

# Anti-Corruption Compliance Stalls, Despite Aggressive Enforcement

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Anti-corruption compliance efforts appear to be stalling, despite an increase in enforcement actions. According to a global fraud survey conducted by auditing firm Ernst & Young, the percentage of companies that have anti-bribery/anti-corruption policies has increased by only 1% over the past two years, and a persistent minority has yet to take even the basic steps toward an effective compliance program.<sup>1</sup> The survey was based on interviews with more than 2,700 senior decision-makers in a sample of the largest companies in 59 countries, including Canada.<sup>2</sup>

While more than 80% of respondent companies had anti-corruption policies in place, the survey suggests anti-corruption compliance efforts have stalled at that level.<sup>3</sup> Moreover, the survey found that less than 50% of respondents had attended anti-corruption training and there had been a reduction in the level of reporting on compliance issues to boards.<sup>4</sup> The survey also found that less than a third of businesses are always or very frequently conducting anti-corruption due diligence as part of their mergers and acquisitions process.<sup>5</sup>

These findings are particularly disturbing in light of more aggressive enforcement actions in Canada, the United States and the United Kingdom. For example, Nazir Karigar, a 67-year old Ottawa-based executive who was acting as an agent for the firm Cryptometrics Canada, was sentenced to 3 years in prison for his role in a plan to bribe officials from Air India and an Indian Cabinet Minister.<sup>6</sup> The RCMP has since issued warrants for the arrest of three more Cryptometrics executives, including its CEO and COO.<sup>7</sup>

In 2013, the United States saw an increase in the fines levied against corporations under the *Foreign Corrupt Practices Act*<sup>8</sup> ("FCPA"), jumping from US\$260 million in 2012 to US\$720 million in 2013.<sup>9</sup> There was also an increase in the number of actions brought against individuals under the legislation,<sup>10</sup> although there was a decrease in the number of actions brought against corporations.<sup>11</sup>

The United Kingdom has also seen significant sentences handed down for the bribery of foreign officials. For example, four executives at Innospec Inc., a specialty fuels company, received sentences ranging from 4 years to 18 months in prison for their role in bribing officials in Indonesia and Iraq.<sup>12</sup>

These enforcement actions underscore the importance of developing an anti-corruption compliance program, which complies with requirements of the *Corruption of Foreign Public Officials Act*<sup>13</sup> and, if applicable, the FCPA and the UK's *Bribery Act 2010*.<sup>14</sup>

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<sup>1</sup> Ernst & Young, "13th Global Fraud Survey: Overcoming Compliance Fatigue" (3 June 2014) Online: Ernst & Young at 2 [http://www.ey.com/Publication/vwLUAssets/EY-13th-Global-Fraud-Survey/\\$FILE/EY-13th-Global-Fraud-Survey.pdf](http://www.ey.com/Publication/vwLUAssets/EY-13th-Global-Fraud-Survey/$FILE/EY-13th-Global-Fraud-Survey.pdf).

<sup>2</sup> Id at 22.

<sup>3</sup> Id at 14.

<sup>4</sup> Id at 2.

<sup>5</sup> Id at 3.

<sup>6</sup> *R. v. Karigar* 2014 ONSC 3093 at para 2

<http://www.canlii.org/en/on/onsc/doc/2014/2014onsc3093/2014onsc3093.html>.

<sup>7</sup> Royal Canadian Mounted Police, "RCMP Charge Individuals with Foreign Corruption" (4 June 2014) Online: RCMP <http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2014/0604-corruption-eng.htm>.

<sup>8</sup> 15 U.S.C. §§78dd-1, et seq.

<sup>9</sup> Shearman & Sterling LLP, "FCPA Digest: Recent Trends and Patterns in the Enforcement of the *Foreign Corrupt Practices Act*" (January 2014) Online: Shearman & Sterling LLP at 6 <http://www.shearman.com/~media/Files/Services/FCPA/2014/FCPADigestTPFCPA010614.pdf>.

<sup>10</sup> Id at 5.

<sup>11</sup> Id at 4.

<sup>12</sup> Serious Fraud Office, "Four sentenced for role in Innospec corruption" (4 August 2014) Online: Serious Fraud Office <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/four-sentenced-for-role-in-innospec-corruption.aspx>. Please note that these offences took place prior to the enactment of the *UK Bribery Act*, and therefore the sentencing took place under older UK anti-corruption laws. There has yet to be a successful corporate prosecution under the *UK Bribery Act*.

<sup>13</sup> S.C. 1998, c. 34.

<sup>14</sup> 2010 c. 23.