

White Collar Risk Management and Investigations

November 6, 2017

“Facilitation Payments” Exception Repealed under the *Corruption of Foreign Public Officials Act*

On October 31, 2017, certain changes were made to the *Corruption of Foreign Public Officials Act (CFPOA)* – Canada’s international anti-bribery and corruption legislation – to make the payment of “facilitation payments” a criminal offence under Canadian law.

As we discussed in our April 24, 2015 Update, *Canadian Foreign Anti-Bribery Law*, the *CFPOA* prohibits payments being made (or offered) to foreign public officials for the purpose of obtaining a commercial advantage, but included an exception to allow “facilitation payments”. Facilitation payments are payments to foreign public officials to secure or expedite the performance of any routine act that is part of the official’s duties or functions. Facilitation payments are not made to influence an official’s decision, but instead are made to speed up a process (e.g., the issuance of a permit or processing of official documents).

In June 2013, the Canadian federal government passed several amendments to the offences and penalties under the *CFPOA*, including an amendment repealing the facilitation payments exception (see our June 20, 2013 Update, *Amendments to the Corruption of Foreign Public Officials Act*). However, the amendment repealing the facilitation payments exception did not come into force with the rest of the amendments in June 2013. As of October 31, 2017, that amendment is in force, making facilitation payments illegal under the *CFPOA*.

The prohibition against facilitation payments aligns the *CFPOA* with the United Kingdom’s *Bribery Act*, and at the same time makes the *CFPOA* stricter in this regard than the United States’ *Foreign Corrupt Practices Act* since facilitation payments are still permitted in the United States.

It remains to be seen how Canadian law enforcement authorities will prosecute makers of facilitation payments. Penalties under the existing *CFPOA* offences have included multi-million dollar fines and imprisonment (see our May 26, 2014 Update, *First Prison Sentence under the Corruption of Foreign Public Officials Act*).

Practical Considerations for Businesses

In light of this amendment coming into force, Canadian companies conducting business abroad should ensure that internal controls, ethics and compliance policies, programs and measures for preventing and detecting bribery have been updated to address this change. If adequate measures currently are not in place, companies conducting business abroad should consider taking the necessary steps to minimize risk and protect against violations of the *CFPOA* and other applicable anti-bribery legislation by establishing and enforcing anti-corruption policies and ethics and compliance programs. These compliance programs should include a system of financial and accounting procedures to ensure the maintenance of accurate books and records.

For further information on the *CFPOA* and this amendment, please contact any member of our White Collar and Risk Management Group.