UKEF support is sought and to make declarations on the basis of those enquiries.

29. For the above reasons, the government does not accept this suggestion and therefore the references to consortium parties will be retained.

Failure to report corrupt activity.

30. BExA suggested limiting the requirement in paragraph 14(3)(d)(ii) of the EXIP Proposal Form so that insured exporters would have to report bribery or corrupt activity to appropriate authorities only where they are legally obliged to do so.

31. As stated in line 34 of the Table of Destinations included in the consultation documents, the purpose of paragraph 14(3)(d)(ii) of the EXIP Proposal Form is to capture, in plainer English, the concept of acquiescence in corrupt activity which appears in UKEF's current application forms. Moreover, the new wording, in effect, requires applicants who have become aware of corrupt activity to take demonstrable and verifiable action (for example, in the form of reporting that activity to the appropriate authorities) so as to put beyond doubt the question whether or not they have acquiesced in that activity. Where an applicant has dealt with an instance of corrupt activity on the part of an employee (for example, by internal disciplinary action rather than reporting the offence), it is open to the applicant to explain to UKEF why it cannot make the declaration in paragraph 14(3)(d)(ii).

32. The government sees no reason to weaken the proposed wording and, therefore, does not accept this suggestion.

Inconsistent application of references to the Bribery Act

33. Corruption Watch suggested there is an inconsistency in paragraph (14)(3)(e)(ii) of the EXIP Proposal Form, inasmuch as it would require exporters to make enquiries as to whether Group Companies, Consortium Parties or Agents have

been convicted under section 7 of the Bribery Act, but not of any other corruption offences under UK law.

34. Convictions of, and admissions by, these parties in respect of other offences are covered in the cross reference to paragraph 14(3)(c) which appears in paragraph 14(3)(e)(i) of the EXIP Proposal Form. The government does not therefore accept this view.

EXIP Policy Document Clause 12

35. The submissions from BExA, Sullivan & Worcester and Standard Chartered suggested qualifications to the wording of the proposed (revised) clause 12 of the EXIP Policy Document as set out below.

Definition of Corrupt Activity

36. The proposed revised wording of the definition of Corrupt Activity referred to "any offence relating to bribery or corruption under the law of any jurisdiction outside the United Kingdom".
37. BExA suggested the reference in that phrase to "any offence" should be qualified so as to refer to any offence equivalent to an offence under the Bribery Act 2010. Sullivan & Worcester and Standard Chartered went further and suggested UKEF should reconsider whether it is necessary to make any reference at all to any offence outside the United Kingdom.
38. The expression "Corrupt Activity" appears in:
 - a) clause 12.2, in which the insured exporter makes declarations concerning the existence of corrupt activity in relation to the export contract being insured;
 - b) clause 12.3, in which the insured exporter undertakes to take certain steps to prevent corrupt activity in relation to that export contract in the future; and
 - c) clause 12.4, which provides for the cancellation of the insurance where any such corrupt activity has occurred.

39. These clauses are consistent with UKEF's policy objective of avoiding supporting export contracts tainted by corruption. It would be inconsistent with that objective to ignore offences involving corruption committed in jurisdictions outside the United Kingdom or which did not have an equivalent in the Bribery Act.
40. Moreover, corrupt activity in relation to an export contract might not be caught by the Bribery Act, for example, if committed outside the UK by a non-UK national, such as an agent or joint venture partner (although, the UK exporter may have committed a Bribery Act offence if it permits, or is complicit in, that activity).
41. Accordingly, the government will not adopt these suggestions.
42. Also, in relation to the definition of Corrupt Activity, BExA suggested that the words "the law of any jurisdiction" should be amended to read "the law of any competent jurisdiction". Similarly, Standard Chartered proposed that the reference should be to any "relevant" or "appropriate" jurisdiction (being a jurisdiction "in line with the underlying transaction").
43. The proposed definition of "Corrupt Activity" used in Clauses 12.2, 12.3 and 12.4 of the EXIP Policy Document is intended to capture corrupt activity wherever it may occur. However, in order to be captured by those clauses, any corrupt activity must relate to the insured export contract or a related agreement.
44. Additionally, in order for any such activity to constitute an offence relating to bribery or corruption under the law of a jurisdiction outside the UK, that activity would have to be committed by such person and in such location as would engage the law of that jurisdiction. The government is therefore of the view that it is unnecessary further to qualify the definition of "Corrupt Activity" by requiring it to have occurred in a "relevant", or "appropriate" jurisdiction.
45. The government is also of the view that the above reasoning equally applies to inclusion of a reference to "competent jurisdiction" in the definition of "Corrupt Activity" for the purposes of the D&Us regarding past or future corrupt activity in relation to the insured export contract and related agreements.

46. The government accepts that a requirement for jurisdictional competence is appropriate before any judicial finding can lead to any cancellation of the policy for the purposes of clause 12.4 of the EXIP Policy Document. However, such a requirement is already present in the proposed wording .
47. BExA further proposed that the definition of “Corrupt Activity” should exclude corruption committed under duress. The government is of the view that the likelihood of an exporter being coerced into making a payment which is then found by a court to have been a corrupt payment is low. To that extent, the proposed exclusion is unnecessary.
48. In any event, the representations in clause 12.2 reflects the fact that UKEF is entering into the policy on the basis that no corrupt activity, including any under duress, has occurred in relation to the insured export contract. Likewise, the government is of the view that creating an exception for activity committed under duress would not be appropriate in the context of the undertakings in clause 12.3, relating as they do to the prevention and notification of corrupt activity.
49. A number of respondents questioned whether the definition of “Corrupt Activity” in the Clause 12.1 of the EXIP Proposal Form should, in addition to the Bribery Act 2010, refer to its predecessors, the Prevention of Corruption Acts, as paragraph 14(3)(c) of the EXIP Proposal Form refer to offences under both the Bribery Act 2010 and the Prevention of Corruption Acts.
50. Paragraph 14(3)(c) of the EXIP Proposal Form is intended to capture past corrupt activity on the part of relevant parties which has occurred the past five years. It is therefore very possible that such activity could have resulted in a prosecution under the Prevention of Corruption Acts. By contrast, the undertakings in clause 12.2 and 12.3 of the EXIP Policy Document are intended to capture corrupt activity in relation to the insured export contract which is much less likely to have occurred prior to the Bribery Act coming into force in 2010. However, to avoid that remote possibility, the government accepts that a reference to the Prevention of Corruption Acts in the definition of Corrupt Activity should be inserted in clause 12.1 of the EXIP Policy Document for the time being.

Monitoring compliance

51. Standard Chartered expressed concern over the provision in clause 12.3 of the EXIP Policy Document which requires the insured to ensure that it has required “every person...acting on its behalf” not to engage in Corrupt Activity and to “monitor compliance with that requirement”. The concern centered on the exact requirements that would be imposed in terms of “monitoring”.
52. The precise steps necessary for monitoring will vary from case to case, depending on the nature of the organisations involved and the contractual arrangements. The wording cannot cater for every possible contracting scenario. Nor does the government consider that it is necessary for it to do so as the insured is best placed to determine how effective monitoring can best be achieved. The government does not accept the need to move away from the long-established current wording in the EXIP Policy Document. However guidance can be obtained from the Ministry of Justice to assist firms of all sizes in their efforts to manage the risks posed by bribery and corruption: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf.
53. In this regard, Sullivan and Worcester further suggested that UKEF should consider using the terminology of the Bribery Act, in preference to the current wording. The government considers that, notwithstanding the differences in terminology, the current wording, which has been in place for a significant time, achieves the same effect and can easily be understood. The government does not therefore accept this suggestion.

Duress

54. BExA suggested that in clause 12.4, the exception for admissions made under duress should be extended to corrupt activity engaged in under duress because “whilst the Bribery Act 2010 does not permit facilitation payments, it is necessary to ensure that facilitation payments can be made where to do otherwise would place an individual at risk/danger.”

55. As mentioned earlier, the government is of the view that extortion of a payment by an official would not constitute bribery. In any event, as the relevant part of clause 12.4 relates to judicial findings, the exporter would be able to raise allegations of duress at trial. Moreover, when enacting the Bribery Act, Parliament did not include an exception for “facilitation payments” and, therefore, the government does not consider it appropriate to create one for the purposes of UKEF’s anti-corruption policy. Accordingly, the government will not take up the suggested amendment to clause 12.4.

FUTURE CHANGES AS A RESULT OF THE INTRODUCTION OF NEW PRODUCTS

56. As a result of the changes to its enabling statute, the Export and Investment Guarantees Act 1991, which were recently enacted in the Small Business Enterprise and Employment Act 2015, UKEF now has the power, among other things, to guarantee general working capital facilities provided to UK exporters, and also to UK suppliers to UK exporters that are not linked to a particular export (or supply) contract. In this response, these types of facilities are referred to as “general working capital facilities”.

57. UKEF proposed that in the application forms for guarantees for general working capital facilities provided to exporters it would not, as a matter of course, make enquiries regarding agents and consortium parties, as it does in respect of requests to support specific export contracts. A number of respondents raised concerns about this proposal.

58. In particular, the Campaign Against Arms Trade (CAAT), the Corner House (CH) and the Jubilee Debt Campaign (JDC), in their response:

- a. expressed concern that UKEF was “*contemplating making general financial support available on an open-ended basis without requiring declarations about the role of agents and joint ventures in the specific export contracts that are (over time) supported*” as this could lead to “*a greater vulnerability to bribery*”, and

- b. suggested that, *“if an open-ended approach is to be adopted it should be conditional on the companies involved having anti-bribery procedures in place that would comply with UK anti-bribery laws”*.

59. In addition, Corruption Watch expressed concern relating to:

- a. the proposals to move to declarations that omit reference to agents, consortium partners and other group companies; and
- b. UKEF’s ability to abide by the OECD Bribery Recommendation *“if it drops the requirement to make declarations about agents on transactions that it covers”*.

60. When providing support for general working capital facilities, there will be no direct connection between that support and any particular contract, whether existing or future and whether contemplated or not at the time support is given. The support that would be given is in respect of the general business of a UK exporter (or UK supplier to a UK exporter) who may, at any one time, be engaged in numerous exporting (or supply) activities.

61. The government therefore considers a differentiated approach to deterring corruption should be taken that is dependent upon the type of applicant (for example, UK exporter or UK supplier to a UK exporter) and the nature of the facility (contract-specific or general). Subject to the facts and circumstances of any particular case, the general approach the government will take is as follows:

- a. UKEF will continue to require all applicants for contract-specific support to make a declaration that they have not, and an undertaking that they will not, engage in, authorise or consent to any bribery or corrupt activity in relation to the contract being supported. Where UKEF’s support relates to a general facility, this declaration and this undertaking will be sought in relation to current and future export/supply contracts;
- b. UKEF will, in keeping with its current requirements, require all applicants to state whether they have in place a code of conduct and written procedures of the type contemplated by section 7(2) of the Bribery Act, which are

designed to discourage and prevent persons associated with the applicant from undertaking corrupt activity. If so, UKEF will obtain a copy. While there is no legal obligation for a firm to maintain a written code and procedures, where no such code and procedures are in place UKEF will continue to point the applicant towards the guidance issued by the Ministry of Justice;

- c. as proposed in the consultation document, for applications for general working capital facilities, UKEF will not, as a matter of course, make enquiries about individual agents used by UK exporters that apply for support. This is because, as explained above, there will be no direct connection between UKEF support and any specific contracts. Further, this change will allow us, in the context of applications from firms with numerous current and prospective export/supply activities, to meet our goal of providing a timely and high quality service to our customers. The same will hold true for consortium partners, and so UKEF will also not make enquiries about these;
- d. however, in order to address the concerns expressed in response to the consultation, UKEF will, where it is providing general working capital facilities to a UK exporter, require the applicant to make declarations that, after making reasonable enquiries, it has no reason to believe that any group company, consortium partner or agent (or any of their directors) involved in any of the exporter's current or prospective export contracts is on a debarment list maintained by the major International Financial Institutions and/or has, in the previous 5 years:
 - (i) been found guilty of specified offences relating to bribery or corruption;
 - (ii) admitted to committing any such offence or engaging in bribery or corrupt activity; or
 - (iii) engaged in bribery or corrupt activity in relation to the exporter's current and prospective export contracts or related agreements;

- e. where support is requested by a UK supplier to a UK exporter (whether under a contract-specific or general working capital facility), no such declaration will be sought in respect of consortium partners or agents, as the government considers that such relationships are likely to be rarer in relation to domestic supply contracts and, furthermore, as stated in the Ministry of Justice's guidance on the Bribery Act 2010, the risks of bribery on their behalf by associated persons are lower than those that operate in foreign markets; and
- f. as proposed in the consultation document, in order to ensure that UKEF's support for general working capital facilities makes appropriate provision in the event of any bribery or corrupt activity, UKEF will require the lending bank to insert into its facility agreement with the relevant applicant a right to terminate the facility (and demand repayment) if any of the applicant's anti-bribery and corruption declarations prove to be untrue when made. A similar right will be required if the ongoing undertaking not to engage in, consent to, or authorise corrupt activity in respect of current or future export contracts is breached.

62. The OECD Bribery Recommendation applies to international business transactions benefiting from official export credit support. The Government is satisfied the above proposals are in line with the OECD Bribery Recommendation to the extent applicable.

CONSULTATION ON ANTI-BRIBERY AND CORRUPTION MATTERS IN THE FUTURE

63. The consultation proposed that, in future, UKEF would, irrespective of past practice, determine whether, to what extent and how, consultation with interested parties should take place on any changes to UKEF's anti-bribery and corruption provisions and procedures in accordance with government guidance published from time to time.
64. BExA and Sovereign Star supported the proposal. Sovereign Star pointed out that there may be occasions where the change has to be made to suit the

circumstances and there is no choice in the matter. In such instances, a consultation would be of no utility. Sovereign Star further pointed out that consultations can be costly and burdensome.

65. By contrast, Corruption Watch stated that “UKEF should not make any changes to its anti-bribery and corruption provisions without some form of consultation beyond its client base, including of interested parties such as anti-corruption organisations”. It added that “UKEF should be improving and extending its level of consultation on both a formal and informal basis when it comes to anti-bribery and corruption”
66. Likewise, Transparency International stated “consultation with experts in civil society and beyond should be an integral part of your future processes, as a government agency and in the spirit of the government's consultation guidelines and Open Government Partnership” CAAT, CH and JDC also felt that such consultations were “essential”
67. Both Corruption Watch and Transparency International cited the 2013 Cabinet Office Consultation Principles in support of their arguments.
68. Those Consultation Principles did not require that each and every proposal or decision must be consulted on. On the contrary, they stated that “The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposal or decision being taken” and that “There may be circumstances where formal consultation is not appropriate”. The government has subsequently published a revised set of Consultation Principles (<https://www.gov.uk/government/publications/consultation-principles-guidance>), that are more concise, and will inform the way that departments consult in future.
69. The government has concluded that UKEF should apply the Cabinet Office Consultation Principles and consult on any future changes to its anti-corruption provisions when, and to the extent, appropriate. Thus, what has been done in the past is not to be taken as establishing any expectation as to future practice. Future practice will involve, in relation to any future changes, case-by-case consideration pursuant to the Cabinet Office Consultation Principles of whether and, if so, what form of, consultation should be undertaken and with whom. To

the extent that any future proposed changes to UKEF's anti-corruption provisions were of a nature that meant that consultation should take place under the Consultation Principles, then UKEF would consult with interested parties accordingly.

CONCLUSION

70. Having carefully considered the responses, the government intends, subject to the changes mentioned above, to implement the proposals made in the consultation document.

ANNEX A: LIST OF RESPONDENTS

Aon Trade Credit

British Exporters Association (BExA)

Campaign Against Arms Trade, The Corner House, Jubilee Debt Campaign (joint response)

Corruption Watch

Invest Northern Ireland

Project Finance & Development Services

Sovereign Star

Standard Chartered

Sullivan & Worcester

Transparency International UK

ANNEX B: SUBMISSIONS FROM RESPONDENTS

Aon Trade Credit
8 Devonshire Square
London EC2M 4PL

15 May 2015

By email to cxo@ukef.gsi.gov.uk

UK Export Finance (UKEF)

Consultation relating to UKEF's anti-bribery and corruption policy

<https://www.gov.uk/government/consultations/uk-export-finances-anti-bribery-and-corruption-policy>

It is encouraging to see developments continue at UKEF. Its insurance protection for exporters and Export Finance Advisors combine to provide hands-on support to companies wishing to develop their export potential. UKEF has a very important role in supporting SMEs which, especially at the micro end, are rarely remunerative for commercial financial services companies, because of the set-up and facility issue costs plus 'Know your customer (KYC)'.

The UK's strong 2010 Bribery Law surely enables much simplification of the undertakings in UKEF documentation. From a broking perspective, we are aware that each rule set that a small company meets has the effect of slowing the transaction. Our recommendation, therefore, is that where the law leads, it is best to encourage greater understanding of the law, and not try to duplicate.

Our observations:

- Clear documentation (including wordings and forms) avoids confusion and speeds the process: we have a duty in the financial services community to assist companies, not leave them bogged down with superfluous detail. Principles of the Plain English Campaign are adopted widely in insurance, giving wordings and forms greater impact because of their clarity.
- Financial Conduct Authority / Prudential Regulation Authority regulation are necessary for UK businesses providing insurance and insurance services, and are governed by the Financial Services Act of 2012. The principles of such regulation include 'contract certainty' and 'treating customers fairly'. By applying such UK legal standards to its business, UKEF's focus would bring it in line with the UK financial services industry and align it better with the National Export Challenge.
- The UK's National Crime Agency or Serious Fraud Office should be the first port of call if an Insured become aware of a person engaging in Corrupt Activity (proposed EXIP 12.3.2)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415130/mark-up-of-clause-12-in-exip-policy-document.pdf

- The proposal form, and subsequent questioning by UKEF, should not lead respondents (Insureds, brokers) to break competition law (Competition Act 1998, Enterprise Act 2001), albeit unintentionally. UKEF could help this situation by making it clear that it does not require and must not be informed of the premium rate from commercial providers as well as the name of the provider(s) and capacity (Q7 'Other Insurance Arrangements' of the proposed proposal form)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415163/exip-proposal-form-new.pdf
- Future Changes (item 3.2 on page 4 of consultation): any 'event of default' by the exporter (2nd bullet point) will need to be clearly set out and independently verifiable – e.g. on the insolvency/administration of the exporter.
<https://www.gov.uk/government/consultations/uk-export-finances-anti-bribery-and-corruption-policy/full-details-of-the-consultation-relating-to-uk-export-finances-anti-bribery-and-corruption-policy>
- A minor point: it is not clear if 'Relevant Offence' (Article 12 of EXIP) will now be deleted.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415130/mark-up-of-clause-12-in-exip-policy-document.pdf

We trust that the wording will be tidied up without undue administration later in 2016 when the reference to declarations of activity during the last 5 years is no longer appropriate (proposed proposal form section 14). By then it will be more than 5 years from since the 2010 UK Bribery Act came into force).

And likewise, before the 2015 Insurance Act comes into force, that the necessary changes will be made to introduce, for example, proportionate responses including for breach of warranty.

Susan Ross
15 May 2015

CONSULTATION RELATING TO UK EXPORT FINANCE'S ANTI-BRIBERY AND CORRUPTION POLICY

The British Exporters Association Response

The British Exporters Association ('BExA') is a membership organisation representing some 90 corporates. Our membership is drawn from across the exporting community, including capital goods manufacturers and international traders (large corporates, MSBs, SMEs and micro exporters), and their bank, credit insurance and other service providers. BExA takes a particular interest in trade finance and export credit insurance, the remit and operation of UK Export Finance (UKEF) and supports the objectives of the 2011 National Export Challenge (NEC).

Consultation Proposals for change

Simple and clearer Anti Bribery and Corruption declarations and undertakings

1. BExA welcomes the principle of simplifying the wording regarding Anti Bribery and Corruption provisions and undertakings required of the exporter in UKEF's Application Forms and the Policy wording. BExA considers that the existing wordings are too complex, verbose and create unnecessary repetition of statements and undertakings between the Proposal Form and Policy wording.
2. BExA agrees that the introduction of clearer and less complex wording will enable all customers of UKEF to understand the representations and warranties that they are providing to UKEF and bring such undertakings in line with the UK Bribery Act 2010.
3. BExA agrees that, with the introduction of new products to UKEF's product range since 2010 and the consequent widening of UKEF's customer base, with a particular focus on SMEs and MSBs, which, in light of the passage into law of the Small Business, Enterprise and Employment Act, will only increase further, the time is right to introduce changes to UKEF's Anti-Bribery and Corruption wordings.
4. BExA would however suggest amendments to the proposed wording in the Proposal for an Export Insurance Policy and the proposed Clause 12 Anti-Corruption Provisions in the revised Export Insurance Policy wording. The objective of such changes is to provide consistency between the documents, tighten the provisions in line with the UK Bribery Act, introduce the concept of 'equivalent offences' in 'competent' jurisdictions outside of the UK and recognise the issue of 'duress'.
5. Revised Sections 11 and 14 to the Proposal Form for an Export Insurance Policy and revised Clause 12 Anti-Corruption provisions in the draft Export Insurance Policy are attached to this Response together with an explanatory Commentary on these changes.
6. The subject of this Consultation is Anti-Bribery and Corruption wordings, BExA has not commented on other aspects of the Application Form or the draft Policy wording.

Future changes

1. BExA believes that UKEF's Mission and Principles statement and associated Consultation Principles published by the Cabinet Office embody the guiding principles on the need or otherwise for UKEF to launch Consultations on all aspects of UKEF's operations. UKEF's Management Board together with the oversight in specific areas of the Export Guarantees Advisory Committee provides an appropriate level of governance and management of the Department's operations.
2. BExA therefore agrees that it should be UKEF's decision whether or not to consult on any future changes to UKEF's anti-bribery and corruption provisions and procedures.

Attachment A – Commentary on Changes to Proposal Form and EXIP Clause 12

Attachment B – Revised Section 11 of the Proposal Form

Attachment C – Revised Section 14 of the Proposal Form

Attachment D – Revised Clause 12 of the EXIP

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13th May 2015

Attachment A – BExA Commentary on Changes to Draft EXIP Proposal Form and Clause 12 of the Export Insurance Policy

For the sake of clarity, we have proposed changes directly on the new draft proposal form and wording.

The impact is to tighten the provisions of the Proposal form and bring the exporter's undertakings and declarations in line with the UK Bribery Act.

Export Insurance Policy Proposal Form

Section 11

- The draft wording is too broad and needs tightening to define the nature of the service therefore we have inserted detail on the nature of the service provided by an Agent
- Reference in the final 2 boxes to 'foreign public officials' should be deleted, to bring the wording in line with the provisions and scope of the Bribery Act 2010 – in effect this change broadens the exporter's undertaking

Section 14 - Declarations

- Sub section 3 (c): it is necessary to tighten the drafting to cover offences 'equivalent' to those covered by UK legislation and committed under a 'competent' legal jurisdiction. The exporter should be required to make declarations in respect of its legal obligations under the UK Bribery legislation and equivalent offences under recognised competent foreign legal jurisdictions. The notion of a competent jurisdiction is recognised at Clause 12 of the EXIP draft; these changes therefore bring the Proposal Form in line with the Policy document.

References to Consortium Party have been deleted because there is no definition of Consortium Party in the Proposal Form

Clause 12 of the Export Insurance Policy

Clause 12.1 – 'Corrupt Activity'

- The same amendments as those at Section 11 of the Proposal Form are needed to reference 'equivalent' offences and 'competent' jurisdiction
- Please incorporate an exclusion of offences that may be committed under duress. This is particularly important for the exporter because, whilst the Bribery Act 2010 does not permit facilitation payments, it is necessary to ensure that facilitation payments can be made where to do otherwise would place an individual at risk/danger i.e. in instances where the payment is being made under duress. The change at Clause 12.4 is needed to bring the draft in line with Clause 12.1.

ATTACHMENT B – PROPOSAL FORM SECTION 11
11. CODE OF CONDUCT AND COMBATING CORRUPTION

Is there an Agent who has been, or will be, directly or indirectly involved in the process of tendering for, or seeking the award of, the export contract(s) or any related agreement? Yes No

An "Agent" is any agent, intermediary, consultant or other person who has been, or will be, instructed by you or on your behalf ~~(to assist guide or support sales and marketing activity)~~

If Yes, please provide for each Agent details of their name and address, their services, the amount or value of any remuneration payable to them and its country/countries of payment

Name:
 Address:
 Services:
 Remuneration:
 Country/ies of payment:

(If you do not wish to disclose the name and address of the Agent for reasons of commercial confidentiality, you should contact UK Export Finance about the use of its Special Handling Arrangements)

Do you have in place a code of conduct and written procedures of the type contemplated by section 7(2) of the Bribery Act 2010 to discourage and prevent corrupt activity? Yes No

(If No, your attention is drawn to the Ministry of Justice's guidance available at <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>)

If Yes, is that code of conduct attached to this Proposal or has it been previously supplied? Attached
Previously supplied

(If not previously supplied, you must attach a copy of your latest code and written procedures to this Proposal)

Has the code been, and will it be, applied in obtaining and performing the export contract(s) to which this Proposal relates? Yes No

Are you, or is anyone acting on your behalf in connection with the export contract(s), currently under charge in any court in the United Kingdom on the grounds that you or they have contravened the laws of the United Kingdom which prohibit ~~the bribery of foreign public officials~~? Yes No

If Yes, please provide full details

Have you, or has anyone acting on your behalf in connection with the export contract(s), been convicted in a court in the United Kingdom, or been subject to any administrative sanction or any other administrative measure in the United Kingdom, for contravening any laws of the United Kingdom which prohibit ~~the bribery of foreign public officials~~ within the period of five years ending on the date of this Proposal? Yes No

If Yes, please provide full details

BEXA ATTACHMENT C – Revised Section 14 of the Proposal Form
14. DECLARATIONS

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By signing and submitting this Proposal:

(1) you confirm that, in this Proposal and any related discussions or correspondence, you have truly stated all material facts of which you are aware and you have neither misrepresented nor omitted any such facts which might have a bearing on our acceptance or assessment of this Proposal;

(2) you acknowledge that:

(a) you should contact us or your broker (if applicable) if you are in any doubt as to what constitutes a material fact;

(b) this Proposal will form the basis of any export insurance policy issued in connection with the export contract(s) referred to in this Proposal and that we will rely on the information, statements and declarations in this Proposal when deciding whether, and on what terms, to issue any policy;

(c) you must continue to disclose material facts to us and any changes to material facts after the date of signature of this Proposal until the date cover commences under any policy unless this would, or might reasonably be considered to, constitute the offence of "tipping off" under s.333A of the Proceeds of Crime Act 2002; and

(d) you will be deemed to have knowledge of all facts and circumstances which are known by any of your directors* or by the signatory to this Proposal;

(3) you declare that:

(a) neither you nor any of your directors appears on any list of contractors or individuals who are ineligible to tender for or participate in any project funded by the World Bank or any other multilateral or bilateral aid agency and you have no reason to believe, after having made reasonable enquiries, that any Group Company, Consortium Party or Agent, any of their directors or any of your Senior Managers** appears on any such list;

(b) during the last 5 years you have not been found guilty of the offence of failing to prevent bribery under s.7 of the Bribery Act 2010 or admitted to having committed that offence;

(c) during the last 5 years neither you nor any of your directors has:

(i) been found guilty by any court of an offence under the Prevention of Corruption Acts 1889 to 1916 or ss.1, 2 or 6 of the Bribery Act 2010 (as in force at the relevant time) or any equivalent offence relating to bribery or corruption under the law of any competent jurisdiction outside the United Kingdom;

~~(ii) been found by any court to have engaged in any bribery or corrupt activity; or~~

~~(iii) (ii) formally admitted to committing any offence as referred to in sub-paragraph (i) above or engaging in any bribery or corrupt activity;~~

(d) you have not:

(i) engaged in, authorised or consented to any bribery or corrupt activity in relation to the export contract(s) or any related agreement (which includes any unilateral undertaking as well as any consent or authorisation needed to obtain or perform the export contract(s) but not any sub-contract) which would amount to an offence under the Bribery Act; or

(ii) become aware of any such bribery or corrupt activity and failed to comply with any obligations to report it to the appropriate

authorities;

(e) you have no reason to believe, after having made reasonable enquiries, that:

(i) any event mentioned in paragraph (3)(c) above has occurred during the last 5 years in a Group Company, ~~Consortium Party~~ or Agent, any of their directors or any of your Senior

(ii) any Group Company, ~~Consortium Party~~ or Agent which is a company has been found last 5 years of the offence of failing to prevent bribery under s.7 of the Bribery Act 2010, having committed that offence; or

(iii) any Group Company, ~~Consortium Party~~ or Agent has engaged in any bribery or corrupt relation to the export contract(s) or any related agreement (as referred to in paragraph (d))

(f) the export contract(s) referred to in this Proposal, and all arrangements connected with or procurement, have not been, and will not be, used for the purposes of money laundering in Part 7 of the Proceeds of Crime Act 2002).

(*For the purposes of paragraphs (2) and (3) "directors" means:

• for a company, all directors, including non-executive directors;

• for a partnership, all partners; and

• for a limited liability partnership (LLP), all members or, if applicable, all those members who manage the LLP.

**For the purposes of paragraph (3):

• a Group Company ~~or Consortium Party~~ is a group company or consortium party named in this Proposal;

• an Agent is an Agent named in section 11 of this Proposal; and

• a Senior Manager is any employee of yours who has the power to bind you in relation to the contract(s) referred to in this Proposal.)

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BEXA ATTACHMENT D – EXIP CLAUSE 12

12 ANTI-CORRUPTION PROVISIONS

12.1 In this Clause 12 the following terms have the following meanings:

“**Consortium Partner**” means any company, person or other legal entity (other than the Insured) which is a party to any written joint venture, consortium or other similar arrangement (other than a sub-contract) to which the Insured is also a party and which joint venture, consortium or other arrangement has been, or will be, entered into in connection with the performance of all, or any part of, the Contract;

“**Corrupt Activity**” means any bribery or corrupt activity (including without limitation, the offering of any payment, reward or other advantage to any public official or other person) that:

(1) constitutes an offence under the Bribery Act 2010 (as from time to time amended or re-enacted) or any **equivalent** offence relating to bribery or corruption under the law of any **competent** jurisdiction outside the United Kingdom; or

(2) renders the Contract or any Related Agreement illegal, void, voidable or unenforceable under its governing law; and

(3) **has not been committed under duress**

“**Related Agreement**” means:

(1) any agreement or undertaking, other than any agreement or undertaking for the supply of goods or services to the Insured or any Consortium Partner, which relates to the Contract and to which the Insured or any Consortium Partner is a party; and/or

(2) any consent or authorisation, required by the Insured or any Consortium Partner for the obtaining or performance of the Contract and of which the Insured or any Consortium Partner is the direct recipient or beneficiary.; and

12.2 The Insured represents and warrants that it has not:

12.2.1 engaged in any Corrupt Activity in relation to the Contract or any Related Agreement;

12.2.2 authorised any person to engage in any such Corrupt Activity; or

12.2.3 consented to, or acquiesced in, any such Corrupt Activity on the part of any person.

12.3 The Insured warrants and undertakes that:

12.3.1 it will not:

(1) engage in any Corrupt Activity in relation to the Contract or any Related Agreement;

(2) authorise any person to engage in any such Corrupt Activity; and

(3) consent to, or acquiesce in, any such Corrupt Activity on the part of any person;.

12.3.2 if the Insured becomes aware that any person (including any Consortium Partner or any of its employees) has engaged in any Corrupt Activity in relation to the Contract or any Related Agreement, the Insured shall promptly notify UK Export Finance accordingly and supply UK Export Finance with full details of the Corrupt Activity in question save where such notification would, or might reasonably be considered to, constitute the offence of “tipping off” under s.333A of the Proceeds of Crime Act 2002; and

12.3.3 the Insured shall:

(1) if it has not done so already, require every person (including any of its employees) acting on its behalf and involved in obtaining or in performing the Contract or any Related Agreement) not to engage in any Corrupt Activity in relation to the Contract or any Related Agreement;

(2) monitor compliance with that requirement; and

(3) take appropriate action against anyone found to have engaged in any such Corrupt Activity.

12.4 Subject to the provisions of Clause 12.5,

if at any time, whether during or after the term of this Policy, the Insured (1) is found by a court of competent jurisdiction (after all available rights of appeal have been exhausted or expired) to have engaged in Corrupt Activity in relation to the Contract or any Related Agreement or (2) admits to having engaged, in Corrupt Activity in relation to the Contract or any Related Agreement other than where that admission or that engagement is made under duress:

12.4.1 UK Export Finance shall be discharged from any liability under this Policy and may cancel this Policy with effect from its commencement; and

12.4.2 the Insured shall on demand repay to UK Export Finance all sums which UK Export Finance may have paid to the Insured under this Policy,

and in any event (1) UK Export Finance shall be entitled to retain all premium which it may have received.

12.5 Clause 12.4 shall not apply, and none of the matters represented and warranted in Clause 12.2 shall be deemed to be untrue or incorrect or any of the undertakings and warranties on the part of the Insured in Clause 12.3 deemed breached, if the Corrupt Activity concerned has occurred solely by virtue of changes to any laws or regulations of any jurisdiction other than the United Kingdom that have retrospective effect.

Submission from the Campaign Against Arms Trade, The Corner House and the Jubilee Debt Campaign to the consultation relating to UK Export Finance's anti-bribery and corruption policy

1. For the past fifteen years, our organisations have closely monitored the support given by the UK Export Credits Guarantee Department (ECGD), now UK Export Finance (UKEF), and undertaken in-depth research into a number of ECGD-backed projects that have been tainted by allegations of bribery.
2. While we encourage the use of plain English in official forms and documentation, we are concerned that UKEF's efforts to make its anti-bribery and corruption declarations clearer threatens to undermine its stated commitment to deterring bribery. The seemingly simple clean up of the language in UKEF forms could redefine and weaken existing anti-corruption policies and commitments.
3. We are particularly concerned that UKEF is contemplating making general financial support available on an open-ended basis without requiring declarations about the role of agents and joint ventures in the specific export contracts that are (over time) supported. Providing support by way of "general financial facilities", rather than underwriting particular contracts, could mean a greater vulnerability to bribery.
4. We believe that this approach is entirely incompatible with stated UK government policy of adhering to the OECD Council Recommendation on Bribery and Officially Supported Export Credits. These require UKEF to deter corruption. If an open ended approach is to be adopted, it should be conditional on the companies involved having anti-bribery procedures in place that would comply with UK anti-bribery laws.
5. We are unconvinced by UKEF's assurances that its own enquiries will be sufficient to deter corruption in its proposed general financial support schemes. We note that, despite widespread publicity over alleged corruption in a number of Petrobras projects, UKEF recently acknowledged that it does not hold any information on whether the Petrobras contracts it has supported are under investigation. This suggests, at the very least, that the public cannot rely on UKEF to undertake the enquiries that are necessary to prevent corruption, let alone deter it, or to protect the public purse.
6. We note that all businesses and individuals in the UK are subject to the Bribery Act. Small and Medium Enterprises (SMEs) are not exempted. While it is to be encouraged that the declaration forms should be made understandable to SMEs, they should not be weakened to give SMEs access to export credit support where they do not have adequate procedures in place to prevent corruption.
7. Finally, we are dismayed that UKEF will not necessarily be consult on future changes to its anti-bribery and corruption provisions and procedures. We believe that such consultations are essential to allow all interested parties to contribute their experience and expertise.

Ann Feltham, Campaign Against Arms Trade ann@caat.org.uk / 020 7281 0297
Nicholas Hildyard, The Corner House nick@fifehead.demon.co.uk / 01258 473795
Tim Jones, Jubilee Debt Campaign tim@jubileedebt.org.uk / 020 7324 4725

May 2015

11th May 2015

Alastair Hamilton
Chief Executive

UK Export Finance
1 Horse Guards Road
London
SW1A 2HQ

Dear Sir/ Madam

**CONSULTATION RELATING TO UK EXPORT FINANCE'S ANTI-BRIBERY AND
CORRUPTION POLICY**

Invest NI has reviewed the proposed changes to the anti-bribery and corruption declarations and undertakings which the Export Credits Guarantee Department (UK Export Finance) requires from customers.

As recent changes to the Export and Investment Guarantees Act allows UKEF to support a wider range of exporters, including smaller exporters, Invest NI considers it appropriate to make the declarations and undertakings clearer for customers to understand and provide. It is further accepted that UKEF has an ongoing objective to avoid supporting any export transaction that may be tainted by bribery.

Subject to a successful conclusion to the public consultation, it is acknowledged that the proposed changes should deliver clearer, simplified and shorter anti-bribery declarations and undertakings for UKEF's customers.

Yours faithfully





SOVEREIGN STAR
TRADE FINANCE LIMITED

UK Export Finance
1 Horse Guards Road
London SW1A 2HQ

11th May 2015

Dear Sirs

Consultation relating to UK Export Finance's Anti-Bribery and Corruption Policy

I write in connection with the Public Consultation being conducted by the Government in respect of UK's anti-bribery and corruption policy. I write in my capacity as Executive Director of Sovereign Star which supports exports, mainly from SMEs, whose buyers require medium term finance to purchase supplies from the UK. Sovereign Star is a wholly owned subsidiary of Northstar Trade Finance Inc. of Canada.

I should state at the outset that in regards to anti-bribery, Sovereign Star complies fully with UK legislation i.e. the Bribery Act 2010. We take our obligations seriously and do not condone the use of bribes or illicit payments to win business. Sovereign Star is, therefore, able to make the anti-bribery Declarations and Undertaking sought by UEF on each and every occasion without any qualification.

The Consultation, as I understand it, makes two proposals:

1. To shorten and simplify the anti-bribery declarations in regards to the Exporter Insurance Product; and
2. To follow the Government's consultation guidelines in respect of consulting with stakeholders concerning any further changes UKEF might wish to make in regard to its anti-bribery policies.

Taking each in turn. With regard to 1) Sovereign Star does not use the EXIP product. However, I note it is contemplated that the changes being proposed regarding the revised Declarations and Undertakings would be adopted in respect of other products if the Government were to decide to promulgate the proposals. The changes are largely linguistic which means the Declarations and Undertakings are shorter

And more comprehensible. However, the proposed Declarations and Undertakings have not been diluted; indeed, arguably, in some respects are stronger.

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Sovereign Star fully supports the proposed changes. Plainly, it is sensible to make it easier for exporters (and banks) to understand the representations they are being asked to sign-up to and, therefore, any change which makes the language easier to comprehend and the terms more straightforward is to be welcomed. I very much hope that the plainer English will be transposed to all UKEF's application forms and product documentation.

As regards to proposal 2) ,the consultation document contemplates the introduction of new products (that may be developed arising from changes to UKEF's statutory powers contained in the Small business Enterprise and Employment Act) which will require UKEF's anti-bribery policy to be adapted to suit the particular circumstances of the new products. It seems to me entirely appropriate that the policy should be tailored to the needs of each product; indeed , there can be no choice in the matter if, as envisaged, the new products do not apply to specific export contracts which means the Declarations and Undertakings will inevitably have to be amended. By definition, therefore, it would be difficult to see the point in consulting stakeholders on matters where there is no choice but to make changes.

I note the Consultation Document references to OECD Council Recommendation on Bribery and Officially Supported Export Credits. This document recognises that individual

Export Credit Agencies may adapt the application of that international agreement. Paragraph 1 of the OECD Recommendations states :

“ Recommends that Members take appropriate measures to deter bribery in international business transactions benefiting from official export credit support, in accordance with the legal system of each member country and the character of the export credit and not prejudicial to the rights of any parties not responsible for the illegal payments, including:

Footnote 2

It is recognised that not all export credit products are conducive to the uniform implementation of the Recommendation. For example, on short-term whole-turnover and multi-buyer export credit insurance policies, Members may, where appropriate, implement the Recommendation on an export credit policy basis rather than on a transaction basis. ”

Clearly the OECD Recommendation itself recognises that ECAs will have to adapt The anti-bribery policies and practices that fit the needs of particular products. It seems to me that the changes UKEF envisages would be in line with the OECD Recommendation and, therefore, UKEF would be following its stated policy of complying with all international agreements which apply to the operations of export credit agencies. Moreover UKEF's Mission and Principles states that “ it will abide by such codes of practice and guidelines on consultation as may be published by the Government from time to time”. Sovereign Star is content that UKEF should adapt its policies to meet the needs of new products where the changes are simply a matter of consequence to meet a particular situation and/or are not material, without



undertaking a Public Consultation with stakeholders which would otherwise be costly and burdensome.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "A. Siegl".

CFJ Siegl

Corruption Watch submission to consultation relating to UK Export Finance's anti-bribery and corruption policy.

Corruption Watch is an anti-corruption group in the UK monitoring the UK's response to overseas corruption. We have the following concerns about the UKEF's anti-bribery and corruption policy:

1. Lack of consistency over whether corrupt activity only applies to Bribery Act offences

We welcome the removal of exceptions to the concept of corrupt activity in the new forms and the fact that applicants will now have to disclose all admission of or convictions for corrupt activity in the newly draft forms. We agree with UKEF that this is appropriate. We also welcome the fact that all group companies involved in the contract will have to be identified.

However, we are concerned that the forms appear to be inconsistent on whether corrupt activity refers only to Bribery Act offences or includes pre-Bribery Act offences. We note that in the revised Clause 12 of the EXIP Policy Document, Comment 9 states that the definition of "*Relevant Offences*" is no longer relevant "*as the offences under the Prevention of Corruption Acts have been replaced by the Bribery Act*". "*Corrupt Activity*" is accordingly defined in the newly draft Clause 12 as solely an offence under the Bribery Act. The Bribery Act is not retrospective and therefore any corrupt activity prior to 1 July 2011 is still covered by the Prevention of Corruption Acts. We are concerned that this gives the impression that UKEF will only require companies to declare Bribery Act convictions, and that convictions under the Prevention of Corruption Acts need not be declared.

The EXIP proposal form has a broader scope. At section 11, it refers to contravening the laws of the UK which prohibit the bribery of foreign officials. At the declaration 3 c), the exporter must declare whether it or its directors have been found guilty or admitted to offences under the Prevention of Corruption Acts as well as the Bribery Act. This is directly contradictory to the approach taken by the Policy Document, but we believe the right one. It cannot be right that companies need declare corruption convictions under only one UK anti-corruption law, and the broader approach must be reflected in all EXIP documents.

However there is a further inconsistency in the EXIP Proposal form. At 3 e)ii), exporters are required to make reasonable enquiries of whether a Group Company, Consortium Partner or Agent has been convicted of a Sec 7 Bribery Act offence, but not of any other corruption offences under UK law. There can be no reasonable justification for such a discrepancy.

We believe exporters must be made aware of their liability for corrupt activity under the Prevention of Corruption Acts consistently throughout the forms, including in the introductory section on Combating Corrupt Activity on the EXIP Proposal Form, and be required to provide declarations for any charges or convictions under those Acts by themselves and relevant related parties. The Serious Fraud Office is clearly pursuing cases under these Acts, and it would be anomalous if companies charged or convicted under these Acts did not have to declare it.

2. Future Changes

Corruption Watch is concerned that in the move to providing general financial facilities, UKEF is considering a) moving to anti-corruption and bribery declarations that omit reference to consortium partners and other group companies and b) no longer requiring declarations or making enquiries

about agents and their role in the export contract. Corruption Watch considers this to be a significant and unmerited weakening of UKEF's anti-corruption policy which will leave UKEF open to considerable reputational risk and substantially reduce its role in deterring overseas corruption.

UKEF is making the shift in response to new powers introduced under the Small Business, Enterprise and Employment Act, and one of the aims is to ensure that UKEF can help small business expansion overseas. Research by the Association of Chartered Certified Accountants shows that SMEs are at considerable risk of corruption when entering international markets. ACCA's 2013 report, *Combating Bribery in the SME Sector*¹ showed that there were dangerously low levels of awareness among SMEs of the risks of foreign corruption and that SMEs are often not investing in even basic compliance and internal control procedures. Corruption Watch considers that it would be severely detrimental to the goal of helping SMEs face corruption risks when expanding overseas, were UKEF to reduce its requirements for disclosure on export financing. These requirements are there to act as a real deterrent to companies using agency fees for corrupt purposes because of the scrutiny that they will face of these fees.

UKEF states that when formulating its anti-bribery and corruption provisions in relation to its products, it *"will continue to be guided by the aim and objective set by the Government to deter bribery and where applicable the requirements of the OECD Bribery Recommendation."* The 2006 OECD Recommendation on Bribery and Officially Supported Export Credits, recommends at 1 e) that Export Credit Agencies require *"that exporters and, where appropriate, applicants, disclose, upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons."*

It is not clear how UKEF can abide by the OECD Recommendation if it drops the requirement to make declarations about agents on transactions that it covers. Only 4 out of 33 Export Credit Agencies that are members of the OECD Working Group on Export Credits do not require any information on agents. The danger is that the UK, which led the way in improving export credit anti-bribery procedures, may lead the way in undermining adherence to the OECD's Recommendation if it adopts the policy of no longer requiring information on agents. It is well known that the use of agents is a significant corruption risk. Removing requirements to provide information about agents is likely to reduce UKEF's ability to detect whether it is backing corrupt transactions.

The UK Government's December 2014 National Anti-Corruption Action Plan commits the UK under its Protect strand of work, to raise awareness of the risks of corruption in both the public and the private sector. Corruption Watch believes that weakening key disclosure requirements on UKEF export finance products in the future would run directly against the spirit, if not the letter, of the Action Plan.

3. Future Consultation

UKEF states that regardless of past practice, there should now be *"no expectation that we will always consult on changes to our anti-bribery and corruption provisions and procedures or indeed any other expectation beyond that we will consider any such change on a case by case basis in line with then current guidelines."*

¹ www.accaglobal.com/ab44

As UKEF is well aware, its anti-bribery and corruption policies have long been a matter of considerable public interest. Where a government department uses taxpayers' money to support firms operating abroad often in highly corrupt environments, the highest levels of transparency about how it protects taxpayers' money in the process and ensures that the UK government is not committing support for corrupt transactions is essential.

Furthermore, UKEF's main client basis is the private sector, whose interest it is to have as little oversight as possible. UKEF's day to day interactions with this client base is likely to have an impact on its views of how it should implement anti-bribery and corruption policies. Without adequate consultation of non-client parties, there is a high risk that UKEF may be "captured" by the views of its client base.

Corruption Watch believes that UKEF should not make any changes to its anti-bribery and corruption provisions without some form of consultation beyond its client base, including of interested parties such as anti-corruption organisations. We note that the Cabinet Office guidelines referred to by UKEF state that *"increasing the level of transparency and increasing engagement with interested parties improves the quality of policy making by bringing to bear expertise and alternative perspectives, and identifying unintended effects and practical problems."* UKEF should be improving and extending its level of consultation on both a formal and informal basis when it comes to anti-bribery and corruption, particularly if, in the context of significant changes to the way it operates, it is seeking to change its anti-bribery and corruption policies in so substantial a manner as dropping disclosure requirements on third parties.

15th May 2015

cxo@ukef.gov.qsi.uk

Dear Sirs,

RE: Consultation relating to UK Export Finance's anti-bribery and corruption policy

Standard Chartered Bank appreciates the opportunity to assist UK Export Finance to conduct their update of their current anti-bribery and corruption policy.

In principle our bank agrees with UKEF's proposal to amend the wording of UK Export Finance's anti-corruption declarations in order to simplify it and make the declarations more appropriate to the wider product range being offered and the wider audience targeted by UKEF.

We have reviewed the revised anti-bribery and corruption provisions with particular attention given to the proposed amendment to the Export Insurance Policy and have the following comments and observations:

- Overall we believe the new wording helps simplify the provisions in Clause 12.
- Under the definition of Corrupt Activity sub-clause (1) we would recommend that this is limited from the currently proposed "any jurisdiction outside the United Kingdom". We are of the opinion that there is sufficient coverage given the scope of the Bribery Act that this additional requirement is superfluous. Moreover as it is drafted there is no qualification with regards to the appropriateness of relevant jurisdictions given a specific transaction. Thus, in our opinion, if UKEF believes more is required than is covered under the Bribery Act we would limit the additional definition to the scope of *relevant* or *appropriate* jurisdictions in line with the underlying transaction.
- Similarly, Clause 12.3.3 (2) requires the Insured, in respect of "every person...acting on its behalf" to ensure that each person does not engage in Corrupt Activity and must "monitor compliance with that requirement". We struggle to see how, as it is currently worded, what is required of the Insured by UKEF under this statement. For us it would be very important to understand what would constitute sufficient monitoring and what would be required in order to demonstrate compliance. We would hope that this could be included in the definition. Moreover we recommend that this should, as well, be linked specifically to the standards required under the Bribery Act 2010 in light of UKEF's desire to simplify the declarations.

We should be happy to provide further commentary on the above as desired by UKEF in support of this consultation.

Yours sincerely,



Torsten Richter
Head of Export Finance, Europe
Standard Chartered Bank

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Standard Chartered Bank is incorporated in England with limited liability by Royal Charter 1853 Reference Number ZC18. The Principal Office of the Company is situated in England at 1 Basinghall Avenue, London, EC2V 5DD. Standard Chartered Bank is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority.

15 May 2015

UK Export Finance
1 Horse Guards Road
London
SW1A 2HQ

BY EMAIL/POST

Re: Consultation relating to UK Export Finance's anti-bribery and corruption policy

Dear Sirs

Sullivan & Worcester is an international law firm with offices in London, Boston, New York, and Washington, DC. Through the work Sullivan & Worcester does, we are both an adviser to UK exporters and a UK exporter of English law legal services. Mark Norris (Partner) and Anna Koshy (Associate) regularly advise banks and corporations on export, trade and commodity finance domestically and internationally.

We welcome the current consultation on UKEF's proposed changes to the anti-bribery and corruption declarations and undertakings which UKEF requires from customers.

We support UKEF's proposal to amend the wording of UK Export Finance's anti-corruption declarations and undertakings in order to simplify them. We agree that it is important to ensure that customers understand the declarations and undertakings required by UKEF.

We have reviewed UKEF's revised anti-bribery and corruption provisions and have the following observations:

1. Deferred Prosecution Agreements and Civil Forfeiture Orders

- 1.1 (As with UKEF's existing wording) it is not clear how Deferred Prosecution Agreements ("DPA"s) and Civil Forfeiture Orders ("CFO"s) are to be addressed. In particular, whether any declaration needs to be made in respect of DPAs and CFOs.

Deferred Prosecution Agreements

- 1.2 DPAs were introduced by the Crime and Courts Act 2013 ("the Act"). Since 24 February 2014, DPAs can be used for bribery offences (Schedule 17 Part 2 (Offences in relation to which a DPA may be entered into) Paragraph 26).
- 1.3 Bribery offences include an offence under any of the following sections of the Bribery Act 2010:

{L0006919; 4}

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- (a) section 1 (bribing another person);
 - (b) section 2 (being bribed);
 - (c) section 6 (bribery of foreign public officials); and
 - (d) section 7 (failure of commercial organisations to prevent bribery).
- 1.4 Briefly, the Act requires that a DPA must contain a statement of facts. Whilst the statement of facts may include admissions of guilt by the corporate the Act does not require it.
- 1.5 The joint Code of Practice on the use of DPA's published by the SFO and CPS on 14 February 2014 makes clear that:
- "... there is no requirement for formal admissions of guilt in respect of the offences charged by the indictment though it will be necessary for [the corporate] to admit the contents and meaning of key documents referred to in the statement of facts ..."* (Paragraph 6.3).
- 1.6 UKEF's revised anti-bribery and corruption declarations do not specifically address DPAs. For example, Part 14 (b) and (c) provides that:
- "... (b) during the last 5 years you have not been found guilty of the offence of failing to prevent bribery under s.7 of the Bribery Act 2010 or admitted to having committed that offence;*
- (c) during the last 5 years neither you nor any of your directors has:*
- (i) been found guilty by any court of an offence under the Prevention of Corruption Acts 1889 to 1916 or ss.1, 2 or 6 of the Bribery Act 2010 (as in force at the relevant time) or any offence relating to bribery or corruption under the law of any jurisdiction outside the United Kingdom;*
 - (ii) been found by any court to have engaged in any bribery or corrupt activity; or*
 - (iii) admitted to committing any offence as referred to in sub-paragraph (i) above or engaging in any bribery or corrupt activity; ...".* (emphasis added)
- 1.7 If a corporate were to have entered into a DPA in respect of a bribery offence it will not have been found guilty of an offence under the Bribery Act and, because the Act and Code of Practice do not require a formal admission of guilt, the corporate may not have *"...admitted to committing any offence as referred to in sub-paragraph [(c)](i) above or engaging in any bribery or corrupt activity ..."*.
- 1.8 It is unclear whether DPAs are intended to be addressed by UKEF's revised wording. We are of the view that this should be clarified.

Civil Forfeiture Orders

- 1.9 Neither the revised wording nor the accompanying commentary addresses how CFOs made in respect of bribery offences under the Proceeds of Crime Act 2002 ("POCA") should be dealt with. In particular, orders made pursuant to Part 5 of POCA, which provides for the recovery of property derived from *"unlawful conduct"* (which could include bribery offences).
- 1.10 We note that the OECD Council Recommendation on Bribery and Officially Supported Export Credits (the **"OECD Bribery Recommendation"**) when

referring to bribery offences refers to convictions in national courts and "... *equivalent national administrative measures* ...". UKEF should consider whether "... *equivalent national administrative measures* ..." could catch CFOs.

- 1.11 Again, it is unclear whether CFOs are intended to be addressed by UKEF's revised wording. As before, we are of the view that this should be clarified.

2 Debarment lists

- 2.1 We agree with UKEF that it is important to ensure that customers understand the meaning of UKEF's anti-bribery and corruption provisions. To achieve this it is important that the scope of the relevant provisions is clear.

We note that the OECD Bribery Recommendation (Articles 2 (c) and (f)) refers to:

"... the publicly available debarment lists of ... international financial institutions [ie the World Bank Group, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank] ..."

- 2.2 We note that the corresponding UKEF declaration is wider than that required by the OECD Bribery Recommendation. Further, we are of the view that the UKEF declaration lacks the clarity of the corresponding OECD wording.
- 2.3 The relevant UKEF declaration provides:

"... (3) you declare that ... (a) neither you nor any of your directors appears on any list of contractors or individuals who are ineligible to tender for or participate in any project funded by the World Bank or any other multilateral or bilateral aid agency and you have no reason to believe, after having made reasonable enquiries, that any Group Company, Consortium Party or Agent, any of their directors or any of your Senior Managers appears on any such list ..." (emphasis added)

- 2.4 We note that the UKEF declaration does not refer to "publically available" lists but rather "... any list ...". In addition, the UKEF declaration refers to "ineligibility" rather than "debarment".
- 2.5 To ensure clarity and certainty, UKEF should consider amending the proposed declaration so that it mirrors the OECD's test of "... *debarment* ..." (rather than "ineligibility"). "Debarment" implies wrong doing, whereas "ineligibility" is not necessarily a consequence of wrong doing.
- 2.6 Further we note that the declaration refers to "... any list of ... any ... bilateral aid agency ...". The reference to "... any ... bilateral aid agency ..." is wider than the OECD Bribery Recommendation. Given its breadth query how much due diligence a customer is expected to undertake to make this declaration (particularly if the customer is a SME).

3 Anti-Corruption Provisions In Export Insurance Policy

- 3.1 We are of the view that the proposed simplified wording makes the anti-corruption provisions easier to follow and understand.
- 3.2 With the aim of ensuring simpler and clearer declarations and undertakings, UKEF should consider whether the proposed Anti-Corruption Provisions in Export Insurance Policy can be clarified further.

- 3.3 For example, sub-clause (1) of the definition of "Corrupt Activity" refers to "... any offence relating to bribery or corruption under the law of any jurisdiction outside the United Kingdom ..." (Clause 12.1 (Anti-Corruption Provisions)).
- 3.4 Given the scope of the Bribery Act and given UKEF's wish to ensure clarity and certainty (in part, so that UKEF has greater assurance that customers understand the meaning and scope of its anti-bribery and corruption provisions), UKEF should reconsider whether it is necessary to refer to "... any jurisdiction outside the United Kingdom ..." (in addition to the Bribery Act).
- 3.8 Similarly, Clause 12.3.3 requires the Insured, in respect of "... every person...acting on its behalf ..." to ensure that person does not engage in Corrupt Activity and to "... monitor compliance with that requirement ...". Again, given the scope of the Bribery Act (in particular, Clause 7 (*Failure of commercial organisations to prevent bribery*)) UKEF should consider whether its proposed wording should use the terminology of the Bribery Act (ie having procedures in place to prevent bribery) to ensure consistency between the requirements of UKEF and the Bribery Act.

We support UKEF's decision to make its declarations and undertakings clearer and less complex in the context of bribery and corruption. By doing this we believe that this will help ensure that UKEF's expanding target customer base better understand the meaning and scope of UKEF's anti-bribery and corruption provisions and are clear as to what is required of them.

We would be pleased to assist UK Export Finance should it have any queries on the above.

Yours sincerely



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Services Ltd**

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Dear Sirs,

UK EXPORT FINANCE'S ANTI-BRIBERY AND CORRUPTION POLICY

I have been engaged in the business of the arrangement of financing for UK sponsored international capital projects for many years, but for the past several years have been difficult and I have not been able to utilise the services of ECGD because the actual level of support has not been helpful. This has been nothing to do with ECGD's Bribery and Corruption policy, but has been because the areas of the world where I was principally working, namely Sub-Saharan Africa, were not areas where ECGD was willing to be helpful. There were all sorts of reasons for this but there were other Export Credit Agencies that did not seem to have the same difficulties as ECGD. Furthermore, the UK Government's policy towards exports changed, and the availability of support declined. For example, the policy towards project aid changed and such support programmes which had operated very successfully in the past were withdrawn or at best seriously curtailed.

When export financing therefore seemed to be the appropriate approach to the particular financing I was working on, I had to look elsewhere for support and I was therefore very pleased to hear of the introduction of a new approach in Britain with the formation of UK Export Finance, and the planned changes at operational levels announced in the Budget last year.

I am not aware of an improvement in services as yet, but in regard to the Policy relating to Bribery and Corruption however my experience in the practical application of the law is limited, but I was aware of the concerns expressed by the British Export Houses Association when the Act was proposed some years ago. As in all laws and statutes of course the difficulty can be created when the law is interpreted and in my recent experience I was disappointed in the way

it seemed the Bribery and Corruption policy was being imposed, but I was just as concerned at the attitude of the banks!

If this consultation results in it being possible to make the "interpretation" of the Act more relevant and practical, it will be helpful. It seems to me however that in imposing what have been determined as the requirements of this Act of Parliament, little attention has been paid to the practicalities of working in the international arena. I don't think it would be appropriate to go into the specifics of a particular case here, even if I could think of something relevant, but I do think the following should be taken into account when considering how to proceed:

- It is not easy to control the activities of parties wherever they are located who act in some capacity for UK Exporters, particularly when their duties representing a particular UK Exporter will not be their sole occupation.
- An exporter may not have had regular contact with a prospective buyer, or even with their representative in the country concerned, but that doesn't necessarily mean that there will not be approaches made by local people regarding potential business, claiming to have all sorts of influence.
- Information will be available to ECGD and to UKEF which may not be available to the exporter. This will come from UK Embassies and High Commissions and other official representatives of UKTI etc. and these may be valuable sources of information to vouch for the good character of local business people trading with UK Companies. These sources should be used therefore by ECGD/UKEF to help them feel comfortable and so that an exporter can focus his marketing efforts in the more suitable areas. This will also help an exporter in the enquiries he has to make in support the declarations he has to make to ECGD/UKEF in pursuit of the assistance he seeks for his export business.
- The requirements of UKEF in regard to this Act will be discussed when the exporter seeks the help and assistance he needs. It does need to be recognized however that a deal may be closed without ECGD or UKEF support, but the exporter still has to comply with the requirements of this Act in the ordinary course of his business.
- Banks also have to interpret this Act, and manage their work to comply with requirements and with a number of other regulatory controls affecting the way they handle their business. This is creating serious difficulties for SME's, particularly if the banks have not identified a particular customer as being regularly involved in the type of business they target! This change in the operating environment has brought about a change in approach which stems from successive financial crises over the past 25 years

and the reaction to these crises has had a serious impact, not only in the way banks support export business, but in their willingness or otherwise to work in the area of export financing let alone with SME's.

NB. This is a most serious issue and it will not matter if your policy in response to this Act changes if SME's continue to experience difficulties finding a bank to work with in their business. The Direct Lending scheme won't necessarily help either because in my experience, the area of business which worries most SME's is the case valued at less than £5 million where the client seeks medium term financing assistance, and this of course raises other issues in the way ECGD/UKEF responds to this requirement!

I hope this will be useful to you in considering the responses to this consultation. The business of UK Export Financing structures has changed enormously since I worked full time in banking. In those days export financing business was considered by banks in a different light and the regulatory environment was more "user friendly". These days ECGD has changed the way it works, not always in the best interests of the smaller exporter, and the banks are more heavily regulated and controlled. They need also to comply with the requirements of the Bribery and Corruption Act and of the Prevention of Terrorism Act amongst other regulatory controls and these have combined to make life extremely difficult. It has changed the way Banks do their business as well as the way ECGD and UKEF behave, and perhaps parts of the business community is finding it difficult to live within the demands of the banks, let alone the requirements of UKEF.

Yours faithfully



J A (Tony) Crowther-Green, Director
Project Finance and Development Services Limited.

UK Export Finance
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May 15th 2015

Dear Sir or Madam

Consultation relating to UK Export Finance's anti-bribery and corruption policy

I am writing on behalf of Transparency International (www.transparency.org), the world's largest anti-corruption organisation, in response to the above consultation.

We have reviewed the submission from Corruption Watch, and are strongly supportive of their response to the consultation.

Notably, we believe that the provisions should apply to UK corruption legislation other than and in addition to the Bribery Act; that declaration of agents is critical, and indeed there is a high risk of undermining your entire process were this not to be so; and that consultation with experts in civil society and beyond should be an integral part of your future processes, as a government agency and in the spirit of the government's consultation guidelines and Open Government Partnership commitments. We fully endorse the other points made by Corruption Watch.

With kind regards,
Yours sincerely



Dr Robert Barrington
Executive Director