

CORPORATE DIRECTORS BEWARE - CANADA PASSES TOUGH AMENDMENTS TO ANTI-CORRUPTION LEGISLATION

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Canada has passed amendments which make its foreign anti-corruption regime significantly more rigorous by requiring greater transparency of corporate accounting, eliminating key exceptions in the prior law and forcing greater accountability on Directors and Officers. As part of the effort to discourage foreign corrupt practices by Canadians, the amendments also broaden the application of the law to all Canadian nationals and Canadian companies, regardless of where the alleged bribery occurred.

An Act to amend the *Corruption of Foreign Public Officials Act* (CFPOA) received Royal Assent on June 19, 2013 and amended the CFPOA to

- (a) expand the definition of "business" to capture all kinds of business or undertakings carried on in Canada or elsewhere, whether or not for profit;
- (b) increase the maximum sentence of imprisonment applicable to the offence of bribing a foreign public official from 5 to 14 years imprisonment;
- (c) eliminate the previous facilitation payments exception to that offence (this change will not come into force until a future date determined by Cabinet);
- (d) create a new criminal offence prohibiting the misrepresentation of books and records which conceal bribery of a foreign public official;
- (e) establish nationality jurisdiction in addition to territoriality jurisdiction in respect of all of the offences under the Act, enabling Canadian authorities to prosecute Canadian nationals and companies regardless of where the conduct took place; and
- (f) grant the RCMP exclusive authority to lay charges under the Act.

These amendments were announced on February 5, 2013 and were enacted unchanged (see the McMillan bulletin [Canada gets tough on foreign corrupt practices](#) which describes the proposed amendments and their implications in greater detail). For a more extensive review of the enforcement of the CFPOA, see Neil

Campbell, Elisabeth Preston & Jonathan O'Hara, **Foreign Corrupt Practices — The Growth and Limitations of Canadian Enforcement Activity**, Indiana International & Comparative Law Review, Vol. XXIII, June 2013.

For directors of Canadian companies, the key implication of these changes and stepped up enforcement activity is that anti-corruption compliance programs will need to be strengthened.

by Neil Campbell and Elisabeth Preston

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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