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Canada Repeals Facilitation Payments Exception in *Corruption of Foreign Public Officials Act*

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The Canadian government announced on October 30, 2017, that it is repealing the exception for “facilitation payments” to the offence of bribery under the *Corruption of Foreign Public Officials Act* (CFPOA).

The CFPOA is Canada’s principal legislation combatting bribery of foreign public officials with respect to international business transactions. It is somewhat similar to measures found in the United States’ *Foreign Corrupt Practices Act* and the United Kingdom’s *Bribery Act*.

In essence, the CFPOA prohibits anyone from giving or offering a loan, reward, advantage or benefit of any kind — directly or through intermediaries — to a foreign public official as consideration for an act or omission by the latter to obtain or retain a business advantage. The CFPOA also criminalizes an agreement to offer any such bribe, even if no benefit is actually paid out to a foreign public official.

Before the October 30 announcement, facilitation payments — that is, payments made to expedite or secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official’s duties or functions — did not amount to an offence under the CFPOA. Such facilitation payments include payments made to a foreign official to expedite the process of obtaining permits, licences or other official documents or the processing of governmental papers such as visas and work orders. Other examples of such services include police protection, mail services, scheduling inspections, providing utilities, cargo handling and actions of a similar nature.

The formal repeal of the facilitation payment exception, which is effective October 31, 2017, has been expected since the introduction of Bill S-14 back in February 2013. These types of payments will now be illegal and could lead to criminal prosecution and conviction of offenders, whether individuals or corporate entities. By taking this step, Canada joins other jurisdictions, including the UK, in criminalizing such payments.

The crime of foreign bribery under the CFPOA is punishable by up to 14 years in jail for individuals and by substantial fines for corporate entities. Furthermore, convicted corporate entities can also be barred from doing business with governments, particularly under Canada’s Integrity Regime and equivalent debarment policies in other jurisdictions.

The October 30 announcement is part of a tougher approach by Canada toward the corruption of foreign public officials. It highlights the importance for Canadian businesses of adopting effective compliance and monitoring programs to minimize the risk of illegal conduct by their employees or other representatives and of conducting thorough anti-corruption due diligence when carrying out a merger or an acquisition in order to avoid liability based on the conduct of the acquired business.

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