

THE
NATIONAL LAW REVIEW

The Remediation Agreement Regime: Canada Moves To Adopt Deferred Prosecutions for Companies

Wednesday, April 25, 2018

Canada's Liberal government recently introduced a bill, known as C-74, that would allow for a type of deferred prosecution agreement called a "remediation agreement" for alleged violations of Canada's foreign bribery law, the Corruption of Foreign Officials Act. The proposal, referred to as the "Remediation Agreement Regime," is modeled after deferred prosecution agreements used in the United States and the U.K. And if approved by the Canadian Parliament, it may provide an incentive for companies to self-report any violations of the Foreign Officials Act.

Under the proposal, prosecutors would be required to consider several factors when deciding whether to enter into an agreement, including how the government was alerted to the wrongdoing. If a remediation agreement is granted, the company would be required to admit wrongdoing and cooperate in the prosecution of any individuals involved. The company also may be required to pay a penalty, forfeit any profits, and potentially submit to a monitor's oversight for some time. Agreements would be subject to judicial approval and oversight.

If adopted, the legislation could increase enforcement of anti-corruption laws. Under Canada's "Integrity Regime," companies convicted of bribery face a public contract bar for up to 10 years. This creates a strong disincentive for companies to self-report potential wrongdoing. In addition, prosecutors may have been wary of charging a company due to the long-lasting economic effects of a conviction. As a result, Canada's enforcement of its foreign bribery law has been historically weak.

The Remediation Agreement Regime may encourage companies to self-report their discovery of wrongdoing and their possible role in corruption without facing a decade-long public procurement bar. Companies also could benefit from more predictable enforcement when wrongdoing is reported. And any remediation agreement granted would require that the company cooperate in the prosecution of individuals, which may result in more convictions of bad actors.

If approved by Parliament, the Remediation Agreement Regime will come into effect 90 days after the legislative amendment receives Royal Assent.

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