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Your reference

Our reference

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✓ 5/6

Dear Mr Evans,

SALE OF AIRCRAFT AND EQUIPMENT TO SAUDI ARABIA:
DRAFT MOU

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1. Thank you for sending me copies of the draft MOU on the sale of aircraft and equipment to Saudi Arabia and the associated draft Letters of Offer and Acceptance. Advice on the legal or quasi-legal commitments in domestic law is of course a matter for the Treasury Solicitor. One point on which we are not clear is whether the MOU is to be a Government to Government arrangement without binding legal effect. As pointed out in Mr Huxley's letter of 10 October, the LOAs are drafted in a Government to Government style but are redolent of binding contractual documents at private law. It therefore seems odd that the MOU (non-binding) contains a clause to the effect that where there is any conflict between an LOA (apparently binding) and the MOU (non-binding) the latter will prevail. It would be more usual for the LOAs to be subsidiary understandings under the framework of the MOU.
2. We are concerned that the first clause on page 14 has the effect of not merely allowing but requiring UK civilian and military personnel to take part in the preparation of Saudi aircraft for action in an armed conflict, including their arming. The clause fails to specify in any way what kind of conflict it covers, whether a purely defensive action by Saudi Arabia in accordance with Article 51 of the UN Charter, or an aggressive armed attack by Saudi Arabia on another State, or even intervention by Saudi Arabia in a continuing armed conflict between other States (one of which might hypothetically be a British ally). At worst, this could expose HMG to accusations that they were involved in an undercover role in any number of types of unlawful military adventures; at best, it might threaten to compromise British neutrality in armed conflicts between third States. We would have expected the clause to be the other way round: to authorise the withdrawal or at least standing aside of all UK personnel as soon as Saudi Arabia became involved in an armed conflict.

/s,

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3. We find the termination clause on page 18 confusing. It might be better to construct a straightforward clause on the basis of the four essentials:

- (a) The right to initiate termination after a year.
- (b) Consultation to agree on a termination date.
- (c) If no agreement, termination after six months.
- (d) Continuation in operation thereafter for so long as may be necessary to settle outstanding questions.

4. The clause on page 20 "Language" attempts to mix two rather different things: a language rule for communications in the operation of the arrangement and a language rule for the text of the MOU itself. The two should be separated. If the former has any place at all (which I doubt since the second sentence for example could lead to some extraordinary results), then it should be in the main body of the text, whereas the latter is part of the testimonium on the next page. However, there is also an additional sentence which declares the Arabic version to be a translation of the English version. This would normally be included in order to justify a provision to the effect that, although the instrument was signed in both languages, only the English text was authentic. But to include it immediately after a rule which provides that both texts are equally authentic can only create confusion.

5. We have a number of other comments on the MOU:

Page 2, para 2, line 5 - insert "thereafter" between "will" and "consult".

Page 3, point (b) - to read "A firm price or failing that, a budgetary cost estimate."

Page 4, para 3, line 1 - insert "and Saudi Arabia admit" between "establish" and "a UK MOD monitoring team"

Page 5, point (b) - the cost of the team should be spelled out.

Page 6, point (d) - "the" should be replaced by "and" to read "are enjoyed by and passed to the Saudi Arabian Government".

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Page 9, point (e) - after the word "explosives", "required for" should be substituted for "to be used solely in".

Page 10 - last sentence of second paragraph should begin "the term" instead of "the team".

Page 10 - penultimate line should read "the Saudi Arabian Government will" rather than "agrees".

Page 11, line 3 - might be rephrased "arrangements when such claims arise out of the negligence etc."

Page 11 - last half of point (b) should read "or loss of or damage to property, out of participation in these arrangements, when such claims arise out of the negligence or wilful misconduct of BAE, its agents or employees."

Page 12 - first line of second paragraph - insert "Saudi Arabian" between "from" and "Social Security".

Page 12, para 4 - "granted to members of the diplomatic corps" should replace "prescribed for members of the diplomatic corps".

Page 13 - we propose amendment to last paragraph to read: "The Saudi Arabian Government will provide expeditiously the necessary entry visas, residence and exit permits for BAE, its sub-contractors and their personnel and dependants."

Page 14 - please see comment in para 2 above.

Page 18 - please see comment in para 3 above.

6. With regard to the paragraph on disposal in all the LOAs, we continue to propose the amendment outlined in para 3 of Huxley's letter of 10 October to you.

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