

Facilitation or Grease Payments Now Illegal Under Canadian Anti-Corruption Law

November 02, 2017

Facilitation or "grease" payments are essentially payments or small bribes paid to a foreign public official in order to expedite or secure performance by that official of any act of a routine nature that is already part of that official's duties or functions. Examples can include payments to secure the issuance of a permit or licence, processing of official documents such as visas and work permits, provision of services such as mail delivery and utilities and provision of services normally provided where required, such as police protection, unloading cargo, protection of perishable products from deterioration and inspection of goods.

Until this week, an exception had been carved out in the [*Corruption of Foreign Public Officials Act*](#) (the "CFPOA") such that payments in the nature of a facilitation payment, did not constitute a bribery offence.

The repeal of the exception for facilitation payments was first announced in 2013 through the landmark [*Bill S-14: An Act to amend the Corruption of Foreign Public Officials Act*](#), which was introduced in response to what was Canada's international reputation for having a somewhat lackadaisical approach to corruption, and which marked an unprecedented fortification of Canada's anti-bribery and anti-corruption regime. The Bill made substantive amendments to the CFPOA introducing nationality jurisdiction, a books and records offence and threat of up to 14 years imprisonment for offences in addition to repeal of the facilitation payments amendment. At the time, however, it was announced that the facilitation payments exception would remain in place, with the repeal taking effect at some point in the future, the idea being that the intervening time would give Canadian individuals and entities acting abroad the opportunity to adjust their policies and practices in advance of a total phase out of the facilitation payments exception.

The end of the facilitation payments exception has significant implications for Canadian individuals and entities acting abroad. It is important to understand that the bribery offence as set out in the CFPOA, which now includes facilitation payments as bribes, is extremely broad in its language and there is not, as yet, any judicial direction as to a *de minimus* threshold for its application. That is, "[e]very person commits an offence who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official" in order

to induce that official to commit and act or omission or to influence his or her decisions. Companies would be wise to ensure their anti-bribery and anti-corruption policies are up to date in that they include a total prohibition on facilitation payments.

The repeal of the facilitation payments exception brings Canada's anti-bribery anti-corruption regime more in line with the UK's [Bribery Act](#) which has long included such a prohibition. The United States' [Foreign Corrupt Practices Act](#) maintains an exception to the bribery offence for facilitation payments.

By

[Loni da Costa](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](#)

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.