



Criminal Law and Enforcement Newsletter

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Developments in Foreign Anti-Corruption Enforcement

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Canada

In our May 2008 issue we reported on the creation of the RCMP's International Anti-Corruption Unit which was dedicated to the investigation and enforcement of corruption offences contrary to the *Corruption of Foreign Public Officials Act* ("CFPOA"). Passed in 1999, CFPOA is intended to meet Canada's treaty obligations under the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *U.N. Convention Against Corruption*. The OECD monitors the enforcement track record of all signatories, and, in March, released its most recent evaluation of the RCMP's efforts. The results were mixed. Although the working group was impressed with the creation of the RCMP unit, it was concerned with the low number of prosecutions (one completed and one underway). It also made recommendations for the amendment of the CFPOA including enhancing the extra-territorial application of the statute permitting the prosecution of Canadian nationals for the bribing of foreign public officials abroad. The Report can be found [here](#).

United Kingdom

In our September 2010 Newsletter, James Klotz summarized the U.K. *Bribery Act* enacted in April 2010. Pending the release of guidance about procedures which relevant commercial organizations can put into place to prevent persons associated with them from bribing, the Act has remained not-in-force. The guidance document was finally released by the U.K. Secretary of State for Justice on March 30 and the Act is expected to come into force on June 30.

In relation to the section 7 statutory duty of care placed on relevant commercial organizations to take steps to prevent foreign corruption by an associated person, the guidance document provides six principles which the Ministry of Justice considers should inform any anti-bribery compliance procedures adopted by the commercial organizations:

1. The procedures should be proportionate to the bribery risk faced and the nature, scale and complexity of the organization's activities. The procedures should be clear, practical, accessible and effectively implemented and enforced.
2. Management must be committed to preventing bribery by persons associated with the organization. Management must foster a compliance culture.
3. The organization should regularly assess its exposure to the risk of bribery offences and documents the process.
4. The organization should exercise due diligence to assess and mitigate the risk of non-compliance.
5. Proportionate to the risk of non-compliance, the organization should ensure its bribery prevention policies and procedures are embedded and understood throughout the organization.
6. The organization should regularly monitor and review its compliance progress and makes improvements when necessary.

The guidance document also dealt with two sensitive topics for British and foreign commercial

organizations:

- When is a foreign business carrying on business or part of a business in the UK and therefore subject to the section 7 duty of care?
- Are hospitality, promotional and other business expenditures bribes for the purposes of sections 6 and 7 of the Act?

The guidance document specifically states that although the test is ultimately for the courts to decide, the government, applying a common sense approach, anticipates that organizations that do not have a demonstrable business presence in the U.K. would not be subject to prosecution under sections 6 and 7.

As to hospitality, promotional and other business expenditures, the guidance document states that it is not the intention of the Act to criminalize *bona fide* expenditures which are intended to improve the image of a commercial organization, present products and services, or establish cordial relations with others.

The guidance document can be found [here](#).

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