

Leigh Day & Co

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Your Ref:

Our Ref: **JB/RS/CH(5)**

Date: 18th June 2010

By Hand

URGENTLY FAO THE JUDGE CONSIDERING THE APPLICATION ON THE PAPERS

Dear Madam,

R (oao Corner House & Samata)-v-Secretary of State for Business, Innovation and Skills – CO/5231/10

We write further to our letter of 16 June and, in particular, further to the submission in paragraph number 1 of that letter.

Further information has come to our client's attention which tends to support the submission made in that paragraph that in practice the ECGD's policy has been abandoned.

Following the consultation on its Business Principles, the ECGD has now issued new application forms and procedural guidance for applicants. Attached are:

- a) ECGD's *Guidance to Applicants*;
- b) the *Application Form* for Export Insurance; and
- c) ECGD's *Environmental, Social and Human Rights Impact Questionnaire*.

The Guidance, issued in April, makes no mention whatsoever of any ban on child or forced labour. Nor do the application forms – the application form attached being an example.

While the new Impact Questionnaire, issued in May, does state that it is ECGD's policy not to support projects involving child or forced labour (see page 10 of the Guidance notes to the Impact Questionnaire), the Impact Questionnaire is only to

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be completed by applicants whose exports are for projects that ECGD deems to be a Category B (medium impact).

The initial assessment as to the impact of a project is made by the ECGD on the basis of the Application Form submitted which, as above, contains no questions relating to social or environmental impact.

As a consequence, applicants would only ever be informed of ECGD's "ban" on child and bonded labour during the application process if all of the following circumstances applied:

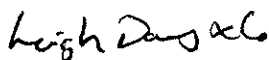
- 1) the support they are requesting has a repayment term over two years; and
- 2) the applicant's share of the project is worth over SDR 10 million; and
- 3) the ECGD deems that the project is in a sensitive area or has "medium" environmental impacts.

Therefore, the ECGD's 'policy' would not be even be drawn to the attention of other applicants in the small print of the application documentation. Furthermore, the ECGD do not ask any questions in the Application Forms that would reveal whether child or forced labour was likely to be an issue.

The reality of the situation is that the ECGD have abandoned their policy in respect of a large swathe of its business in favour of a policy of "don't ask, don't tell".

Given this failure to make the ECGD's "policy" apparent to all applicants, it would seem highly unlikely that the ECGD would be able to enforce its stated intention to claw back any support it has approved in the event that projects with a repayment period under two year or where the value of the contract was under SDR 10 million were subsequently revealed to be using child or forced labour.

Yours faithfully,



Leigh Day & Co

Encs.

Cc: Andrew Jack, Treasury Solicitor