

Briber Beware

With Canadian criminal law and the international community tightening the reins on corruption, businesses around the world can expect more fair play in the global business arena of the future. That's good news for Canadian exporters.

Canada and its international counterparts in the Organization for Economic Cooperation and Development (OECD) recently celebrated the 10th anniversary of the OECD Anti-Bribery Convention, which was ratified by Canada in December 1997 and came into force in February 1999. Since then, OECD member countries have, in fulfillment of their undertakings under the Convention, strengthened their anti-bribery legislation, helping level the playing field for international business.

In Canada, bribing foreign public officials in order to obtain or retain an advantage in the course of business was made a criminal offence on February 14, 1999. Offences may result in imprisonment for up to 5 years and/or fines.

Through the OECD, export credit agencies like EDC also committed to take stronger concerted action to deter and detect bribery in the transactions they are asked to support. The export credit agencies, including EDC, have agreed to i) require anti-bribery declarations from customers, ii) undertake enhanced due diligence when the Member has reason to believe that bribery may be involved in a prospective transaction, iii) inform law enforcement authorities and refuse to provide support where there is credible evidence of bribery in a transaction as well as, (iv) in cases where bribery has been proven after support has been extended, take appropriate action such as deny a claim or require refund of sums provided. Furthermore, the export credit agencies have committed to informing their customers of the legal consequences of bribery and encouraging them to develop management control systems that combat bribery.

With similar tough new measures in many parts of the world, the idea that it may be acceptable to pay off local public authorities in some countries to win business is quickly being discredited. Overall, the international attitude towards bribery has moved from acceptance and tolerance to abhorrence and prohibition.

■ KEEPING CORRUPTION OUT...



Six questions to help you avoid bribery in foreign transactions.

▶ *Does your company have an anti-corruption policy?*

Developing an anti-corruption policy would assist in minimizing the risk of corruption.

▶ *Are relevant parties informed about your anti-corruption policy?*

It is important to develop an anti-corruption policy but it is also key to educate and train your employees and agents on a regular basis regarding your policy and the appropriate actions to take if they encounter requests for bribes, particularly in jurisdictions with a high corruption risk. You should require agents and employees to acknowledge this policy in writing and to refer troublesome situations to your head office for direction.

▶ *How well do you know your agent, partner or customers?*

Verify credentials of your agents and partners and monitor their efforts on your behalf. Consider contacting local business associations and consulting your local counsel to verify the reputation of your agents, partners and customers.

▶ *Does the jurisdiction in which you operate present a high corruption risk?*

Consider consulting the Transparency International's Index (www.transparency.org), a well-known indicator of corruption perceptions around the world, and the Canadian Embassy in the relevant country.

▶ *Do the amounts paid make sense?*

Look for any unexplained payments that do not add up. They may be indications of irregularity.

▶ *Have you clearly said "no"?*

Failure to say "no to bribery" clearly and definitively to your agents, customers and partners could lead to the misunderstanding that your company might consider providing loans, rewards, or benefits of other kinds to a foreign official to obtain an advantage in the course of business. Developing an anti-corruption policy and making sure relevant parties are aware of your zero tolerance for bribery will assist in this regard. ■

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