

Facilitating the End of Facilitation Payments

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The Canadian government has eliminated the exception allowing for facilitation payments under Canada's anti-corruption regime effective October 31, 2017. The repeal of the facilitation payment exception in 2013 had been held in abeyance to allow Canadian companies adequate time to adjust their operations to comply. Nearly four years later, the repeal is effective and facilitation payments are no longer permissible under the *Corruption of Foreign Public Officials Act (CFPOA)*.

Facilitation payments, often referred to as "grease payments," are payments made to facilitate or expedite routine government actions such as processing permits or visas or other paperwork.

The elimination of the facilitation payments exception aligns the Canadian regime with other countries, including the UK, but importantly differentiates the Canadian regime from the US and Australian regimes which maintain a facilitation payment exception.

This divergence between regimes continues to present ongoing challenges to Canadian companies dual listed or operating in countries which still maintain a facilitation payment exception. Moreover, Canadian companies which are dual-listed or operate in such jurisdictions will need to abide by the stricter Canadian legislation. The *CFPOA* extends its reach to any act in contravention of the *CFPOA* committed abroad by a Canadian company, citizen or permanent resident.

Canadian companies, especially those operating in high risk countries, should continue to review the effectiveness of their compliance regimes for the detection and prevention of any facilitation payments. In particular, Canadian companies should ensure robust, ongoing training regarding the new Canadian prohibition on facilitation payments and take appropriate steps to ensure compliance by any third party consultants, contractors or agents working with the company to this new requirement.

For further information regarding this matter, please contact Wendy Berman, Stephanie Voudouris or any other member of our Securities Litigation Group.

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