

TRANSPARENCY INTERNATIONAL (UK)

the coalition against corruption



27 February 2009

Ian Pearson MP
Economic and Business Minister
Department for Business, Enterprise & Regulatory Reform
1 Victoria Street
London SW1H 0ET

Dear Minister

Bonny Island bribery case

I am writing on behalf of Transparency International (UK) to express our disquiet at the approach that ECGD has taken to the involvement of MW Kellogg in the Bonny Island bribery case, and to raise related issues of principle that we feel need addressing by ECGD and other government departments in future such contracts.

The ECGD has stated publicly that a) it is unable to debar from future contracts companies that have admitted to, or been found guilty of, bribery, due to legal constraints, b) in this particular case, the provision of cover via a third party, BNP Paribas, means that it is unable to take action against MW Kellogg for breach of contract, and the situation is further complicated by the fact that MW Kellogg was not itself directly involved in the corrupt transactions and c) that ECGD's preferred approach is one of engagement with companies rather than debarment.

Overall, the case raises several areas of principle both for ECGD and the UK government as a whole:

- The UK government's approach to debarment of companies and their subsidiaries that have admitted to, or are convicted of, bribery in the UK or elsewhere.
- The commitment of all arms of government to live up to the government's statements on tackling foreign bribery.
- The legal constraints that may prevent ECGD and other government departments from enforcing strong anti-bribery provisions.
- The quality of anti-bribery provisions, and related breach of contract clauses, in contracts issued by ECGD and other government departments.

Of wider concern is that this case risks reinforcing the impression gained by the OECD and others that the UK government is not serious in its fight against corruption. This is unfortunate, as Transparency International (UK) had perceived that the government enforcement agencies had started to make real progress in investigating and prosecuting cases in line with OECD peer countries. Yet rather than acknowledging the anomaly of this situation and setting out plans to rectify it, the ECGD, and therefore by extension the UK government, appears to be defending its intention both to maintain a contract with a company involved with bribery, and to enter into new contracts with the same company in future.

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Transparency International supports debarment, and we note that it is a technique widely used by other governments and international bodies, including the US government and the World Bank. The point of debarment is to act as a punishment for the company involved, and a deterrent to other companies. Engagement is therefore not a substitute for debarment, but a complementary activity to be undertaken with companies that have poor anti-bribery systems in place.

Although Transparency International believes that engagement to improve anti-corruption systems can be both desirable and affective, the ECGD has not, to our knowledge, published any evidence that it has engaged companies over the issue of bribery, or what the results have been, and therefore it is not possible for the UK taxpayer, or civil society, to judge the effectiveness of the ECGD's stated approach.

The case also raises questions about why ECGD had drawn up a contract that did not foresee circumstances similar to the MW Kellogg/BNP Paribas relationship, and specifically that cover to a company involved with bribery may be provided through a third party.

Transparency International requests you, as the Minister responsible for ECGD:

- To review the Bonny Island contract with MW Kellogg and related parties, and confirm that it is indeed unlawful to annul the contract in the light of the evidence of bribery that has come to light.
- To commit that the ECGD will in future debar companies that have admitted to, or been found guilty of, bribery, for a period of up to five years [the flexibility of 'up to five years' to take into account behaviour such as self-reporting, changes in senior management, clear evidence of a change in corporate culture, introduction of best practice anti-bribery systems, etc].
- To make changes in the Act governing ECGD, or other legislation if necessary, to ensure that ECGD can legally debar companies convicted of bribery.
- To commission an independent review into the anti-bribery provisions used by other Export Credit Agencies and institutions such as the World Bank, in order that the ECGD can benchmark itself against best practice.
- To ensure that the revisions to ECGD's anti-bribery provisions due in 2009 conform to the highest international standards, and commit to changing the ECGD's governing Act if there is a contradiction between the two.
- To ensure that future contracts can be annulled in circumstances similar to the MW Kellogg/BNP Paribas case, and that the anti-bribery provisions of ECGD contracts are sufficiently sophisticated to encompass the several ways in which companies and their subsidiaries may be involved in bribery-related transactions.
- To encourage the government to take a consistent anti-bribery line across all departments, such that the provisions above are applied not only to ECGD but to all government departments and related bodies.
- To provide details of how many companies the ECGD has engaged on the issue of bribery, the nature of the engagement, and the results of the engagement.

I look forward to your response.

Yours sincerely

Chandrashekhhar Krishnan
Executive Director

cc Patrick Crawford, Chief Executive, ECGD