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Australian Government
Department of Foreign Affairs and Trade

DFAT Supplementary Submission

Inquiry into the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 (the Bill)

INTRODUCTION

The Department of Foreign Affairs and Trade (DFAT) wishes to address a number of questions raised in other submissions to the inquiry and by the committee secretariat. This supplementary submission should be read in conjunction with DFAT's submission of 6 March 2019.

1. Does the Bill support our broader foreign policy aims relating to sustainable development?

The Bill supports our foreign policy aims, including on sustainable development. As the Prime Minister said on 8 November 2018 "Australia's national security and that of the Pacific are intertwined - as the 2017 Foreign Policy White Paper made clear, when it identified the Pacific as one of Australia's highest foreign policy priorities". He also noted "[w]e must also deepen our commitment to economic engagement in a way that addresses the specific challenges of the Pacific." Infrastructure is a priority challenge for the Pacific. The Bill addresses this challenge and underpins our interest in ensuring the region's massive infrastructure needs are met responsibly.

Efic can only provide commercial debt finance. Therefore, Efic will focus on projects where there is a genuine commercial need, appropriate governance, and the probability of debt default is low. Efic applies the OECD Sustainable Lending Guidelines.¹ The purpose of these Guidelines is to ensure that financing extended to public or publicly-guaranteed buyers in lower-income countries supports their economic and social progress without endangering their financial future and long-term development prospects.

2. Does the Bill consider the interests of recipient countries in the Pacific?

The Bill would give the Australian Government, via Efic and the Australian Infrastructure Financing Facility for the Pacific (AIFFP), greater flexibility to finance viable and beneficial infrastructure development in the region in partnership with recipient countries.

Both the AIFFP and Efic will consider the interests of recipient countries including the appropriateness of the infrastructure, the way in which it is procured and its impact on the local community. Efic's current due diligence processes include debt sustainability analysis and compliance with international economic, financial, environmental and social risk standards. Efic will also apply this due diligence to AIFFP transactions.

¹ See OECD, 'Sustainable lending', <http://www.oecd.org/trade/topics/export-credits/sustainable-lending/>

Consistent with our aid program, the interests of recipient countries are most appropriately dealt with by:

- Government direction (such as under section 9 of the *Export Finance and Insurance Corporation Act 1991* or section 34 of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*); and
- adherence to safeguards modelled on international best practice.

For example, the Government directs Efic through the Minister's Statement of Expectations² to apply international standards for the assessment of projects and make public its *Policy and procedures for environmental and social review of transactions (Policy)*.

This is a more appropriate approach than through legislation, which would limit Government's ability to quickly update the requirements that Efic is required to apply as international standards or expectations change.

Efic must ensure the Policy is consistent with international best-practice environmental and social standards, including the:

- World Bank Group's International Financial Corporation (IFC) Performance Standards,³ which define responsibilities for managing environmental and social risks including guidelines on: Risk Management, Labour, Resource Efficiency, Community, Land Resettlement, Biodiversity, Indigenous People and Cultural Heritage.
- OECD Guidelines for Multinational Enterprises,⁴ a comprehensive set of recommendations on responsible business conduct.
- Equator Principles,⁵ a risk management framework adopted by financial institutions for determining, assessing and managing environmental and social risk in projects. It provides a minimum standard for due diligence and monitoring to support responsible risk decision-making.
- OECD Common Approaches,⁶ which seeks to align OECD export credit agencies' environmental and social due diligence practices through information sharing and monitoring of projects.

More information on Efic's approach is available in its submission at page 6.

3. Does Efic have infrastructure expertise?

Efic has a strong track record of supporting infrastructure and large projects in the region and around the world (see Annexure 1 of Efic's submission). It has a dedicated, experienced and skilled Corporate, Sovereign and Project Finance team focused on providing such support. Efic can also draw on expert independent advisers when assessing projects. For many infrastructure projects, where financing is often syndicated, Efic will work with other financiers active in the region, including the Asian Development Bank, the World Bank,

² See the Minister's Statement of Expectations for Efic, 7 September 2017, <https://www.efic.gov.au/media/4112/efic-august-2017-statement-of-expectations.pdf>

³ See the IFC Performance Standards, https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards

⁴ See OECD Guidelines for Multinational Enterprises, <http://mneguidelines.oecd.org/>

⁵ See Equator Principles, <https://equator-principles.com/>

⁶ See OECD Environmental and Social Due Diligence, <http://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>

other export credit agencies and commercial financiers, which bring their skills and experience to project assessment and management.

4. What are Efic's transparency and accountability mechanisms?

Efic, as a corporate Commonwealth entity governed by the PGPA Act, is subject to a range of transparency and governance requirements. As part of the Australian Government's Foreign Affairs and Trade portfolio, Efic is accountable to the Minister for Trade, Tourism and Investment and to the Australian Parliament.

In compliance with its transparency obligations, Efic publishes an annual report⁷ which is tabled in Parliament. Efic discloses its proposed involvement in transactions⁸ with a potential for significant environmental and/or social impacts on its website prior to making a decision. Public input on Efic's participation in such projects is encouraged.

Within eight weeks of a transaction being signed Efic is required to publish detailed information on its website.

Like other financial institutions, including banks, export credit agencies and multilateral development finance institutions, Efic must respect commercial-in-confidence information of its clients and borrowers. This means it is not always able to disclose fully detailed transaction information. Efic must safeguard its clients' legitimate financial or business interests. Without the ability to protect commercial-in-confidence information, Efic would not be able to operate.

Efic is audited by the Australian National Audit Office and independent external auditors.

5. If the Bill is passed, will Efic continue to provide loans on the Commercial Account in accordance with the criteria set out in the Statement of Expectations (including Australian content requirement?)

Yes.

Efic will maintain its focus on supporting Australian business and exporters including small and medium sized enterprises. The increase in Efic's callable capital by \$1.0 billion will ensure that Efic has adequate counterparty exposure limits to meet its obligations under the Statement of Expectations and also support more and larger infrastructure projects.

6. Are there unacceptable reputational and performance risks in the model proposed?

The Government takes reputational and performance risks seriously. Efic has a strong track record of financing infrastructure and other major projects in emerging markets. DFAT has expertise managing infrastructure projects and grant programs in the Pacific.

Care has been taken in designing Efic's new infrastructure powers. As noted above, Efic is required to adhere to international best practice standards and is regularly audited. The governance model proposed for the AIFFP will build on the existing expertise within Government, mitigating performance risks by minimising the need for new bureaucratic architecture while the AIFFP is established. The proposed

⁷ See Efic Annual Report 2017-18, <https://www.efic.gov.au/our-organisation/our-governance/reporting/annual-report/>

⁸ See Efic 'Transaction disclosure', <https://www.efic.gov.au/our-organisation/our-corporate-responsibility/transactions/transaction-disclosure/>

structure will allow the AIFFP to focus on its core objective to support projects that benefit our Pacific neighbours and do so without delay.

7. How will DFAT and Efic work together to approve and administer loans for the AIFFP? How will Efic's due diligence and approval processes interact with policy decisions from DFAT about which infrastructure projects should be supported?

DFAT will manage the AIFFP which will support the development of essential infrastructure in sectors such as energy, transport, water and telecommunications. Assessments of the development merits of projects will be undertaken by DFAT and the AIFFP Board. DFAT is the lead agency managing Australia's aid program and has long-standing experience delivering effective infrastructure projects and grants programs in the Pacific.

Efic will not be responsible for decision making for AIFFP infrastructure loans. Efic will provide technical and expert financial advice (such as credit assessment and loan structuring), portfolio management and operational support to the AIFFP. Efic will draw on its longstanding experience in financing projects in emerging markets. As set out at question 2, Efic will contribute to a rigorous due diligence process which incorporates a careful assessment of credit risks, country risks and environmental, social and technical risks.

8. Will the new overseas infrastructure financing power based on an Australian benefits test relate only to AIFFP loans on the National Interest Account?

No. The new overseas infrastructure financing power will also be used by Efic on its commercial account where commercially-viable infrastructure project loans will be originated, structured and approved by Efic.

The AIFFP will consider infrastructure projects in the Pacific and Timor-Leste. These projects will be assessed by the AIFFP Board, with Efic providing expert technical financial advice (such as credit assessment and loan structuring), portfolio management and operational support for the loan component.

9. The Statement of Expectations states the Minister's expectation that the National Interest Account 'should also normally be conducted on a commercial basis'. Will this requirement have any implications for the approval of AIFFP loans on the National Interest Account?

AIFFP loans will be non-concessional in line with this expectation. Grant funding will also be available for some AIFFP projects to reduce the overall cost of the project.

10. What consultation and information has been shared as part of the establishment of the AIFFP?

The Bill is focused on Efic's infrastructure capabilities and not the design of the AIFFP; views are being sought separately on the scope and design of the AIFFP. However, as this question has been raised in submissions it is addressed briefly below.

The AIFFP team has conducted extensive in-person and phone consultations with interested groups including Pacific Governments, NGOs, think-tanks, businesses, and members of the aid contracting community. These consultations are ongoing.

Pacific Governments and the Government of Timor-Leste have welcomed the announcement of the AIFFP and DFAT is in close contact with them through Ministers, our Heads of Mission and other senior officials. DFAT has tasked representatives at our High Commissions and Embassies to discuss the AIFFP's design and potential investments with host and accredited Governments. Representatives from the AIFFP team have travelled to the Solomon Islands, and have upcoming consultations planned in Fiji and Papua New Guinea. DFAT also provided a presentation on the AIFFP to senior diplomatic representatives from the Pacific and Timor-Leste in Canberra on 8 March 2019. This close consultation on the AIFFP design process will ensure the new facility supports the development priorities of Pacific countries and Timor-Leste.

Consultations with Australian stakeholders are well underway and will continue. To further inform the AIFFP design process, DFAT sought public submissions from businesses, NGOs and other individuals and groups. DFAT received over 40 submissions through this process. We are grateful for this input.

Once the AIFFP is operational, DFAT will continue to work with partners in the Pacific and Timor-Leste to identify projects that will support transformative and sustainable economic growth. Both the Bill and the establishment of the AIFFP highlight that Australia has listened and is working closely with our partners in the region, including through the Pacific Islands Forum.