

Changes to Canada's Anti-Corruption Regime Are Now in Force

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On June 19, 2013, Bill S-14: The *Fighting Foreign Corruption Act*, received Royal Assent, thereby bringing into force the most significant changes to Canada's anti-corruption legislation, the *Corruption of Foreign Public Officials Act* (CFPOA) since its inception. Bill S-14 (copy at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6246177>), which passed through both the Senate and House of Commons without amendment, significantly increases the scope of the CFPOA's prohibitions and enhances the ability of Canadian authorities to prosecute and penalize offenders.

Canadian companies should now be carefully reviewing their anti-bribery policies and procedures to ensure they are in full compliance with these new laws. Further, those companies whose policies currently allow for facilitation payments should now be taking steps to eliminate those practices as the government has served notice that the existing exception for such payments will be repealed.

The Key Changes

There are six key changes to Canada's anti-bribery regime, each of which are summarized in detail in [in Significant Amendments Proposed to Strengthen Canada's Anti-Corruption Regime at http://www.mccarthy.ca/article_detail.aspx?id=6169]. In brief, they are as follows:

- (i) the exception for facilitation payments is now subject to elimination by an order of the federal Cabinet; the government has put Canadian companies on notice that the exception for payments made to expedite or secure the performance of acts of a routine nature will be eliminated at a future date, allowing time for companies to adjust their policies and being cognizant of the competitive disadvantage this may create vis-à-vis other countries (such as the United States) that continue to allow their companies to make such payments;
- (ii) there are new prohibitions against engaging in a wide range of activities regarding books and records when undertaken for the purposes of bribing a foreign public official or disguising such bribery;
- (iii) the jurisdiction of the CFPOA is significantly expanded from a territorial to a nationality basis; regardless of where the alleged bribery has occurred, the CFPOA now applies to all Canadian companies and citizens as well as permanent residents present in Canada after they commit the offence;
- (iv) the maximum term of imprisonment for individual offenders has been increased from five to 14 years; in addition to sending a signal regarding the seriousness with which the government views CFPOA violations, this eliminates the availability of discharges and conditional sentences;

(v) the definition of business activity subject to the CFPOA has been expanded with the removal of the “for profit” requirement; and

(vi) the Royal Canadian Mounted Police (RCMP) has been accorded exclusive authority to lay charges for CFPOA and related offences.

Continued Developments

These changes should be viewed in the wider context of recent policy initiatives and increased anti-corruption enforcement in Canada. On June 13, 2013, the Canadian government announced that it will implement a mandatory reporting regime for companies in the extractive industries - see Canada Announces New Initiative for Disclosure of Payments to Governments at http://www.mccarthy.ca/article_detail.aspx?id=6334.

Recent efforts by the RCMP to step up enforcement have led to convictions and significant multi-million dollar penalties – for example, see A Closer Look at the *Griffiths Energy Case*: Lessons and Insights on Canadian Anti-Corruption Enforcement at http://www.mccarthy.ca/article_detail.aspx?id=6176 and A Deeper Dive Into Canada’s First Significant Foreign Bribery Case: *Niko Resources Ltd.* at http://www.mccarthy.ca/article_detail.aspx?id=5640. There are currently over 35 ongoing CFPOA investigations, a few of which have been making headlines in Canadian and international media.

Companies and their boards should be reviewing their anti-corruption compliance policies and procedures to ensure they are up to date with all of these developments in Canada and in other jurisdictions that are also expanding anti-corruption obligations and enforcement efforts. In addition to preventing violations of applicable anti-corruption laws, those policies and procedures should enable management and directors to quickly detect potential violations and respond accordingly.