

Sills Egsgard LLP is a Toronto-based boutique law firm specializing in regulatory compliance issues for both Canadian and foreign enterprises. Our lawyers combine solid legal knowledge and expertise with years of practice in some of Canada's most prestigious law firms. We bring experience living and working in developing countries and a deep knowledge of international trade to our assignments. Our skills and experience are provided to our clients at cost-effective prices owing to our low overheads.



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ANTI – BRIBERY LAWS

GREATER ENFORCEMENT

INCREASED RISKS

YOUR SOLUTIONS



**LEGAL COUNSEL
FOR A CHANGING WORLD**

WHAT ARE YOUR COMPANY'S RISKS?

- If incorporated in Canada, you are liable under Canadian law for acts of bribery committed by your company and its agents both in Canada and abroad. Individuals may be sentenced to up to five years in prison. There are no statutory limits to the fines that companies or individuals may be ordered to pay
- If your company is a US issuer, you are fully subject to the *Foreign Corrupt Practices Act*, which is broader in application than the Canadian legislation. Individuals may be sentenced up to five years in prison, and individuals and companies may be ordered to pay stiff fines. Managers and employees convicted of bribery offences may not be compensated by their employers for any fines levied
- If your company is "carrying on business" in the UK as defined by UK authorities, you may also be subject to the provisions of the UK's new *Bribery Act 2010*. This Act, among other things, creates liability for acts of bribery committed by your company's agents even if you do not know about their activities. Individuals may be sentenced up to 10 years in prison. There are no statutory limits to the fines that companies or individuals may be ordered to pay

STRONGER ENFORCEMENT OF ANTI-BRIBERY LAWS WORLDWIDE PRESENTS NEW CHALLENGES

Liability for bribery has dramatically increased in recent years.

Legislation in Canada, the US and the UK is now being enforced with much greater vigour. The anti-bribery laws in these three countries contain intersecting and overlapping liability for companies operating internationally.

While payments to foreign officials to facilitate business transactions were once regarded as an inevitable cost of doing business, stepped-up enforcement in recent years is resulting in heavy civil and criminal penalties in relation to such payments.

Companies wishing to shield themselves from liability should consider making a clear and unequivocal commitment to anti-bribery at the top of the company, backed up by a series of "adequate procedures" to ensure that neither company officials, employees, nor persons acting on their behalf engage in corrupt practices.

Our lawyers have both the practical knowledge and the legal skills necessary to help you design and implement corporate strategies to minimize potential liabilities for foreign corrupt practices.

DRAMATIC INCREASE IN PROSECUTIONS FOR BRIBERY

Recent years have seen a dramatic increase in prosecutions for bribery. Examples include the following:

- **Canada:** Niko Resources Ltd. pled guilty in June 2011 to a violation of Canada's *Corruption of Foreign Public Officials Act* as a result of its subsidiary's bribe to a former Bangladeshi Minister of Energy. An Alberta court sentenced Niko to a \$9.5 million fine and imposed extensive books and records-keeping obligations
- **US:** Siemens AG was ordered to pay a total of \$1.6 billion in criminal and civil fines and other penalties in both the US and Germany
- **UK:** BAE Systems was ordered to pay £29.5 million to the people of Tanzania, costs of £225,000 and a £500,000 fine in December 2010

In addition to the fines paid, reputational damage to all three companies was very significant.



SOLUTIONS

Our lawyers will work with your company to tailor an anti-corruption strategy that minimizes your company's exposure to anti-bribery risks in Canada and abroad. Such a strategy would include:

- An unequivocal commitment to anti-corruption at the highest levels of the company, and development of internal anti-bribery policies and codes of conduct in line with that commitment
- In-depth risk assessment of your company's activities including, where required, interviews with personnel in the field

- Assistance in implementing anti-bribery strategies including employee training and due diligence procedures relating to agents and business partners

- Post-implementation assessment and follow-up

We also provide advice on remediation of existing company practices before enforcement audits, and legal advice during anti-bribery investigations.

We look forward to working with you.

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