

19 March 2012

Via email to: exportcredit@pc.gov.au

Export Credit Arrangements
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

Dear Sirs

Submission in response to Australia's Export Credit Arrangements: Productivity Commission Draft Report

Clifford Chance welcomes the opportunity to provide a submission to the Productivity Commission's public inquiry into Australia's Export Credit Arrangements.

Clifford Chance is one of the world's leading law firms. In relation to banking and finance, we are actively involved every day in projects that are or are seeking to be supported by export credit agencies ("ECAs"). This includes "mega-projects" such as the Nord Stream and Nabucco gas pipelines, ECA-backed aircraft and other asset financings and smaller projects in "difficult" jurisdictions through Africa, Asia and Latin America. We act for ECAs across the globe including US-Exim, SACE, Hermes, ECGD, ECIC, Sinosure, K-Exim, K-Sure, Coface and EDC. We have also recently acted for EFIC (amongst other ECAs and commercial banks) in relation to debt facilities provided to Santos Finance Limited in connection with the Gladstone LNG project and in relation to mining projects in Senegal and Guinea and an asset finance transaction in Mongolia.

Our experience across many jurisdictions with many different ECAs gives us a global view of the benefits that ECAs bring to projects and financial markets. In this regard, we are convinced that "mega-projects", like Nord Stream and, relevantly to EFIC, PNG-LNG, cannot happen without significant participation of ECAs. These projects typically have very long, challenging and multi-phase construction periods and so require long availability

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periods and tenors for debt facilities, involve huge capitals costs and stretch across multiple jurisdictions (physically and/or contractually) which brings with it significant commercial and political risks that commercial banks and bond holders are not willing to bear. We have also found that in projects of this nature that the ECAs act as "pathfinders" leading from the front not only on commercial issues but also on all important environmental and social issues. In our experience EFIC is willing and able to be a "pathfinder" while also demonstrating significant commercial rigour in assessing and negotiating its participation in these transactions both in terms of pricing and loan terms and conditions.

Australia has a long list of mega-projects under consideration and ECA financing will, in our view, be absolutely vital to the success of these projects. We would expect, based on our experience working with EFIC on the Santos GLNG transaction, that EFIC's role in these Australian mega-projects will be to catalyze the participation of foreign ECAs and domestic and foreign commercial banks. Given the huge global demand for resources and infrastructure projects at the moment, sponsors and commercial banks are being particularly careful in selecting projects in which to invest. We believe that an active ECA can make the difference in this climate in terms of bringing debt and equity investors to projects and markets.

It is also worth noting that even though the sponsors of mega-projects may be significant corporate entities or state-owned or controlled national champions, the multiplier effect of large projects means that there are numerous opportunities for local contractors that would not exist if the mega-project did not go ahead. In that regard, we are of the view that EFIC's continuing involvement in Australian domestic and regional mega-projects will be vital for the competitiveness of Australian contractors.

Often (but not always) at the other end of the spectrum in terms of deal size, we are equally convinced that ECAs along with development finance institutions are essential to the financing of projects involving new technology or that are located in challenging jurisdictions. The political and/or technology risks in these deals mean that commercial banks are simply not willing to participate without ECA coverage. If these challenging deals do not go ahead, exporters miss the opportunity to demonstrate novel technology or open new markets which impacts greatly on their competitiveness.

Outside the world of ECA financing, we advised on the creation and the incorporation of European Financial Stability Facility ("EFSF") and continue to advise on debt issuances and loan facilities from the EFSF. This puts us at the heart of the issues surrounding the euro zone sovereign debt crisis and its global impact. Australia is by no means immune to the effects of the euro zone crisis. We have seen firsthand the effect that the downgrading of certain European countries has had on the availability at commercially acceptable prices of European

ECA-covered debt in the Australian market. Clearly also European banks have been affected by the euro zone crisis, which has compounded their own ongoing capital and liquidity issues, and they have significantly withdrawn from the Australian market. While Asian banks and US banks and capital markets have filled the gap to some extent, now is not the time, in our view, to further limit sources of liquidity and projects expertise in the Australian market by restricting EFIC's role.

We are also heavily involved in advising on the impact of Basel III, which is expected to increase the cost to commercial banks of providing project financing and so further constrain their ability to fund projects both large and small. While there is talk in the market place of project bonds and infrastructure funds stepping in to fill some of the gaps, these financial products will take a long time to come to maturity and there are significant issues particularly around construction risks that need to be "solved". Therefore ECAs will remain vital in the medium term and, particularly given the withdrawal of many commercial lenders from the projects space, we expect ECAs to play a path-finding role in educating bond trustees and fund managers in relation to complex projects helping to bring these sources of capital to market.

Through our involvement, since 2008, as a strategic partner of the World Economic Forum, we are also regularly in contact with governments, regulators and business leaders in relation to the key challenges facing economies around the world today and one of key themes in recent times has been the effect of regulations post GFC on global capital flows. Indeed regulations such as the Dodd-Frank Act are expected to have a constraining effect on capital flows around the world and this will be exacerbated if similar measures are adopted in Europe. Particularly while the global regulatory response post GFC remains under discussion, keeping sources of capital and liquidity open will be critical for the competitiveness of exporters.

Another reason why we believe EFIC and other ECAs will grow in importance in the Australian market is that, as the Commission will be aware, Australia's large banks face significant near and medium term refinancing requirements. Some of their capital accessed from foreign wholesale markets will be replaced by capital raised from the domestic markets, including through retail offerings. Australian lenders will have less capacity and appetite to provide the project finance or export finance that Australia requires to maintain its current economic good fortune. At a time when the continued expansion of the Australian economy will require substantial capital, but capital will be less readily available, the Australian Government should be very wary of limiting the operations of EFIC.

We are strongly of the view that the competitiveness of a country's contractors and exporters is materially enhanced by an active and professional ECA. In the current climate of high-demand, on the one hand, for capital for resources and infrastructure projects and supply-side constraints, on the other hand, of liquidity and capital constrained banks, rising lending costs in light of Basel III and possible further regulatory restrictions on global capital flows, this is the case perhaps now more than ever before. In light of the foregoing supply and demand pressures we are actually seeing many ECAs expanding the support they provide to their own contractors and exporters by providing, for instance, more untied cover, more favourable terms in respect of eligibility and more direct lending. The competitiveness of Australia's contractors and exporters may therefore be doubly affected if EFIC's operations are curtailed.

Please do not hesitate to contact us if you have any queries in relation to this submission.

Yours sincerely

Clifford Chance