Anti-corruption, bribery and enforcement

Things to know

- Anti-corruption and bribery in Canada is enforced principally under two federal statutes:
  - Foreign bribery under Canadian law is governed by the *Corruption of Foreign Public Officials Act* (“CFPOA”) which makes it an offence to: i) directly or indirectly give, offer or agree to give or offer any form of advantage or benefit to a foreign public official to obtain an advantage in the course of business; or ii) engage in certain accounting practices where those practices are employed for the purpose of bribing a foreign public official or concealing a bribe.
  - Domestic bribery and corruption is governed under the *Criminal Code* which prohibits various forms of corruption including bribery of various officials, frauds on the government, breach of trust by a public officer and secret commissions, as well as various corrupt accounting and record-keeping practices.
- Unlike the United States, there is no central regulatory body responsible for the investigation of anti-corruption matters in Canada. Both the CFPOA and the *Criminal Code* are addressed as police matters and investigated and enforced by the RCMP.
- In Québec, anti-corruption compliance is also enforced by the Unité permanent anticorruption (“UPAC”) pursuant to the province’s *Anti-Corruption Act*. UPAC employs personnel from different agencies across Québec, including the Sûreté du Québec, the anti-fraud squad of Revenu Québec and the anti-collusion unit of Transports Québec, among others.
- Foreign companies and individuals are subject to the corruption offences in either the CFPOA or the *Criminal Code* if the offence is deemed to have taken place in Canada.
- Both individuals and companies can be held liable under Canada’s anti-corruption laws and may be subject to significant fines and maximum jail terms ranging between five to 14 years. Companies will be held liable where the act was committed with the knowledge of a “senior officer”, as defined under the *Criminal Code*. Recent case law has established this includes individuals responsible for managing an important aspect of an organisation’s activities, including middle management.

USEFUL RESOURCES

**Government of Canada**
- *Corruption of Foreign Public Officials Act*
- *Criminal Code*

**Government of Québec**
- *Anti-Corruption Act*
- **osler.com**
  - Risk Management Blog
  - Deferred prosecution agreements to be introduced in Canada
• Canada is a party to several international anti-corruption conventions obligating it to maintain and enforce appropriate anti-corruption legislation. Canada has faced increasing international pressure in recent years to increase its anti-corruption enforcement.

**Things to do**

• Set a “tone at the top” in which management promotes a culture of compliance.
• Assess your business’ level of risk – including the countries and industries in which it operates – and review your business activities to confirm the scope of restrictions and obligations that apply to you and your business.
• Implement and maintain anti-corruption policies and procedures. Although an anti-corruption compliance program should be designed to address the unique circumstances of your business and its specific risks, an effective compliance program should: i) outline responsibilities for compliance and establish appropriate compliance training; ii) detail internal controls, auditing practices and documentary policies; iii) set forth disciplinary procedures; iv) contain rigorous enforcement procedures; and v) make available a venue for whistleblowers.
• Ensure incentives are designed so as not to encourage corrupt behaviour.
• Watch for trends in the area of bribery and anti-corruption regulation and enforcement in Canada. Canadian laws have become progressively more restrictive – for example, as of October 31, 2017, facilitation payments, sometimes referred to as “grease payments”, are no longer excluded from the bribery offence under the CFPOA, and are thus not permitted under Canadian law – and Canada has faced increasing pressure to ramp up its anti-corruption enforcement.