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.[1] 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.[2]

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.[3] 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.[4] 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.[5]

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.[6] The RCMP has since issued warrants for the arrest of three more Cryptometrics executives, including its CEO and COO.[7]

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

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.[12]

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*[13] and, if applicable, the FCPA and the UK's *Bribery Act 2010*.[14]

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[1] 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.
[2] Id at 22.
[3] Id at 14.
[4] Id at 2.
[5] Id at 3.
[6] *R. v. Karigar* 2014 ONSC 3093 at para 2 http://www.canlii.org/en/on/onsc/doc/2014/2014onsc3093/2014onsc3093.html.
[7] 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.
[8] 15 U.S.C. §§78dd-1, et seq.
[9] 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.
[10] Id at 5.
[11] Id at 4.
[12] 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*.
[13] S.C. 1998, c. 34.
[14] 2010 c. 23.