

FOREIGN CORRUPTION: CANADA MAKES "FACILITATION PAYMENTS" ILLEGAL

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The Canadian government has repealed the exemption for "facilitation payments" that has been contained in the Corruption of Foreign Public Officials Act since it was enacted in 1998. Amendments which strengthened the CFPOA in 2013 included the changes needed to bring facilitation payments under the bribery offence, but they were not proclaimed in force until October 31, 2017.

What are facilitation payments?

Facilitation payments (often referred to as "grease payments") are generally regarded as payments made to expedite or secure the performance by a government official of the duties or functions of an act of a routine nature that is part of his or her duties. Typical examples include the issuance of licences or permits, the processing of official documents (e.g. visas or work permits), the provision of services that are normally offered to the public (e.g. telecommunications, rail, power and other utilities), and the provision of services that are provided as required (e.g. police protection, inspections of goods, etc.). However, the CFPOA exemption never extended to payments related to decisions by officials to award or continue business with a party or the terms of such business relationships.

Compliance Requirements

The OECD has encouraged member states to prohibit facilitation payments, but few have done so. Canada's change of position places it among the strictest anti-corruption regimes in the world, following the leadership of the UK in its 2010 Bribery Act. While the US Foreign Corrupt Practices Act and many other regimes continue to permit facilitation payments, Canadian corporations and individuals doing business anywhere in the world now need to comply with the stricter CFPOA standard. (The 2013 amendments extended the application of the CFPOA to include jurisdiction based on nationality, in addition to its application to offences committed in, or which have a real and substantial connection to, Canada.)

The expansion of the CFPOA to cover facilitation payments is consistent with the Canadian government's commitment to more vigorous anti-corruption enforcement over the past 5 years. It should provide a catalyst for firms to update anti-corruption compliance programs. For companies that have already moved to prohibit

facilitation payments as a matter of policy, this change creates a useful opportunity to refresh training and annual certification measures.

by Dr. A. Neil Campbell

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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