



ANTI-CORRUPTION FAQs: EDC CUSTOMER FREQUENTLY ASKED QUESTIONS

Explore specifics about EDC's anti-corruption requirements for customers and due diligence processes.

1. Why do you require our company to sign a declaration denying corruption in EDC-supported business transactions?

The corruption of foreign public officials was made an indictable offence on Feb. 14, 1999 under Canada's *Corruption of Foreign Public Officials Act (CFPOA)*. In addition, the Criminal Code prohibits bribery in the private sector. Consequently, we must take steps to ensure that we don't facilitate criminal acts by supporting export transactions that involve corruption of foreign public officials or otherwise.

We rely on due diligence and the anti-corruption declarations provided by our customers as assurance in this regard. By taking these steps, we're serving the best interests of our customers by alerting them to these laws.

Our Code of Conduct states that we're dedicated to conducting our business responsibly, free of any form of bribery or corruption and in compliance with all applicable anti-bribery and anti-corruption laws and regulations. Canada and EDC also support the anti-corruption commitments made by the Export Credits and Credit Guarantees Working Group members of the Organisation for Economic Co-operation and Development (OECD) by adhering to the Recommendation of the Council on Bribery and Officially Supported Export Credits. The agencies and countries involved are committed to getting signed anti-corruption declarations as one of the measures against corruption.

[Explore further helpful anti-corruption resources](#)

2. The declaration states that my company hasn't been and won't knowingly be party to a violation of the Corruption of Foreign Public Officials Act. What does this law say and how am I affected?

Essentially, this Canadian law criminalizes international bribery and associated practices, including conspiracy, aiding and abetting, and counselling others to provide a bribe by creating three separate criminal offences:

1. Bribery of foreign public officials
2. Possession of the proceeds of such bribery
3. Laundering of those proceeds

Offences may result in imprisonment and/or fines.

3. I've never been involved in corruption and take exception to signing the declaration. Why should I? What will happen if I refuse?

We're confident that, for the vast majority of our customers, the anti-corruption declaration won't pose a problem. But all will be asked to sign it because export credit agencies, including EDC, have committed to the OECD to obtain anti-corruption declarations from all exporters and/or applicants for their export support. As a public institution of Canada, we require this declaration from our customers. We rely on our customer's anti-corruption declaration as one of the indications that no corruption is associated with transactions that EDC will be supporting.

We don't suggest or imply that our customers are involved in illegal activities. We assume that all of our customers are conducting their business in a lawful and law-abiding manner. But we need to ask the people who know best about these affairs to confirm the accuracy of that assumption.

Although we respect your decision not to sign the declaration, we may not be able to proceed with the transaction and may no longer be able to provide insurance coverage.

4. What will happen if I sign the declaration while knowingly being involved in corruption? What if I'm involved in corruption without my knowledge?

EDC relies on the truthfulness of the anti-corruption declarations provided by our customers. We also have the right to withdraw from a contract and refuse the claims in that contract, if we determine that corruption is associated with the transaction. We won't tolerate a party knowingly delivering a false anti-corruption declaration, and would, in such an unlikely circumstance, consider all of our options. If you have any questions about the implications of engaging in such conduct, consult your legal counsel. If the declaration was signed without your knowledge of corruption, there should be no liability unless

there's been "willful blindness" (aka head in the sand) on your part. In that case, you could be held criminally responsible. We strongly recommend that you raise such complicated issues with your legal counsel.

5. How can EDC and the Canadian government expect me to carry on business internationally in competition with companies that are willing to pay bribes?

There are three points to keep in mind:

1. Payment of bribes, the possession of property obtained by bribery and the laundering of these proceeds have been made extraditable criminal offences in Canada by Canadian Parliament. The maximum term of imprisonment for the offence of bribing a public official is 14 years. The amount of any fine would be the discretion of the judge and there's no maximum. Bribing foreign public officials is no longer a matter of business expediency, convenience or judgment. It's a criminal offence. The consequences of bribing can be disastrous both to you as an individual and to your business. As explained above, we can't be associated with such activity.
2. The international view of bribery is changing. The attitude towards bribery is moving from acceptance and tolerance to abhorrence and prohibition. The firm anti-corruption position of the World Bank and the many global anti-corruption initiatives of other world bodies are increasingly exposing the practice of bribery in an effort to control it. Many OECD countries have committed to criminalizing the bribery of foreign public officials in their domestic laws by signing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in Paris on Dec. 17, 1997. The OECD is following up on this binding commitment and how it's being implemented by each country. Canada is among the many OECD countries that have amended their domestic laws to conform with the Convention, and that is the substance of the new Canadian statute, the *Corruption of Foreign Public Officials Act*.
3. Many countries have signed mutual information and assistance agreements such as the *Mutual Legal Assistance in Criminal Matters Act*, that require police forces in each participating country to investigate allegations of bribery brought to them by other countries. Disappointed business competitors, who lost the bidding for an international contract because of bribery, may turn to their domestic police force to initiate an investigation in the country of the alleged briber if that country, like Canada, has passed anti-bribery laws.

6. The declaration states that my company hasn't been "party" to any action prohibited by the Corruption of Foreign Public Officials Act. Can the activities of my agents expose my company to liability under this Canadian law?

The declaration is intended to catch any knowing involvement in corruption (as defined), whether committed directly by your company (or your employees) or indirectly through an agent.

Typically, the activities of an agent may expose the principal—in this case, your company—to liability. The agent's actions may be or deemed to be those of the principal and for which the principal must bear full responsibility, depending on many factors. Literature is available describing the safeguards that companies should use in retaining agents. These safeguards relate to:

- the selection of the agent;
- the reputation and qualifications of the agent;
- the language of the retainer; and
- the quantum of and the method and other arrangements for payment.
(See further helpful anti-corruptions resources and website addresses.)

The responsibilities and liabilities of your company for the acts of your agents are no different with regard to anti-corruption laws than they are with regard to other matters.

7. My company is extremely concerned about not violating anti-corruption laws. How can we distance ourselves from potential corruption in transactions?

There are a number of indicators of potential corruption. These red flags should alert you to further investigate. You can also implement various anti-corruption measures. The following list is by no means exhaustive, but provides a few common sense suggestions:

- Does your agent/counterparty/supplier have a good reputation? A discrete inquiry by your local lawyer or agent may save a great deal of difficulty.
- Is the jurisdiction in which you operate known for corruption? Transparency International's *Corruption Perceptions Index* is a well-known indicator. You may also want to speak with the Canadian Embassy. Make sure your strategy for dealing with requests for bribes—a firm no—is determined well in advance.
- Do the business numbers "make sense?" Any unexplained payments or numbers that don't add up or aren't "businesslike" may be indications of irregularity.
- Have you clearly said no? Failure to say no can lead to a misunderstanding that your company might consider loans, rewards, or benefits of other kinds for a foreign official.
- Are others informed about your anti-corruption policy? You should clearly inform agents and all employees, especially those working outside Canada, of your company's unwavering anti-corruption policy and require them to refer troublesome situations to your head office for direction.

8. What should I do if I discover that my company is involved in corrupt practices for transactions supported by EDC?

You should act as you would for any other criminal offence. We recommend that you obtain legal advice on the matter. Remember that criminal offences may be attributed to persons who may have no direct role in carrying out the offence. Examples of such offences are conspiracy, counselling, and aiding and abetting.

