



**Amicus response to ECGD consultation on
changes to the Anti-Bribery and Corruption
Procedures**

June 2005

Amicus response to the ECGD Consultation Document on Changes to Anti-Bribery and Corruption Procedures

1. Amicus is the UK's largest private sector trade union and the fastest growing union in the public sector. With over 1.2 million members Amicus has members in a range of industries including, financial services, manufacturing, print and media, the voluntary and non-profit sectors, local government and NHS health professionals.
2. We welcome the opportunity to comment on the ECGD's proposals for changes to the anti-Bribery and Corruption procedures introduced in December 2004 and shall specifically address those principle changes identified in clauses 8.3 to 8.9.
3. Amicus has previously made clear the importance that it attaches to the provision of a competitive and fair support system for exporters from the UK. It is in this context that Amicus is responding to this consultation acknowledging the need to strike a fair balance between appropriate safeguards of public monies and processes which exporters and banks are able to access without undue burden.
4. Replacement of the concept of affiliate
 - 4.1 Amicus notes the changes to the concept of affiliate to introduce two new concepts, that of Associate and Controlled Company.
 - 4.2 It is not unreasonable for an exporter to be responsible for other companies with whom it has entered into a contractual arrangement or over which it has control by virtue of its own Memorandum and Articles of Association.
 - 4.3 However, it is difficult to envisage circumstances where it is practical for an exporter to be aware of where an Associate company, over which they have no legal control, is engaging in corrupt activity without having access to all the files of that business, which in most cases would not arise. Amicus would not support any company where it as found that it had encouraged a third party to act corruptly and would expect such a company to be dealt with within the appropriate existing UK law.
5. Details of Agents
 - 5.1 Amicus notes that there appears to be an assumption in some quarters that the use of Agents by exporters implies that bribery has or will occur. Amicus believes that it is for the company to be able to demonstrate to the ECGD that it has in place processes and procedures which ensure that the use of an Agent is both valid and appropriate.

- 5.2 It is further noted that UK sanctions are extra-territorial and Amicus would support the view that, rather than insisting on the full disclosure of details of an Agent on the application form, the explanation and detail of the company procedures and processes should be disclosed to the ECGD. ECGD must ensure the confidentiality of such disclosures. Companies are fully aware of the risks involved if an Agent is found to have paid a bribe and Amicus believes that most companies are unlikely to be prepared to take such a risk.
- 5.3 However, in circumstances where the fees of the Agent are to be covered by the ECGD or where the fees exceed 5% of the total contract, Amicus would suggest that greater details in such circumstances should be provided by the company if requested by the ECGD.
- 5.4 Whilst Amicus accepts that there are extreme sensitivities in the use of Agents and that commercial confidentiality is crucial to the main users of ECGD, we would encourage transparency wherever this can be achieved without detriment to the provision of confidentiality.

6. Audit Provisions

- 6.1 Amicus fully supports the right of the ECGD to carry out an audit of exporters to ensure that corrupt practices are not taking place. The changes to this process in December 2004 provide a more focussed approach at a point when the risks are highest for such practices.

7. Employees/Directors

- 7.1 Amicus notes that the December 2004 changes reduces the number of employees for whom representations of fact are required in application forms. This, appropriately, focuses upon employees who are relevant to the transaction and who exercise control, over the contract.
- 7.2 Amicus is further aware that our members employed in export companies are specifically covered by codes of conduct in their conditions of employment which makes it clear that disciplinary sanctions will be applied if it is found that they have acted in breach of the ethical code on such contracts.
- 7.3 Amicus is also aware that most major companies, particularly in the defence sector, have introduced whistle-blowing procedures to ensure that any potential corrupt activities are brought to the attention of senior management at the earliest opportunity.
- 7.4 Amicus also notes that a further declaration has been introduced in the December 2004 procedures which addresses the issue of money laundering legislation and though such declarations adds to the

certainty that ECGD can have that proceeds of crime are not being concealed through export contracts.

8. Best of Knowledge and Belief/Due Diligence

- 8.1 Amicus notes that the CBI has raised this issue in its response and addresses the criticisms of the NGOs regarding the definition of the statement “to the best of our knowledge and belief”.
- 8.2 Amicus agrees that the clarification given by the ECGD by way of a footnote is appropriate and does not undermine or weaken the effectiveness of such declarations.

9. Conclusion

- 9.1 Amicus believes that deterrence of bribery and corruption is critical to the UK’s reputation and the securing of jobs on the international stage. All companies should be able to compete for business on the same level playing field through ensuring that the various European Agencies operate equivalent standards. However, sanctions under the existing law, managed by the competent authorities, provide the appropriate deterrent.
- 9.2 ECGD is not an investigative body and its procedures should reflect that. Amicus believes that the December 2004 provisions, when compared with those imposed in May 2004, represent a fair balance between meeting ECGD’s objective of ensuring that taxpayers’ money is not used to support corrupt activities and ensuring that the burden placed upon exporters and the financing banks is reasonable.

For further comment or information:

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