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By Fax & Post: 7512 7004

URGENT

Dear Sirs,

Consultation on Proposed Revisions to ECGD's Business Principles and Ancillary Policies

Thank you for your letter of 17 March 2010. Our client is also in receipt of the circular letter sent by ECGD to companies and organisations that have responded to the above consultation.

ECGD has misconstrued our client's position in a number of important respects.

First, both our client's Letter before Claim (para 3)¹ and their joint submission to the Consultation (para 76)² clearly stated that their concern about the failure of ECGD to carry out an impact assessment related to the Consultation *as a whole*. In its response, ECGD limits this concern to a failure to conduct an impact assessment on the ESHR aspects of the Consultation. ECGD has now issued an Interim Response "in relation to matters unaffected by ESHR impacts and the Common Approaches", which "will be final as to the matters with which it deals". In effect, ECGD has made a final decision on a range of major policy changes, notably those relating to its anti-bribery policies and (depending on how one construes the wording of its circular letter) the Business Principles, without any impact assessment having been undertaken. Our clients contend that this is unlawful.

¹ "In that response, our client expressed great concern about the failure of ECGD to carry out an impact assessment in respect of the proposed revisions of ECGD's business principles."

² "The Consultees contend that the failure to conduct an impact assessment renders the consultation illegitimate and that the ECGD should not proceed with its proposed changes until such an impact assessment has been undertaken and the public has had an opportunity to comment on it."

Second, whilst our client welcomes the opportunity to submit further comments on the likely environmental, social and human rights (ESHR) impacts of the changes proposed by ECGD, the information supplied by ECGD to enable this exercise is entirely insufficient and based, it would again appear, on a misconstruction of our client's position.

Contrary to your assertion in paragraph 5 of your letter, our client does not claim that "past levels of applications" would provide a gauge for the likely extent to which exempted projects might in the future have an impact upon the environment and human rights. Such information by itself is of no value in assessing the likely ESHR impacts of the ECGD's proposed changes to its screening and assessment policies.

What our client proposed as a gauge was the assessments of contracts which have previously been supported and which have repayment terms of under two years or a value under 10 million pounds. Para 83 of the joint submission made by our clients, which you cite in your letter, was very clear in this regard:

"Contrary to the Minister's assertions . . . the ECGD is in fact well placed to assess the general nature and extent of the impacts that might flow from its proposed policy changes. As already noted, the Dutch ECA Atradius DSB already screens and assesses projects with a repayment period under two years. The ECGD could – and should – request details of such assessments and employ them to gauge the likely extent to which exempted projects might impact the environment and human rights." (emphasis added).

Such assessments, whether conducted by Atradius or the ECGD, are the sole source of information on the ESHR impacts of already approved contracts with a repayment period of less than two years or a value less than 10 million pounds. An evaluation of them would reveal, for example, the detailed impacts of such contracts; whether or not previously approved contracts had involved exports to High or Medium impact projects; whether any such contracts had been categorized as High or Medium impact; and whether any had failed to comply in all material respects with the World Bank groups safeguard policies and other standards. They would thus provide the only reliable guide for judging whether or not exempting such contracts from assessment in the future might lead to ECGD supporting environmentally and socially damaging contracts without accompanying mitigation measures. They are thus critical for evaluating the impacts of the ECGD's proposals.

Our clients therefore request that ECGD supplies the following information to those who responded to the Consultation in order to permit an evaluation of the ESHR impacts of the ECGD's proposals:

- The impact questionnaires that were completed for each of the non-defence contracts with repayment terms under two years itemized in Lord Mandelson's reply to Lord Taylor;
- The impact questionnaires that were completed for each of the non-defence contracts with a value of less than 10 million pounds itemized in Lord Mandelson's reply to Lord Taylor;
- The Case Impact Screening form completed by the Business Principles Unit for each of the non-defence contracts with repayment terms under two years itemized in Lord Mandelson's reply to Lord Taylor;
- The Case Impact Screening form completed by the Business Principles Unit for each of the non-defence contracts with a value of less than 10 million pounds itemized in Lord Mandelson's reply to Lord Taylor;
- Details of any environmental or social conditions contained in the contracts signed by ECGD for each of the non-defence contracts with repayment terms under two years itemized in Lord Mandelson's reply to Lord Taylor;
- Details of any environmental or social conditions contained in the contracts signed by ECGD for each of the non-defence contracts with repayment terms under two years itemized in Lord Mandelson's reply to Lord Taylor.

Our clients would request that the above information be supplied as soon as possible and that they be given reasonable time to analyse and comment upon it prior to the ECGD reaching any decision on the Consultation. Our clients would seek an assurance from ECGD that the deadline of 30 March 2010 will accordingly be extended.

Our clients would also request that ECGD supply reasons why it has declined to seek information from Atradius as to its assessments of the ESHR impacts of the short-term credits it has supported.

Finally, our clients would seek confirmation that the effect of ECGD's statement in the final paragraph of page 3 of its 17 March circular letter³ is that:

- contracts with a value less than 10 million pounds or a repayment period less than two years will not be screened or assessed for child or forced labour; and that
- contracts with a value over 10 million pounds or a repayment period greater than two years will be assessed using all the standards that ECGD currently applies, including the requirement that the project complies all material respects with World Bank Group standards and policies.

Yours faithfully,

Leigh Day & Co

³. "Para 5 of the Summary of the Consultation Document makes clear that the impact of the proposed changes would be to exempt from review only those applications falling outside the OECD Common Approaches criteria for environmental impact review. All other applications will continue to be subject to ESHR review. Such reviews would apply all the standards ECGD currently applies including those appertaining to an analysis of any child or bonded labour issues that might arise."