

White Collar Risk Management and Investigations

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RCMP Investigates Canadian Mining Company For Alleged Bribery Offences Under the CFPOA

Recently unsealed court documents have provided insight into the Royal Canadian Mounted Police's (RCMP) investigation of Canadian mining company MagIndustries Corp. (MagIndustries) regarding alleged bribes paid to Congolese government officials, contrary to Canada's *Corruption of Foreign Public Officials Act* (CFPOA).

The ongoing investigation of MagIndustries is a potent reminder to directors and officers of Canadian corporations operating abroad of the importance of taking steps to prevent and properly respond to potential violations of the CFPOA. Increasing awareness of the RCMP's recent enforcement of the CFPOA may motivate whistleblowers to report potentially illegal activity, which could result in further investigations and enforcement proceedings.

The MagIndustries Investigation

In January 2015, the RCMP raided the offices of MagIndustries, a Toronto-based mining company developing a \$1.5 billion potash mine in Pointe Noir, Republic of Congo (ROC). MagIndustries is a public company listed on the Toronto Stock Exchange.

The recently unsealed court documents filed to obtain the search warrant indicate the RCMP initiated its investigation over a year before the raid after it received a tip from the company's former in-house accountant in ROC, who was a Canadian citizen¹. According to the accountant, he was asked to approve a \$12,000 cash

payment to Congolese government officials to secure the right to expropriate 290 hectares of land in order to build a seaside shipping terminal near the company's potash processing facility. The accountant also claimed that he was terminated as a result of his refusal to authorize the payment. The accountant emailed his allegations to the Trade Commissioner at the Canadian Embassy in ROC, who provided the information to the RCMP.

In the early stages of its investigation, the RCMP obtained a search warrant of MagIndustries' internet service provider to obtain the company's emails. Those emails suggested that the \$12,000 payment was not the first of its kind by the company. A subsidiary company, Eucalyptus Fiber Congo, appeared to have kept two sets of books and to have made "under-the-table" payments totalling over \$100,000 to Congolese government officials in 2012 to secure a significant reduction in its taxes payable to ROC.

The unsealed court documents also suggest that an external governance consultant hired by MagIndustries was terminated a month after he advised company executives that MagIndustries may be in breach of the CFPOA based on information he received in a meeting with the whistleblowing accountant.

To date, none of the allegations have been proven in court and no charges have been laid.

Recent Developments in CFPOA Enforcement

As reported in previous Goodmans Updates, plea bargains and significant penalties (both fines and incarceration) are on the rise and the pace of new investigations appears to be increasing:

- In 2011, Niko Resources was fined \$9.5 million for providing the energy minister of Bangladesh with

¹ As a Canadian citizen, the accountant was subject to the CFPOA as a result of the Act's nationality based jurisdiction.

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a sports utility vehicle and trips to Calgary and New York amounting to a total value of less than \$200,000. Niko Resources was also placed on a three year probation period requiring third party audits and the submission of annual reports outlining its CFPOA compliance efforts to the court and the RCMP.

- In 2013, an Alberta court approved a \$10.35 million penalty against Griffiths Energy International, a junior oil and gas exploration firm, in response to a \$2 million payment and share offering to Chad's ambassador to Canada to secure drilling rights to land in the Republic of Chad. The penalty included a \$9 million fine and a \$1.35 million victim surcharge.
- In 2014, following the first contested trial under the CFPOA and the first conviction of an individual, Nazir Karigar was sentenced to three years imprisonment for agreeing to pay \$450,000 in cash and shares to Air India officials and the Indian Minister of Civil Aviation. Mr. Karigar, an agent for Cryptometrics Canada, agreed to make the payments in an effort to secure contracts with Air India relating to its facial recognition technology and related equipment.
- In 2015, charges were laid against SNC-Lavalin Group Inc., following a lengthy and very public investigation. SNC-Lavalin was charged for bribing one or several public officials of Libya for an aggregate sum of approximately \$47.6 million over a 10 year period and an alleged fraud of \$130 million in relation to projects in Libya. In response, SNC-Lavalin has announced that it will "vigorously defend itself" against the charges.

Lessons from MagIndustries for Canadian Companies

The investigation into MagIndustries is further evidence of increased efforts by the RCMP to enforce the CFPOA. Furthermore, it demonstrates that the RCMP will consider tips from whistleblowers alleging bribery

seriously, and will commence investigations even when the alleged bribes appear to be small relative to those cases that have previously resulted in charges and convictions.

Regardless of the dollar amount represented by a potential violation, it remains clear that companies must treat any concerns regarding potential CFPOA violations proactively and swiftly.

There is no "one-size-fits-all" compliance program for organizations that routinely deal with foreign public officials and operate in countries or industries with a high rate of corruption. Nonetheless, a robust anti-corruption compliance program supported by routine internal supervision and review and, where the organization has evidence or suspicion of a potential CFPOA violation, properly organized independent internal investigations are critical to preventing bribery and providing the organization with an opportunity to appropriately respond to potential bribery within their organization.

A proactive approach may allow an organization to minimize the detrimental consequences that form a potential CFPOA violation.

For more information on the MagIndustries investigation, the CFPOA or the steps an organization may consider taking to minimize risks and protect against CFPOA violations, please contact any member of our White Collar Risk Management and Investigations Group.