



**Steven D. Ness,
President**

November 9, 2018

Diana Smallridge, President and CEO
International Financial Consulting Ltd.
World Exchange Plaza, P.O. Box 81119
Ottawa, Ontario
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RE: Legislative Review – Export Development Canada (EDC)

Dear Ms. Smallridge:

By way of introduction, the Surety Association of Canada (SAC) was formed in June 1992 to be the “voice of surety” in Canada. In addition to our advocacy role, we are the primary information resource for governments and other stakeholders on surety bonds and the role of the suretyship process in construction risk management. SAC’s membership consists of major bonding companies from coast to coast along with members from the insurance brokerage community, legal fraternity and other industry related entities. The combined business of SAC member surety companies comprises 97% of all surety premiums written in Canada.

SAC very much appreciates the opportunity to participate in the consultative process around the 2018 Legislative Review of Export Development Canada (“EDC”). We’ve visited the EDC Review 2018 website and reviewed the identified themes along with submissions from other stakeholders. We’re pleased to provide you with our comments and recommendations which centre largely around the interrelated issues discussed under Themes 1 and 7.

Canadian licensed surety providers collectively provide billions of dollars in performance security annually to support infrastructure and construction projects, both domestically and internationally for Canadian construction companies. Given the magnitude of performance security provided to the construction industry by Canadian licensed surety firms, the surety provider is often the largest creditor of a construction organization.

EDC in the Domestic Marketplace: A Question of Then and Now

In the wake of the significant dislocation caused by the worldwide credit crisis almost a decade ago, EDC has been able to play a key role working with sureties and their clients to help facilitate opportunities and, in many cases, assist them in expanding globally. During that critical time, EDC exercised government authority to operate in the domestic marketplace. At that time, because of the challenges in the credit marketplace, and notwithstanding EDC’s historic export focus, it was beneficial for EDC to provide its

Performance Security Guarantee (“PSG”) program to Canadian construction companies domestically to respond to their need for performance security in the form of letters of credit on Public Private Partnership (“P3”) projects.

The current economic situation is markedly different than that which existed in 2008 when EDC’s mandate was adjusted to respond to those unique market issues. Today, capital levels in the Canadian financial services sector are at an historic high, facilitating innovative, sustainable solutions for Canadian businesses. An example of this is in the surety sector where the industry has responded by designing a new P3 type performance security. Since 2014, more than 25 P3 bonds have been issued on P3 projects that have reached financial close, in addition to countless more which were issued to support RFP proponents who submitted bids in the procurement process. There are also many instances of where contractors, without access to EDC, have been able to access surety products and successfully compete in the P3 marketplace.

The Role of the Surety Industry

We discussed earlier, the current availability of capital that provides sufficient surety capacity to address the ever-growing needs of a robust domestic construction market. It may be useful at this point to place that into the context of the current consultation process and elaborate on the role that our industry plays in bringing about stable and sustainable growth within Canada’s non-residential construction industry.

A surety’s primary and most recognizable function is that of providing financial security to project owners, trades and suppliers in the event of a contractor failure. Hand-in-hand with that obligation however, is the extending of the prequalification assurance that the bonded contractor is capable of fulfilling the obligations under its contract; both financial and performance.

In the exercise of its prequalification due diligence, a surety often finds itself cast in the unenviable role of industry gatekeeper; providing support to submissions that meet its underwriting criteria, while declining such support where an applicant may be less than qualified. This risk assessment process; important though it may be to the stability of the industry as a whole, is sometimes misconstrued by some industry stakeholders who refer to the suretyship process acts as an unwanted “barrier” to participation

In the current context, we encounter variations on this misconception in the P3 space as well, where stakeholders will occasionally misinterpret a surety’s reluctance to entertain a specified risk or submission. Indeed, we note concerns expressed by stakeholders about how the surety industry “...would not provide bonds on the large civil projects or when projects exceed their single bond limit...”. This is not the case. For the most part, this reluctance is simply a case of a surety responsibly and judiciously deploying its capacity to ensure against an overextension of credit that might heighten the risk of project failure.

EDC in the Domestic Market – Time for a Change in Mandate

With the recovery of the financial system following the downturn of 2008-09, the surety industry is more than capable of providing sufficient financial and underwriting capacity to service the needs of the marketplace in 2018 and beyond. Given current conditions, we respectfully suggest that EDC’s continuing participation in the surety marketplace at the current level will “crowd out” rather than complement the activities of private sector participants.

In that regard, the Surety Association of Canada recommends that EDC begin the process of phasing out its offering of PSG products.

However, given that EDC has been supporting domestic transactions in the marketplace since 2009, we believe any rapid and premature withdrawal from the marketplace might create short-term implications to some Canadian construction companies who have come to depend on the EDC program. Therefore, EDC's withdrawal should not be sudden and ideally undertaken after appropriate consultation and analysis.

This is not to say that EDC should have no role whatsoever in the domestic market. We believe that there may be an opportunity for the corporation to participate in support of, rather than in competition with, the private sector. For this reason, SAC proposes a consultative process which includes government, EDC, the surety industry and the lending and construction communities. We emphasize however that any solution should be sustainable and beneficial for all stakeholders. To that end, the surety industry is prepared to contribute by meaningfully participating in such a process for the long-term betterment of the Canadian construction industry and the marketplace.

Finally, SAC would respectfully suggest that a period of ten years between EDC mandate reviews is perhaps too long a period given the pace at which the marketplace is changing. In the future, SAC would therefore recommend that EDC maintain a regular and formal dialogue with industry to stay informed and current to proactively avoid any unintended consequences.

Ms. Smallridge, both SAC and the surety industry have a vested interest in the near term and long term health of Canada's domestic construction market and pledge to work with our construction industry partners and other stakeholders to achieve this laudable objective. We would welcome the opportunity of meeting with you and your colleagues to elaborate on these proposals further and answer any questions you may have.

Again, we wish to sincerely express our thanks for seeking input and allowing us to provide our suggestions about next steps. We look forward to hearing from you.

Yours Very Truly,

A handwritten signature in black ink, appearing to read "Steven D. Ness". The signature is fluid and cursive, with a large loop at the end.

Steven D. Ness
President
Surety Association of Canada