



Submission No 99

**Review of Australia's Relationship with the  
Countries of Africa**

**Organisation:** Export Finance and Insurance Corporation –  
Answers to Questions on Notice



Australian Government



## **Joint Standing Committee on Foreign Affairs, Defence and Trade:**

### **Review of Australia's Relationship with the Countries of Africa**

## **Export Finance and Insurance Corporation (EFIC) – Answers to Questions on Notice**

22 December 2010

# 1. EFIC Question on Notice: Business in Africa

Senator Trood asked EFIC to take on notice the following question:

**You obviously get a lot of proposals that you do not decide to fund. Have the number of proposals that come to you increased over the last two or five years or so? ...I would be interested to know whether or not there has been an increase in activity and the number of people who are seeking funds which for one reason or another you decide not to grant?**

## **EFIC RESPONSE**

Over the past two to five years the number of enquiries and requests for EFIC support of African-related export business has remained within the typical range of demand experienced from year to year. As indicated during EFIC's statement to the Committee, most of EFIC's business in Africa has been in relation to mining projects. The fluctuations in demand for EFIC support in Africa in recent years may be attributed to the withdrawal of appetite and capacity of the debt markets during the global financial crisis (potentially generating more enquiries for EFIC), which was, however, counteracted by a decline in the number of projects when commodity prices fell (reducing the extent of Australian involvement in overseas projects). Following the recent recovery in commodity prices, the number of projects being proposed and developed has increased and there is evidence of a return of some appetite and capacity by the debt markets.

There is also variation between the various forms of support that EFIC can provide. In terms of the debt markets, as noted above, the interest of commercial lenders has followed the economic cycle. With regard to political risk insurance ("PRI"), the global financial crisis has not affected the capacity in the insurance markets. Given this available capacity and EFIC's market gap role, the demand for PRI from EFIC in general has remained at low levels notwithstanding the potential for large and infrequent transactions.

## 2. EFIC response to Jubilee Australia Submission (No. 97)

The Hon. Phillip Ruddock MP asked EFIC to take on notice the following question:

Could EFIC provide a written response to Jubilee Australia's submission to the Enquiry into Australia's relationship with the countries of Africa [submission no. 97]?

### EFIC RESPONSE

Jubilee Australia (**Jubilee**) submission (reference number 97) tabled to the Committee on 7 December 2010 contained six recommendations concerning EFIC. Each recommendation is provided in italics followed by EFIC's response in plain text.

***Recommendation 3:** The Environmental Policy of EFIC should be formally recognised in the Export Finance and Insurance Corporation Act 1991, to ensure procedural compliance and diligent Ministerial oversight of EFIC's Social and Environmental policies.*

The Environment Policy is one of many policies considered and approved by the EFIC Board. This is consistent with the functions of EFIC, its corporate governance structure and the circumstances in which the Minister is able to provide written directions to EFIC.<sup>1</sup> This is a fundamental aspect of EFIC's independent structure as a statutory authority with an independent Board and reporting obligations and other accountabilities under the *Commonwealth Authorities and Companies Act 1997* (the **CAC Act**).

As a statutory authority, EFIC is subject to a framework of oversight and scrutiny both by the public and by its representatives in Parliament and Government. EFIC reports on a regular basis to its responsible Minister and has an independent Board and Board Audit Committee, including a Government Member, the Secretary for the Department of Foreign Affairs and Trade (**DFAT**), which meets regularly. As a policy matter, the Environment Policy presents EFIC's approach to environmental and social issues in transactions and is a living document, which is regularly reviewed, made available for comment by civil society and updated by EFIC. It not only reflects the requirements of the *Export Finance and Insurance Corporation Act 1991* (the **EFIC Act**), which states EFIC's duty to "have regard to ... Australia's obligations under international agreements"<sup>2</sup>, but also factors in other decisions made by EFIC. For example, EFIC's nomination of the World Bank's International Finance Corporation (**IFC**) Performance Standards as the benchmark for its environmental and social reviews and EFIC's decision to become a signatory to both the Equator Principles and the United Nations Environment Programme Finance Initiative (**UNEP FI**). The key international agreement relevant to EFIC's Environment Policy is the OECD Common Approaches (the **Common Approaches**). The Common Approaches is currently under its fourth review since being formally adopted in 2003. EFIC itself, is separately undertaking a fourth review of its own Environment Policy, since it was formally adopted in 2000.

Leaving aside the issues above, if EFIC's Environment Policy were to be contained within the EFIC Act, any updates to that Policy would require amendment to the EFIC Act. Introducing a legislative process would be cumbersome and would likely hinder EFIC from updating its Environment Policy to reflect, and keep up with, changing international norms and best practices.

In accordance with the CAC Act, EFIC's Annual Report is tabled in Parliament each year and is subject to public scrutiny by both Houses of Parliament. As part of our Annual Report, EFIC also discloses the extent of our voluntary compliance with the ASX Corporate Governance Council's revised Principles of Good Corporate Governance and Best Practice Recommendations.

EFIC's stakeholders, including Jubilee, are also advised of EFIC's possible involvement in projects with a potential for significant environmental and/or social impacts (so-called "Category A

---

<sup>1</sup> Refer sections 7, 9(1) and (5), 83 and 84 of the EFIC Act

<sup>2</sup> Refer section 8(2)(b)(iii) of the EFIC Act

transactions”) before EFIC makes a decision on providing support. EFIC’s Environment Policy requires that we disclose an environmental assessment for Category A transactions in order to facilitate feedback on our potential involvement. This disclosure is made through EFIC’s website. In addition, EFIC has an obligation to report all Categories A and B projects to the OECD Export Credits and Guarantees Secretariat which subsequently is released for public dissemination.

***Recommendation 4:*** *The Government should direct the Auditor General to conduct a review every 5 years of EFIC compliance with the Environment Policy.*

This relates to Government policy and is ultimately a matter for Government to determine. However, it should be noted that assessment of EFIC’s compliance with the Environment Policy is a specialist area and may require external assistance.

EFIC is considering using an independent external party to audit the application of its Environment Policy. The audit frequency has yet to be determined but is likely to be every one or two years. It may be proposed that EFIC would engage a specialised environmental consultancy for the audit to ensure both the involvement of appropriately skilled people and so that EFIC can obtain useful, practical feedback on the application of the Environment Policy.

***Recommendation 5:*** *The Government should direct the Export Finance and Insurance Corporation to publish summaries of minutes of the Board of Directors.*

EFIC Board minutes include commercial-in-confidence material and are subject to the secrecy provisions of section 87 of the EFIC Act and often, also subject to confidentiality obligations to the contracting parties of transactions considered by the EFIC Board.

As part of the review of its Environment Policy, EFIC organised a workshop to discuss proposed amendments to the Policy. All parties who had made submissions (there were three submissions from civil society organisations (CSOs)) and members of DFAT were invited to attend. Representatives from Jubilee Australia, Oxfam Australia, the Mineral Policy Institute and DFAT attended the workshop on 9 December 2010, (two days after the Committee’s public hearing in Sydney).

The publication of Board minutes was one issue that was discussed at the workshop. These discussions revealed that a key concern of the CSOs was not to seek access to EFIC’s Board minutes specifically, but rather to ensure that frequent and up to date information be provided concerning EFIC’s provision of support to exporters. In response to this concern, EFIC agreed to maintain a table on its website that lists all signed transactions. This initiative was well received by workshop participants. The table will be updated at intervals to be determined but several times throughout the year and it will, subject to confidentiality obligations owed to the contracting parties, include details of the transaction including, where relevant, associated project, the type of support provided and the level of environmental review undertaken. Interested persons will be able to receive an automatic alert each time the table is updated. As the majority of EFIC’s transactions are approved under authority delegated by the Board (being non-Category A transactions or below a designated monetary threshold), and therefore do not require Board approval, the proposed table will provide more information than would be contained in a summary of EFIC Board minutes.

EFIC has previously provided this information to stakeholders through media releases and its Annual Report. However, the proposed regular updating of a list of signed transactions on its website will enable stakeholders to obtain access to information more easily and frequently.

***Recommendation 6:*** *The Government should direct the Export Finance and Insurance Corporation to publish a summary of its risk assessment for each Category A project.*

This refers to EFIC’s internal environmental and social analysis, which includes information provided by clients that is commercial-in-confidence. EFIC’s ability to disclose such information is restricted

under section 87 of the EFIC Act and may also be restricted by confidentiality obligations owed to the contracting parties. Jubilee's statement in its submission that EFIC's non-publication of such a summary is "inconsistent with the practises of other ECAs" is not correct. EFIC is aware of only one ECA that publishes some related information, the Japanese Bank for International Cooperation (JBIC). JBIC publishes a very brief overview of each of its 'Category A' projects but that overview contains little information on a project's environmental and social impacts and resultant management response. JBIC is also not a directly comparable organisation to EFIC as it has a wider mandate, fulfilling a development and strategic acquisition role for Japan.

This concern was discussed at a workshop convened by EFIC to discuss proposed amendments to EFIC's Environment Policy held on 9 December 2010. In response to this concern, EFIC agreed to expand its website information for approved Category A transactions to include information similar to that provided by the Canadian ECA, Export Development Canada (EDC). Subject to confidentiality obligations owed to the contracting parties, the information to be provided will include the project name and description, the type of support and, where possible, the amount, provided by EFIC, the benchmark standards used and type of information used in the benchmarking. This initiative was well received by workshop participants.

***Recommendation 7: Australia's export credit agency should not provide export finance and insurance products to extractive sector investments in non-EITI implementing countries.***

It is unclear what Jubilee means by an EITI implementing country. The EITI identifies two levels, 'EITI Candidate' and 'EITI Compliant'. To become an EITI 'Candidate', a country must fully and to the satisfaction of the EITI Board meet four sign-up indicators. Once a country has obtained 'Candidate' status it has two years to be validated as a 'Compliant' country. As at December 2010 only five countries had achieved 'EITI Compliant' status: Azerbaijan, Mongolia, Ghana, Timor-Leste and Liberia. A decision to initiate efforts to become EITI Compliant is made by a national government. Extractive industry companies, particularly smaller companies that EFIC typically supports, have little influence on that decision. Companies can become supporters of the EITI but, at best, they can only encourage a national government to join the initiative. EFIC has on occasions previously included (where commercially possible) in its legal agreements with an extractive company a requirement that the company become an EITI supporter.

Therefore, the effect of EFIC implementing this recommendation would be that EFIC could not currently support an exporter involved in the extractive sector (which includes both oil and gas and mining) in all high-income OECD countries (excluding Norway but including most of Europe as well as Canada and the USA), almost all of South-East Asia and South America, China, India and much of Africa. Similarly EFIC could not support an export related extractive industry within Australia. One of Australia's export strengths is its internationally acknowledged expertise in extractive industries. This recommendation would lead to EFIC not being able to support a key export industry. This could severely curtail EFIC's ability to perform its statutory functions.<sup>3</sup>

***Recommendation 8: Place a moratorium on the approval of political risk insurance policies by the Export Finance and Insurance Corporation until the EFIC Environment Policy and its process of due diligence has been reviewed by the federal parliament.***

Jubilee's explanatory text leading to this recommendation (pages 10 and 11 submission number 97) seems to indicate a misunderstanding of the function of political risk insurance (PRI) and EFIC's application of environmental and social policy to all transactions it considers. Jubilee state among other things that:

1. PRI may enable a project to proceed notwithstanding a host country not having the institutional or governance capacity to regulate a project/operation.
2. In many situations deficiencies in project design relating to environmental and social management plans are being 'theoretically' offset or mitigated by the provision of PRI.

---

<sup>3</sup> Refer to section 7(1) of the EFIC Act

3. Instead of implementing a project design framework that addresses risks associated with extractive industry projects in developing countries and deploying effective actions plans as required by IFC Performance Standards, some companies prefer to rely upon the financial safety net of PRI if the project becomes politically untenable.
4. In maintaining Australia's international reputation and support for human rights it is important that PRI is not used as a substitute for strong project host nation institutional, regulatory and governance capacities and best practice project management of social and environmental risks.
5. By issuing PRI, EFIC is essentially encouraging companies to proceed with excessively risky projects.

These five factors identified by Jubilee, whether in combination or alone, are in fact factors that would likely lead to EFIC refusing support to a project; this is completely contrary to Jubilee's assertion that they are reasons for providing PRI. EFIC's PRI policy provides insurance against losses incurred by the insured where that loss is caused by clearly specified political events, including: expropriation e.g. nationalisation of insured's investment or plant and equipment by the overseas host government; war damage/political violence; and currency inconvertibility and exchange transfer blockage. While PRI insurers can impose terms and conditions on environmental and social management matters (for example breach of such terms and conditions may terminate the policy or invalidate any subsequent claims), the insurance policy by itself cannot mitigate or somehow offset project deficiencies in the areas of social and environmental risks.

In determining whether EFIC will provide PRI, the same due diligence process will be applied as is applied to any other type of EFIC support, whether it is finance or insurance support. All transactions have to satisfy various EFIC requirements, including those relating to environmental and social assessment and management, country risk, financial capacity of the exporter and where relevant the exporter's client, management capacity of the exporter and where relevant the exporter's client.

### 3. Correction

Senator Trood asked EFIC the following question (page 48 of Hansard transcript):

**What has been the trend of your business in Africa over the last five to ten years?**

EFIC's response during the Hearing referred to the episodic nature of EFIC's business. It also made reference to the percentage of transactions in the mining sector globally; a topic which had been discussed with the Committee in response to an earlier question, rather than specifically to transactions EFIC has supported in Africa. The following table provides the percentage of transaction supported by EFIC in Africa over the last ten years, as a percentage of the value of total transactions over that time.

Table:

Value of transactions in Africa as a % of total value of transactions per year										
Year	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001
Value	2%	2%	0%	61%	0%	0%	55%	0%	0%	0%