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Email: [jbeagent@leighday.co.uk](mailto:jbeagent@leighday.co.uk)

Your Ref: unknown

Our Ref: **JB/RS/Corner(4)**

Date: 14<sup>th</sup> November 2008

Dear Sir,

**BAE Al Yamamah contracts**

We act for Campaign Against Arms Trade and Corner House Research.

As you will be aware, on 16 October 2008 the OECD Working Group published its Phase 2bis report on the application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

That report contains a detailed analysis of the role of the ECGD in relation to its continuing support of the Al Yamamah arms contracts.

The report notes that "one of the four branches of the discontinued SFO Al Yamamah investigation involved alleged bribery-related fraudulent misrepresentations by BAE to ECGD, the UK's export credit agency." In February 2007, the OECD Working Group on Bribery asked what action ECGD had taken with regard to existing and future credit support relating to Saudi Arabia and we understand that the SFO has now passed evidence of bribery related conduct to the ECGD (para. 272).

The OECD concluded that it was "seriously concerned about the lack of evidence of any response by ECGD to the serious allegations of bribery-related fraud relating to the Al Yamamah contracts. The lead examiners invite the UK government to provide information in this regard in a manner that does not require any disclosure of commercial information disclosed by a client of the agency".

We note that officers of ECGD have suggested that ECGD is bound by considerations of commercial confidentiality from disclosing information to the OECD. A duty of confidentiality only applies insofar as it is in the public interest for the confidentiality to be maintained. Nor can any duty of confidence be owed in respect of evidence of wrongdoing.

In light of the OECD's conclusions:

1. Please inform us what steps the ECGD is taking to review cover provided for the Al Yamamah contracts in light of the evidence passed to it by the SFO.
2. Does ECGD intend to use its audit powers? If no steps are being taken, please give reasons.
3. Is ECGD now reviewing its policy in relation to further cover for Saudi Arabia, in circumstances where Saudi Arabia has sought to threaten the national security of the United Kingdom if it proceeds with the investigation of a proper bribery and corruption allegation? If not, please give reasons.
4. What steps is the ECGD taking to deal with the issues raised by cases where criminal proceedings may be in future blocked for reasons unrelated to their merits? As the OECD pointed out, it would be wrong in principle for the risk of loss in future cases to fall on the British taxpayer where a prosecution cannot take place due to the stance of a foreign government.

Yours faithfully,

**Leigh Day & Co**

Patrick Crawford  
Chief Executive

10 December 2008



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Dear Sirs,

**British Aerospace: Al Yamamah Contract**  
**Your Ref: JB/RS/Corner(4)**

Thank you for your letter of 14 November 2008.

In relation to the first two questions which you raise at the end of your letter, I would advise you that the agreement under which ECGD provide cover to British Aerospace in relation to the Al Yamamah contract (known as the Saudi British Defence Cooperation Programme), and which contain ECGD's powers of audit in relation to that contract, was terminated by British Aerospace with effect from 1 September 2008.

In relation to your third question, I would advise you that ECGD continually reviews its policy in relation to the provision of cover for Saudi Arabia and other countries in the light of all relevant circumstances and developments.

ECGD will consider the recommendations regarding the issue mentioned in your fourth question which were made by the OECD in its recent report.

Yours faithfully,

*Patrick Crawford*

**Patrick Crawford**



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Your Ref: unknown

Our Ref: JB/RS/Corner(4)

Date: 22<sup>nd</sup> December 2008

Dear Sir,

**BAE Al Yamamah contracts**

Thank you for your brief letter of 10 December on which we have taken instructions. You state that ECGD cover to "British Aerospace" in relation to the Al-Yamamah contract was terminated by "British Aerospace" with effect from 1 September 2008.

Your letter is in a number of important respects unclear. We therefore seek clarification of the following points:

1. Whom was cover provided to? "British Aerospace" no longer exists. By "British Aerospace" do you mean BAE Systems plc, or BAE Systems (Operations) Limited?
2. On what date was notice to terminate cover given? Please provide a copy of any correspondence between BAE and ECGD relating to the termination of that cover.
3. Our understanding was that the ECGD had provided cover to BAE Systems (Operations) Ltd with a single contract of indemnity in respect of all the BAE business with Saudi Arabia, this comprising the residue of Al Yamamah (now called the Saudi British Defence Co-operation Programme as you correctly note) and the new Salam Project, that the application for cover to include the Salam Project was made in June 2006, with the contract of cover entered into on 12th September 2006. Please confirm that our understanding is correct.
4. If so, please state whether:

- a. the September 2006 contract as it applies to the Salam Project remains extant; or
  - b. there is a new contract of indemnity solely for the Salam Project; or
  - c. there is no longer any extant cover for any of BAE's military sales to Saudi Arabia.
5. Please provide a copy of the relevant audit clause in the contractual arrangements.
  6. Do audit powers lapse once cover has been terminated?
  7. In relation to our third question in our letter of 14 November 2008, your answer is somewhat opaque. What are the results of the continual review into the provision of cover for Saudi Arabia in light of the circumstances we identified. This a matter of considerable public importance. Please state your current policy in relation to cover for Saudi Arabia.
  8. When does ECGD expect to publish its response to the OECD Phase 2 bis report?

To the extent necessary, please treat this letter as a request for information under the Freedom of Information Act 2000.

Yours faithfully,

**Leigh Day & Co**

Steve Dodgson  
Group Director  
Business Group



30<sup>th</sup> January 2009

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Dear Sirs,

### **Indemnity in respect of the Al Yamamah Contract**

Thank you for your letter of 22<sup>nd</sup> December 2008.

We had used a general term in referring to the party who had terminated the Indemnity in respect of SBDCP because we considered the material point to be the termination of our Indemnity rather than the precise contractual parties; and we do not believe that any difficulty or confusion has been caused thereby. The precise contracting parties were the Secretary of State and BAE Systems (Operations) Limited.

Notice to terminate the Indemnity was given in a letter from BAE to ECGD dated 1<sup>st</sup> August 2008 by which BAE, following a reassessment of its requirements, decided to cancel the cover provided by ECGD. BAE gave thirty days notice of the Indemnity (pursuant to Clause 15.1 of that Indemnity), which meant the indemnity would terminate on 31<sup>st</sup> August 2008.

This was followed by a letter from ECGD to BAE dated 4<sup>th</sup> August 2008 in which ECGD acknowledged receipt and noted the contents of BAE's letter of 1<sup>st</sup> August 2008.

The correspondence was concluded by a letter from ECGD to BAE dated 3<sup>rd</sup> September 2008 in which ECGD informed BAE that in view of the expiry of the thirty days notice which BAE gave in its earlier letter, the Indemnity terminated and ECGD cover ceased on 31<sup>st</sup> August 2008.

It is correct that all ECGD cover which related to the SBDCP (formerly Al Yamamah) was the subject of one contract and it follows therefore that all that cover has now



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been terminated. Your questions by way of purported clarification are, with respect, themselves confused, in that if the position were as you say you understand it to be at point 3, neither of your questions 4a or 4b, which are based upon that understanding, could possibly follow from it.

With regard to your questions 5 and 6, the audit clause follows the form of the standard audit clause set out in the Final Response to the Bribery and Corruption Consultation, a standard form with which your clients are familiar.

We do not consider our answer to the third question in your letter of 14<sup>th</sup> November 2008 to be opaque. The answer we gave sets out ECGD's position. However, if it will assist, we can expand on our answer to say that ECGD keeps a watching brief on all countries in relation to political, financial and economic factors that may impact upon ECGD's view of risk, either in relation to existing support or in relation to applications for support. Periodically a more formal review of a country is undertaken. Meanwhile, ECGD is open for cover for Saudi Arabia and will consider applications in the normal way.

With regard to the OECD Phase 2 bis report, HM Government will be making a reply in due course.

Yours faithfully,



**STEVE DODGSON**