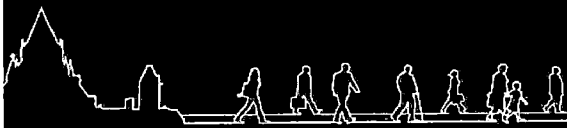


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14 août 2017 / August 14, 2017

**MO BRIEFING
DEFERRED PROSECUTION AGREEMENT**

Please find enclosed documentation for the August 14th briefing on the Integrity Regime and Deferred Prosecution Agreements (DPAs).

The material includes the following draft documents:

- Consultation overview entitled Expanding Canada's Toolkit to Address Corporate Wrongdoing.
- Integrity Regime Consultation Guide.
- Consultation Strategy and list of potential stakeholders.
- Communications and Outreach Strategy.
- Briefing deck.
- Deferred Prosecution Agreement Consultation Guide (to be provided by Justice Canada).

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EXPANDING CANADA'S TOOLKIT TO ADDRESS CORPORATE WRONGDOING

The Government of Canada is seeking views of stakeholders on enhancements to the Integrity Regime and on factors that should be taken into account in reviewing the desirability of implementing a possible Canadian DPA regime.

Context

Corporate wrongdoing¹ imposes significant economic, political and social costs. Behaviours linked to corporate wrongdoing undermine fair competition, threaten the integrity of markets, constitute barriers to economic growth, increase cost and risk of doing business, and undermine public and investor confidence.

Many governments, including Canada's, are committed to taking action against improper and unethical business practices and holding companies criminally liable for such conduct. This is achieved through a framework of laws, regulations, governance frameworks, policies and programs, etc., that seek to detect, prevent and address such practices. The stability of the marketplace is inextricably linked to a good and stable government. Companies are also playing a role by implementing stronger internal controls, governance structures, codes of conduct and compliance regimes.

The Canadian government has implemented a number of measures to deter companies from participating in corporate misconduct. These include amending or updating legislation such as the *Corruption of Foreign Public Officials Act*, the *Competition Act*, the *Proceeds of Crime (Money Laundering) and the Terrorist Financing Act*. Other measures include conducting investigations and initiating prosecutions against those who contravene an Act of Parliament, as well as developing and implementing non-legislative initiatives such as Public Services and Procurement Canada's (PSPC) Code of Conduct for Procurement, Fairness Monitoring Program, and Anti-Fraud Tip Line (joint initiative of the RCMP, Competition Bureau and PSPC), and the Government-wide Integrity Regime.

Review and consultations

After introducing a government-wide Integrity Regime (Regime) over two years ago, it is useful to review whether it is achieving its objectives and whether it is efficient in doing so. This assessment is also an opportunity to consider how the Regime addresses new trends and risks in a constantly changing marketplace.

This assessment is also an opportunity to consider the possibility of introducing a Canadian Deferred Prosecution Agreement (DPA) regime as an additional tool for prosecutors, to be used in appropriate circumstances, to ensure that corporate criminal conduct is subject to effective, proportionate and dissuasive penalties and to assist in

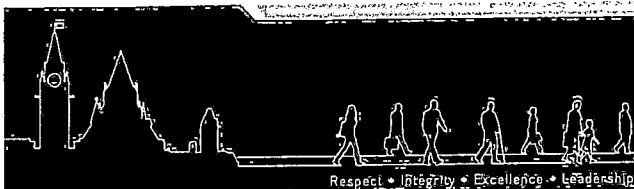
¹ Refers to the behaviours of companies or other business related legal entities.

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meeting other objectives, including increasing detection and improving compliance and corporate culture.

A DPA can serve as a tool to be used, at the prosecutor's discretion in appropriate circumstances, to address corporate crime. Under a DPA, criminal prosecution is suspended on the accused agreeing to fulfil certain requirements including admitting to facts that would support a conviction, paying a significant financial penalty and cooperating with authorities, on completion of which, charges will be withdrawn.



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Expanding Canada's Toolkit to Address Corporate Wrongdoing

Discussion paper for public consultation

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Integrity Regime Stream

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August 10, 2017



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Expanding Canada's Toolkit to Address Corporate Wrongdoing ***Discussion paper for public consultation – Integrity Regime stream***

Setting the context

The Government of Canada spends billions of dollars annually to buy goods and services on behalf of Canadians and to support government operations. Given the sizeable financial flows of these expenditures, contracts and real property transactions have the potential to leave the Government of Canada vulnerable to fraud, collusion and corruption. This could include, but is not limited to, bid-rigging, price fixing, bribery, undisclosed conflicts of interest, and fraudulent contract performance schemes. Public procurement is also vulnerable to organized crime, which negatively affects the daily lives of Canadians.¹

The direct costs of these types of wrongdoing in public procurement include loss of public funds through misallocations or higher expenses, as well as lower quality of goods, services and works.² This can result in less available financial resources to address other priorities and further erode trust and confidence in public institutions. In a direct way, corruption in public procurement leads to distortion of competition, limited market access, and reduced business appetite for foreign investors.³

Internationally, a number of cases within public contracting have highlighted these risks. This has spurred renewed commitments from international bodies, such as the Organization for Economic Cooperation and Development (OECD), the World Bank, and the United Nations, to further combat bribery and corruption.

Although it is difficult to measure the exact cost of corruption, it has been estimated that between 10-30% of the investment in publicly funded construction projects internationally may be lost through mismanagement and corruption.⁴ The World Bank also estimates that businesses and individuals pay an estimated \$1.5 trillion in bribes each year.⁵

What role do governments play in protecting the integrity of public procurement?

All governments have an obligation to protect and safeguard the use and expenditure of public funds, to ensure strong stewardship and transparency, and to uphold public trust. There are a number of ways that this can be achieved in the context of public procurement, including, but not limited to, debarment. Debarment is generally defined as the exclusion of an entity from receiving public contracts.

What are other jurisdictions doing?

A number of jurisdictions have what is commonly referred to as a debarment regime. Although the parameters of each regime differ (i.e., reasons for debarment, application of the regime, debarment

¹ Criminal Intelligence Service Canada. Organized Crime in Canada – Backgrounder <http://www.cisc.gc.ca/media/2014/2014-08-22-eng.htm>

² OECD. Preventing Corruption in Public Procurement <http://www.oecd.org/gov/ethics/Corruption-in-Public-Procurement-Brochure.pdf>

³ OECD. Preventing Corruption in Public Procurement <http://www.oecd.org/gov/ethics/Corruption-in-Public-Procurement-Brochure.pdf>

⁴ Construction Sector Transparency Initiative. Press Release <http://www.constructiontransparency.org/documentdownload.axd?documentresourceid=8>

⁵ The World Bank. Combating Corruption. <http://www.worldbank.org/en/topic/governance/brief/anti-corruption>

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periods, compliance requirements, administration, etc.), each has a common goal of ensuring that contracts using public funds are not awarded to unethical suppliers, with varying levels of discretion.

Case study: United States of America (US)

In the US, regulations dictate circumstances in which a supplier may be debarred from receiving federal funds. The US model balances mandatory and discretionary provisions. For example, a supplier will be debarred if it is convicted under, or is in violation of a statute (e.g., violations of federal or state controlled substance laws; certain violations of the *Buy America Act*, *Clean Air Act*, *Clean Water Act*, etc.). Alternatively, a supplier may be debarred if it commits a serious violation of the terms of a government contract or certain statutes, or if there is significant evidence (typically an indictment) or any other cause so serious or compelling to justify debarment. A supplier may also be suspended from award on the basis of evidence, an investigation or charges.

Periods of debarment, where mandatory, are spelled out in relevant legislation. For discretionary debarment, a supplier may be excluded for three years and this can be extended. Each agency applies required federal regulations to its own contracting and renders their own debarment decisions, which are reported centrally. There are no monetary thresholds associated with the application of the regime. It applies to all federal funds (e.g., contracts, grants and contributions, etc.).

Case study: United Kingdom (UK)

The UK's debarment regime is enshrined in the European Union Directives and the UK Public Contracts Regulations and applies to public sector contracting authorities in the purchase of goods, supplies, and services, as well as lease to purchase agreements with varying monetary thresholds.

A supplier is debarred based on a conviction of a listed offence (i.e. conspiracy, corruption, fraudulent trading, money laundering, etc.) or if it is in breach of its tax and social security obligations. These mandatory debarments last five years from the date of exclusion. A discretionary debarment may take place in instances such as non-compliance with specified laws, bankruptcy, grave professional misconduct, anti-competitive behaviour, conflict of interest, poor performance, etc. A discretionary debarment lasts three years. Self-cleaning measures may be considered to avoid exclusion from public procurement (i.e., paying or undertaking to pay compensation in respect to damages; clarifying facts and circumstances by collaborating with investigating authorities; taking measures to prevent further criminal offences or misconduct, etc.).

Similar to Canada, the UK government may enter into a contract with a debarred supplier if it is in the public interest to do so (i.e., public health or protection of the environment).

Case study: Quebec

Quebec has implemented a legislation-based certification to bid regime whereby suppliers and subcontractors apply for approval through Autorité des marchés financiers (AMF) which works with L'Unité permanente anticorruption (UPAC). Suppliers and subcontractors competing in a call for tenders or an award process equal to or greater than these threshold must apply for approval. The AMF verifies applicants against a number of federal, provincial and other offences legislated in An Act

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Respecting Contracting of Public Bodies that will or may render applicants ineligible for public contracts in consultation with UPAC.

Quebec's debarment regime currently applies to construction and public private partnership contracts over \$5 million and service contracts over \$1 million.

Suppliers convicted of specific offences under both federal and provincial legislation are debarred for up to five years. The Authority also has wide discretion to refuse to grant or to renew an authorization or may revoke an authorization if a supplier fails to meet the high standards of integrity that the public is entitled to expect from a party to a public contract or subcontract. The **Registre des entreprises non admissibles aux contrats publics** must be consulted for public contracts to ensure that bidders are not debarred. Suppliers established outside of Quebec are required to provide a "good conduct certificate", sworn letter, criminal/penal court record or an equivalent document when bidding.

Case study: New Brunswick

New Brunswick has implemented a legislation-based debarment regime under its **Procurement Act** and **General Regulation**. A supplier is disqualified from provincial procurement if convicted of a number of offences under six federal statutes (i.e., *Criminal Code*, *Corruption of Foreign Public Officials Act*, *Controlled Drugs and Substances Act*, etc.). Periods of debarment last for a maximum of five years, proportional to the offence. In the case of three offences (sections 463-465 of the *Criminal Code*) the disqualification period could be more than five years, based on the set term of the sentence.

The New Brunswick regime allows for some discretion. A supplier may be disqualified for documented significant or persistent deficiencies in fulfilling or performing a substantive requirement or obligation under a prior contract or contracts.

Case study: The World Bank

When firms or individuals participating in World Bank Group-financed projects are found, through investigation, to have engaged in fraudulent, corrupt, collusive or obstructive practices on a World Bank project, the World Bank may impose a debarment. Debarred entities are then ineligible to be awarded a contract, either permanently or for a designated period of time. Decisions on how long a firm or individual is debarred are made through a two-tier adjudicative process based on the severity of the misconduct, the harm caused by the misconduct, and the past history of adjudicated misconduct. There can also be mitigating factors that influence decisions, such as a minor role in the misconduct, voluntary corrective action taken, and cooperation.

The World Bank places an emphasis on debarred parties meeting certain integrity compliance conditions before they can once again participate in World Bank Group-financed projects. These conditions encourage debarred parties to focus on rehabilitating their business practices.

What is the Government of Canada doing?

The Government of Canada is committed to being accountable to Canadians; protecting the stewardship of public funds; embodying and observing high ethical standards; and reflecting public

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expectations around transparency, open and citizen-centered government in procurement practices. Over time, Canada has established a strong framework to support integrity in its procurement and real property transactions, with strong governance, codes of conduct, fairness monitoring, audits, financial controls, internal investigations and, more recently, the Federal Contracting Fraud Tip Line.

In addition to these tools, Canada administers a debarment regime that has undergone a series of changes to improve its rigour and broaden its application, beginning with the introduction of the Integrity Framework in 2012.

Integrity Framework

In July 2012, Public Services and Procurement Canada (PSPC), the main contracting arm of the Government of Canada, regrouped many of its oversight measures into a formal debarment regime, the Integrity Framework. The Framework applied to PSPC contracts and real property agreements and expanded on the existing Code of Conduct for Public Procurement. In addition to the offences included in the Code (i.e. corruption, collusion, bid-rigging, fraud committed against her Majesty, etc.) a supplier could also be rendered ineligible (term used by the Government of Canada in place of debarred) for fraud, money laundering, participation in activities of criminal organizations, income and excise tax evasion, bribing a foreign public official and offences related to drugs.

Later that same year, PSPC removed the leniency exemption from the Framework, which previously allowed an applicant to come forward, cooperate and plead guilty in exchange for lenient treatment in sentencing, and introduced a public interest exception.

In February 2014 nine new offences were added to the Framework including:

- extortion
- bribery of judicial officers
- bribery of officers
- secret commissions
- criminal breach of contract
- fraudulent manipulation of stock exchange transactions
- prohibited insider trading
- forgery of other offences resembling forgery
- falsification of books and documents

The ineligibility period for a supplier convicted of or having pleaded guilty to an Integrity Framework offence was ten years with no exceptions. In addition, suppliers who were convicted of a similar foreign offence were also debarred from contract award. Finally, suppliers were required to bind their subcontractors to the same terms and conditions listed in their contract or lease agreement with PSPC.

Integrity Regime

In July 2015, the Government of Canada introduced an updated Integrity Regime to foster ethical business practices, ensure due process and uphold the public trust. Unlike its predecessor, the Regime applies to contracts and real property agreements awarded by all federal departments and agencies under Schedule I, I.1 and II of the *Financial Administration Act*, with some exceptions. This drastically expanded the scope of application. The Regime is articulated in the Ineligibility and Suspension Policy and Integrity clauses.

Key features of the Regime are as follows:

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- A supplier convicted of a listed offence in Canada or a similar offence abroad is ineligible for a period of ten years to enter into a contract or real property agreement with the government.
- A supplier can apply to have their ineligibility period reduced by up to five years if they address the causes of the conduct that led to ineligibility.
- A supplier is not automatically penalized for the actions of an affiliate in which they had no involvement.
- A supplier may be suspended for a period of up to 18 months if it has been charged with a listed offence or has admitted guilt. This period may be extended as judicial processes proceed.
- Procedures incorporate consideration of due process.
- Provides for the use of independent expert third-party assessments, and administrative agreements that specify required corrective actions and ensure their effectiveness by monitoring compliance.

In April 2016, an updated version of the Ineligibility and Suspension Policy and integrity clauses were released. While there were no changes to the Integrity Regime itself, the policy and clauses were simplified in response to feedback from client departments and agencies, as well as the supplier community. The clauses now incorporate the policy by reference into solicitation documents and resulting contracts and real property agreements.

In order to foster transparency and accountability, the ineligibility and suspension list is publicly available on the Integrity Regime website and the Government does regularly report on the activities and achievements of the Integrity Regime.

Principles guiding Canada's government-wide Integrity Regime

Through various efforts to protect the integrity of federal procurement and real property transactions, the Government of Canada has been guided by the following five principles:

- Safeguard the expenditure of public funds within procurement and real property transactions;
- Conduct business in an open, fair, transparent, accountable and cost-efficient manner;
- Ensure rigour and due process without imposing undue administrative burden on suppliers or the Government of Canada;
- Promote ethical conduct by suppliers within the marketplace; and,
- Ensure consistent government-wide application while preserving operational efficiencies.

What we have heard to date

Since the introduction of the Integrity Regime in 2015, the Government of Canada has engaged major industry associations, professional organizations (i.e., law firms and accounting firms), suppliers, and civil society groups to solicit feedback on implementation, and provide clarification on elements of the Regime. Reaction has been generally positive, however some changes have been suggested to strike a better balance between holding wrongdoers accountable for their actions, incenting early detection and reporting when problems arise, and allowing some discretion to mitigate negative impacts on innocent parties. This includes proposed changes to timelines and criteria associated with ineligibility and suspension; increased discretion; possible expansion of the scope of the Regime; and, the potential for legislation.

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Possible enhancements

After five years of experience administering a debarment regime, and based on feedback received and best practices from other jurisdictions, the following are a series of possible enhancements to the Integrity Regime for consideration. Each concept includes a short description of what the enhancement could look like in practice, followed by questions for input.

1. Time periods associated with ineligibility and suspension

Concerns have been raised regarding the time periods associated with suspension and ineligibility. For example, the ten-year period of ineligibility has been criticized as being punitive, disproportional, and not aligned with international best practices. Questions remain as to whether these time periods should be reduced, or if they should be made discretionary and based on the nature and context of the offence.

Under the current Regime, discretion within the determination process is limited, as much of the Policy is rules-based. For example, if a supplier is convicted of one of the listed offences in Canada or of a similar offence abroad within the last three years, the supplier will automatically be ineligible to be awarded a federal contract or real property agreement for a period of ten years. There is some discretion when dealing with a conviction of an affiliate in that the supplier may be determined to be ineligible; however, only if they directed, influenced, authorized, assented to, acquiesced in or participated in the commission of the offence of the affiliate.

There is also discretion to reduce a supplier's period of ineligibility by up to five years if it can demonstrate that they have cooperated with law enforcement or have taken steps to address the causes of the conduct that led to their ineligibility.

The periods of ineligibility are fixed (i.e., ten years) regardless of the offence that triggered the determination or the circumstances associated with the situation.

Other jurisdictions have greater levels of discretion built into their debarment regimes. In the US, the debarring official at the federal agency level, when making a decision to debar a supplier or affiliate, applies discretionary measures on a case-by-case approach with supportive evidence. In addition to assessing the business risk to the US government, the debarring official assesses whether the supplier is "presently responsible", meaning whether the supplier's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment, and whether the supplier has implemented programs to prevent a recurrence.⁶

What do you think?

- Q1: To what extent, if any, should the duration of ineligibility and/or suspension be modified to ensure appropriateness while continuing to mitigate risk?
- Q2: How could the exercise of greater discretion be built into the Integrity Regime to address issues associated with periods of ineligibility? What factors should be considered in determining whether a supplier should benefit from discretion?

⁶ The World Bank. Combating Corruption. <http://www.worldbank.org/en/topic/governance/brief/anti-corruption>

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2. Criteria for ineligibility and suspension

The *Ineligibility and Suspension Policy* sets out criteria that trigger a determination of suspension or ineligibility. These decisions are rendered on the basis of specific charges and convictions, all of which are criminal in nature, relate to corporate wrongdoing, and are specified federal offences.

Currently, the *Ineligibility and Suspension Policy* includes offences under the following legislation:

- *Criminal Code*
- *Competition Act*
- *Controlled Drugs and Substance Act*
- *Corruption of Foreign Public Officials Act*
- *Excise Tax Act*
- *Financial Administration Act*
- *Income Tax Act*
- *Lobbying Act*

The Regime does not take into account civil or provincial offences; other federal offences associated with corporate wrongdoing; allegations or investigations; and debarment decisions made in other jurisdictions. The absence of these considerations could leave federal contracts and real property agreements susceptible to increased risk.

Provincial and civil offences

A supplier that is charged with or convicted of criminal conduct similar to the specified federal offences contained in the *Ineligibility and Suspension Policy* by either a province or other subnational body does not face the same consequences under the Integrity Regime. For example, a supplier could be convicted of tax fraud in a particular province, but remain eligible under the federal Integrity Regime.

Furthermore, in some cases, other jurisdictions may prosecute corporate wrongdoing civilly rather than criminally. For example, in many European countries, wrongdoing associated with collusion and bid-rigging are civil offences. In some countries, such as Germany and Sweden, corporations are not subject to criminal prosecutions as they are not recognized as a natural person.

This represents a potential gap in the application of the Regime, treats suppliers inconsistently and as such, may present a risk in the context of federal procurement and real property agreements. For example, while a supplier may exhibit the same conduct or criminal behaviour, it may face different consequences under the Regime depending on how the offence is treated in the jurisdiction in which the wrongdoing is prosecuted.

Additional offences associated with corporate wrongdoing

To further safeguard the integrity of its contracts and real property agreements, the Government of Canada could also consider adding new federal offences to the *Ineligibility and Suspension Policy* that are linked to corporate wrongdoing. This could include other fraud related offences or those calling into question the integrity of the supplier.

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What do you think?

- Q3: Are there other offences that call into question the integrity of a supplier that should be considered for inclusion within the *Ineligibility and Suspension Policy*? If so, what are they?
- Q4: What factors should be considered in determining whether new offences should be included?

Taking action prior to, or in the absence of a conviction

The reliance on charges and convictions to trigger a determination of suspension or ineligibility potentially limits the Government of Canada's ability to take action to protect the integrity of its contracts and real property agreements prior to a formal conviction, where the risks are potentially higher.

The risks to the Government are potentially greater in doing business with a supplier that is under investigation or the subject of allegations regarding business ethics, than following a conviction many years later. By that time, a supplier could have taken remedial actions to address the issues around the allegations of wrongdoing.

Regimes in other jurisdictions allow for debarment in the absence of formal charges or convictions. For example, in the US a supplier may be suspended from federal procurement on the basis of adequate evidence, temporarily pending the completion of an investigation, when it has been determined that immediate action is necessary to protect the government's interest.⁷ This enables US officials to take action to mitigate risks and protect the integrity of its contracts when problems first arise.

What do you think?

- Q5: At what point should the Government of Canada consider actions regarding corporate wrongdoing when making a determination of suspension or ineligibility? What wrongdoing or action would warrant a federal response?

Application to non-procurement Government of Canada services

Decisions under the *Ineligibility and Suspension Policy* could also affect a company's eligibility for certain Government of Canada services outside of procurement. For example, Global Affairs Canada's Trade Commissioner Service (TCS) provides market information, qualified contacts, advice and support to eligible Canadian companies in their business endeavours abroad. The TCS has its own eligibility criteria and a standard operating procedure to determine whether a company may receive its services. A suspension or declaration of ineligibility under the *Ineligibility and Suspension Policy* may render the company ineligible for business development support from trade commissioners or other Canadian officials abroad. Other triggers for ineligibility for TCS support include a criminal conviction for bribery or corruption and debarment by an international financial institution such as the World Bank.

⁷ Federal Acquisition Regulation. Section 9.407 <https://www.acquisition.gov/?q=browsefar>

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As part of its standard operating procedure, the TCS requires companies to sign an Integrity Declaration before receiving any advocacy support. The TCS aims to bring economic benefit to Canada by supporting Canadian companies that do business responsibly and ethically, while showcasing Canada as a positive example in responsible business practices.

What do you think?

Q6: How aligned should Integrity Regime determinations of ineligibility and decisions made by Global Affairs Canada's Trade Commissioner Service be? Should a similar approach be applied to other federal services?

Other jurisdictions' debarment decisions

The Government of Canada could consider using debarment decisions made in other jurisdictions (i.e., Canadian provinces and territories with debarment regimes, the US, the UK, the World Bank, etc.) to assess whether or not it is in the government's best interest to do business with a debarred supplier. This could be particularly useful in the Canadian context to avoid inconsistencies resulting from the Government of Canada continuing to contract with a supplier debarred by a province or territory.

This practice, also known as cross debarment, is in place among five multilateral development banks (Asian Development Bank Group, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and the World Bank Group). Effectively, a supplier debarred by one development bank is ineligible to contract with all of them.⁸

The World Bank suggests that cross debarment multiplies the deterrence factor of a single sanction and allows participating institutions to make the most of limited investigative resources. The increased transparency and uniformity of the sanctions process also helps suppliers have a better understanding of what is expected of them.⁹

What do you think?

Q7: What impact should a debarment decision made in another jurisdiction or by another organization have on a supplier's status under the Integrity Regime?

3. Addressing Organized Crime

Organized crime poses a significant threat to public safety and negatively impacts the daily lives of Canadians. Tied to illegal activities such as drug trafficking, prostitution, theft and human trafficking, organized crime groups have a violent and corrupting effect on the communities and cities where they

⁸ World Bank Group. Cross Debarment. http://siteresources.worldbank.org/INTDOI/Resources/Cross_Debarment_Brief.pdf

⁹ World Bank Group. Cross Debarment. http://siteresources.worldbank.org/INTDOI/Resources/Cross_Debarment_Brief.pdf

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operate.¹⁰ Public procurement is also susceptible to the infiltration of organized crime and its negative consequences.

Under the Integrity Regime, a supplier may be determined to be suspended or ineligible for a charge or conviction under sections 467.11 to 467.13 of the *Criminal Code* (i.e., recruitment of members by a criminal organization; commission of offence for criminal organization; instructing commission of offence for criminal organization). As there are known linkages between illicit drugs and organized crime, a supplier may also be suspended or ineligible if charged with, or convicted of an offence under sections 5-7 of the *Controlled Drugs and Substances Act* (trafficking in substance; importing and exporting; and production of a substance).

Some have suggested that relying on charges or convictions under these sections of the *Criminal Code* does not go far enough to protect the Government of Canada from doing business with suppliers who are affiliated with organized crime.

What do you think?

Q8: What type of measures should be taken to preclude those with known membership in or associations with organized crime from being awarded a federal contract or real property agreement?

4. Expanding the scope of application

There is an opportunity to look beyond the current scope of the Integrity Regime with respect to how it applies to contracts and real property agreements awarded by organizations affiliated with the Government of Canada, and if it can be used to achieve other policy objectives of interest to Canadians.

Application to Other Federal Organizations

At this time, the Integrity Regime applies to all federal departments and agencies identified under Schedules I, I.1 and II of the *Financial Administration Act*. Other federal entities, such as Crown Corporations, are encouraged to opt-in to the Integrity Regime.

Broader adoption of the Integrity Regime to other federal organizations' procurement and real property transactions would provide greater assurances that the Government of Canada is not conducting business with unethical suppliers.

Using the Integrity Regime to achieve other purposes

It has been suggested that the Government of Canada use its purchasing to positively and uniformly influence corporate behaviour. Increasingly, international bodies and national/sub-national governments are incorporating provisions to ensure respect for human and labour rights protection in procurement decisions and policy.

¹⁰ Criminal Intelligence Service Canada – Organized Crime in Canada: Backgrounder. <http://www.cisc.gc.ca/media/2014/2014-08-22-eng.htm>

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For example, in the US, a supplier may be debarred if it engages in conduct prohibited under federal statutes such as the *Buy American Act*, *Clean Water Act* and *Clean Air Act*. In addition, the US has issued a series of presidential executive orders that augment ethical procurement standards. This includes, but is not limited to:

- Requiring federal contractors who supply items included on a list of products, by country of origin, which may have been made by forced or indentured child labour to certify that they have made a good faith effort to determine whether forced or indentured child labour was used to produce the items.
- Imposing a variety of prohibitions on suppliers and subcontractors who engage in activities which usually constitute or may lead to some form of trafficking (commercial sex, forced labour, fraud, worst forms of child labour).

In the UK, a longstanding discussion on the use of forced labour in supply chains has led to the adoption of the *Modern Slavery Act* which requires companies with a global turnover of £36m or more to disclose actions undertaken to eliminate modern slavery in their own business or end-to-end supply chains. There is growing pressure for the UK to require all suppliers to the government to include a similar disclosure when bidding on a public procurement.

The Government of Canada could consider adding to the Integrity Regime offences related social issues such as forced labour and labour rights violations, human trafficking and environmental infractions.

What do you think?

Q9: Should application of the Integrity Regime be broadened to include federal entities beyond departments and agencies? What factors should be considered when determining what other organizations should be required to adopt the Integrity Regime?

Q10: How could the Government of Canada use the Integrity Regime to achieve other social, economic or environmental policy objectives?

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Summary of questions

We are interested in your views and welcome detailed responses regarding the questions set out in this discussion paper – a summary of which can be found below.

- Q1: To what extent, if any, should the duration of ineligibility and/or suspension be modified to ensure appropriateness while continuing to mitigate risk?
- Q2: How could the exercise of greater discretion be built into the Integrity Regime to address issues associated with periods of ineligibility? What factors should be considered in determining whether a supplier should benefit from discretion?
- Q3: Are there other offences that call into question the integrity of a supplier that should be considered for inclusion within the *Ineligibility and Suspension Policy*? If so, what are they?
- Q4: What factors should be considered in determining whether new offences should be included?
- Q5: At what point should the Government of Canada consider actions regarding corporate wrongdoing when making a determination of suspension or ineligibility? What wrongdoing or action would warrant a federal response?
- Q6: How aligned should Integrity Regime determinations of ineligibility and decisions made by Global Affairs Canada's Trade Commissioner Service be? Should a similar approach be applied to other federal services?
- Q7: What impact should a debarment decision made in another jurisdiction or by another organization have on a supplier's status under the Integrity Regime?
- Q8: What type of measures should be taken to preclude those with known membership in or associations with organized crime from being awarded a federal contract or real property agreement?
- Q9: Should application of the Integrity Regime be broadened to include federal entities beyond departments and agencies? What factors should be considered when determining what other organizations should be required to adopt the Integrity Regime?
- Q10: How could the Government of Canada use the Integrity Regime to achieve other social, economic or environmental policy objectives?

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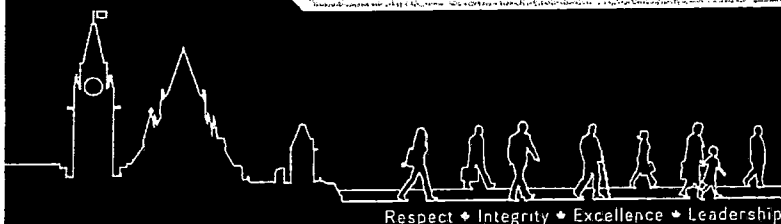
Contact details

Responses to this consultation paper should be sent to xxxxxxxx@pwgsc-tpsgc.gc.ca no later than 11:59 p.m. (Pacific time) November 10, 2017.

Any questions regarding this consultation process may also be directed to this email address.

Submissions may be made public on the Consulting with Canadians website.

Thank you for participating in this consultation process.



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Consultation Strategy

Enhancing Canada's Toolkit to Address Corporate Wrongdoing

August 11, 2017

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1. Introduction

Consultation is a key public sector activity that facilitates the success of government initiatives. It supports inclusiveness in the design and implementation of public policy and legislation and increases public confidence in the legitimacy and credibility of government decision making.

1.1 Objectives

The objectives of this Consultation Strategy are to ensure that consultations are well coordinated, effectively managed and responsive to the diverse views and needs of the public and its stakeholders. Officials from Public Services and Procurement Canada (PSPC), the Department of Justice (DoJ), and Innovation, Science and Economic Development (ISED) will consult with various stakeholders to determine:

- the critical changes that need to be brought to the Integrity Regime;
- how best the Government of Canada (GoC) can ensure it does business with ethical companies;
- how the Integrity Regime can be used to support the Government's interest in ensuring procurement supports its broader policy objectives (e.g., social and environmental); and,
- the views on the possible introduction of Deferred Prosecution Agreements (DPAs) in Canada as a tool to combatting criminal business practices.

The consultation will provide stakeholders' perspective to help shape the components of options to enhance the Integrity Regime and frame options for a possible Canadian DPA model.

1.2 Principles

The following three principles have been identified to underpin the consultation process:

Inclusiveness:

- A broad range of groups and individuals who may be affected by, interested in, or able to make a meaningful contribution to the consultation will be encouraged to participate.
- Measures will be taken to ensure all participants have reasonable opportunity to have their voices heard, while respecting the need for efficiency in the use of time and resources.

Transparency

- A summary of the viewpoints, perspectives and comments collected during the consultations will be shared publicly.
- Summaries will be published online.

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Good Faith

- A commitment that these consultations will be meaningful and their results will be taken into consideration within the decision making process.

2. Consultation Context

The *GoC Plan on Open Government* - Commitment 20 (part of the greater Open Government Partnership) states that Canada will “enable open dialogue and open policy making”. The GoC will foster enhanced citizen participation through greater collaboration and co-creation with the public and stakeholders within and across government initiatives.

According to the *Policy on Communications and Federal Identity*,¹ the Government is expected to:

- engage with Canadians and use innovative methods when developing policies, programs, services and initiatives; and
- interact with Canadians using new approaches such as digital technologies, while balancing traditional methods to enable the GoC to reach and engage with Canadians effectively and efficiently.

The *Directive on the Management of Communication*² requires Departmental Heads of Communication to:

- use digital media and platforms as the primary means to connect and interact with the public while continuing to use multiple communications channels to meet the diverse information needs of the public;
- provide communications advice, support and guidance at all stages of consultations and public engagement initiatives; and,
- ensure that information about external consultations and public engagement initiatives are posted on the Government of Canada's web presence (Consulting with Canadians web site).

*Treasury Board Secretariat (TBS) Guidelines for Effective Regulatory Consultations*³ provides advice to departments and agencies and tools to support effective consultations throughout the regulatory life cycle.

- Consultations are intended to promote the establishment of ongoing, constructive, professional relationships with stakeholders.
- Consultation principles allow for meaningful experiences, openness and balance, transparency and accountability.

¹ <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=30683>

² <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=30682>

³ <https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/effective-regulatory-consultations.html>

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In 2001, the Consulting with Canadians web site was created to coordinate and list all national and regional consultative activities across federal institutions, as well as to create a single window for Canadians to access and participate in consultations. It serves as the government's gateway for public access to information on consultations planned, underway or recently completed by institutions.

Departments are to provide the following, the level of detail will vary from one department and initiative to the next.

- a) Purpose and objectives of the consultation activity
 - In some cases, interested participants are required to request more information on the subject, or a copy of the relevant proposal or report.
 - Includes information on the consultation period.
- b) Targeted stakeholders groups
 - Typically, a number of stakeholder groups are chosen to ensure that interested or impacted stakeholders are provided the opportunity to provide input.
 - Stakeholders may include: representatives from federal provinces and territories, municipalities, rural and remote communities, Indigenous communities, academia and international counterparts, subject matter experts in a specialised field, industry, communities of practice, and the general public.
- c) Planned consultations that may be held, but are not limited to:
 - Request for feedback/written submission on reports/proposals
 - Reports/proposals may be provided online, provided by link, or interested stakeholders may be required to request a copy of the relevant document for review
 - Comment forms
 - On-line surveys/questionnaires – includes open ended questions
 - Interviews/bilateral meetings
 - Working groups/focus groups (by invitation only)
 - Series of focused workshops/conferences (by invitation)
 - Public town halls/open houses (in some cases, discussions were lead through broad discussion topics related to the initiative).
 - Twitter chats
 - Live Facebook event
 - Video conferencing
- d) Next steps in the consultation process
- e) Links to supplementary information

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f) Final consultation results/reports

3. Consultation Approach

Consultations will be conducted on a possible Canadian DPA regime and the Integrity Regime in a joint process to be co-led by PSPC and DoJ, and supported by Innovation, Science and Economic Development Canada (ISED) and Global Affairs Canada. The two initiatives will be positioned under the common theme of *"Expanding Canada's Toolkit to Address Corporate Wrongdoing"*. Canadians will be engaged on key issues related to unethical business practices in the context of public procurement and the possible introduction of a DPA regime to address corporate crime.

Although consultations will fall under the same overarching umbrella, they will be conducted in two streams; one stream for each initiative. A limited consultation approach will be employed. The principal mechanism will be on-line consultations supported by meetings with specific target groups. Views and opinions shared during the consultations will be considered in the development of options moving forward.

In order to balance the limitations of selecting one primary method of engagement (i.e. the online activity) departments will develop an aggressive communications plan to encourage participation among targeted stakeholders, and groups and minorities (women and young entrepreneurs, indigenous businesses, small and medium enterprises, etc.).

3.1 Methods of engagement

The consultations will be launched using the Consulting with Canadians website. The home page will introduce the joint consultation process, under the overarching theme of addressing corporate wrongdoing. It will provide a synopsis of the two streams of consultations that are taking place. Stakeholders will be able to click on the consultation initiative they wish to participate in (e.g. the Integrity Regime or on a possible Canadian DPA regime), which will redirect them to another webpage. For example, when participants are redirected to the Integrity Regime Consultations page, they will be provided information on engagement objectives, a list of targeted stakeholders, information on the online consultation (e.g. submission period), the discussion guide for review and comment, and a brief overview of what to expect next.

Similarly, when a stakeholder accesses the DPA consultation webpage, they will be provided similar information.

Both departments will monitor submissions and should an organization submit one paper but cover both streams, that submission will be share with the other department.

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a. Online consultation on discussion papers

Each department will develop discussion papers for stakeholders to review and comment on. They will provide an understanding and greater context on the Integrity Regime and DPAs, outline some key considerations and possibilities, and pose a series of questions for response. The consultation period will be open for 60 days. Comments may be submitted through the online Consulting with Canadians platform or a general email address (i.e. separate accounts for Integrity Regime and DPAs).

b. Meetings

Similar to the situation involved in the National Security consultations, DoJ officials will engage key justice sector stakeholders directly, through existing mechanisms.

Since implementation of the Regime, PSPC officials have held regular meetings with the Integrity Regime Industry Association Working Group. In collaboration with other federal officials, PSPC will hold a 3-hour meeting with this working group. Half of the meeting will be focused on the Integrity Regime and the other half will be used to discuss the possible introduction of DPAs.

In addition to these sessions, meetings will be held, to the extent possible, with stakeholders to discuss their views on the Integrity Regime and/or on a possible Canadian DPA regime (meeting requests will be assessed on a case by case basis for feasibility). Such meetings will be conducted jointly by PSPC and DoJ officials, when relevant.

3.2 Outreach and communication

In order to raise awareness of the online consultation opportunities and maximize potential participation levels across all stakeholder groups, PSPC and DoJ will launch two to three communication blitzes: leading up to the online consultations, upon the launch and prior to the closing date. Once the consultations have closed, a message will be placed on the Consulting with Canadians website to thank stakeholders for their participation and feedback.

a. Pre-launch announcement

One week prior to launch, departments will announce their intention to consult on the Integrity Regime and the possible introduction of DPAs. A standard communiqué will be distributed through broadcast and targeted messaging to raise awareness and encourage participation in the upcoming consultation activities.

Broadcast messaging would include:

- placing a notice on the Buy&Sell.gc.ca and Integrity Regime websites, and in PSPC's 'In the Know'; and

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- sending 'tweets' through departmental accounts (e.g. PSPC, DoJ, Buy&Sell.gc.ca, Office of Small and Medium Enterprises (OSME) regional offices, Associate Deputy Minister and Assistant Deputy Minister accounts).

Targeted messaging would be conducted by:

- sending emails to existing departmental networks and committees;
 - In particular, PSPC's Office of Small and Medium Sized enterprises' networks will be used to reach SMEs and minorities, such as women and young entrepreneurs, indigenous businesses, etc.);
- sending emails to stakeholders that have provided feedback on the Integrity Regime or DPAs in the past (e.g. Transparency International)
- leveraging existing committees and working groups by sending an email to groups; and raising the topic during meetings scheduled during this period (e.g. the Supplier Advisory Committee, Federal, Provincial and Territorial Committees, etc.).

By using a combination of these communication methods, the federal government is actively seeking and encouraging participation from the full range of stakeholder groups. These methods will be used in each communication blitz.

b. Opening announcement

A news release would launch the consultations. Upon the launch of the consultations, communication mechanisms identified for the pre-launch announcement will be repeated.

c. Pre-closing message (if needed)

If uptake is low, two weeks prior to the close of the online consultations, a third notification will be sent out to as a reminder that the consultation period will be closing shortly and to encourage stakeholder participation.

d. Closing message

Once the online consultation is closed, a thank you message will be placed on the Consultation with Canadians website accompanied by next steps in the process (i.e. a summary of results will be posted online).

3.3 Reporting

Two executive summaries will be written, one compiling findings from Integrity Regime consultations and another from DPA consultations. Key themes from the various events and online consultations will be grouped together to report on topics and overall findings. These summaries will be posted on the Consulting with Canadians website, describing what was heard.

4. Stakeholders

The following table indicates stakeholders each stream would target to solicit views.

STAKEHOLDER GROUP	IR	DPA
Private Sector		
• Industry associations	✓	✓
• Suppliers to the GoC	✓	✓
• Companies		✓
Professional Organizations		
•	✓	✓
• Law firms	✓	✓
• Accounting firms	✓	✓
Civil society and NGOs		
•	✓	✓
•	✓	✓
•	✓	✓
• Academics (a range)	✓	✓
•	✓	
• To be defined		✓
Targeted Groups		
• Indigenous Businesses	✓	
• Women entrepreneurs	✓	
• Small and medium enterprise	✓	
Justice Sector Stakeholders		
• Provincial and/or Federal Court judges (TBD)		✓
• Criminal Lawyers' Association		✓

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s.21(1)(b)

•		✓
•		✓
Provinces and Territories		
• Heads of Prosecution and Coordinating Committee for Senior Officials criminal section – (PT)		✓
• Federal, Provincial, Territorial Deputy Heads of Public Works	✓	

Beyond the consultation exercise, insights may be sought from others such as the World Bank, the UK and US governments regarding lessons learned and best practices.

The willingness of the GoC to broadly consult on possible modifications to the Integrity Regime is likely to be well received by interested stakeholders, especially given their criticism of the limited consultations during the development of the Integrity Regime in 2015. Consultations on the possible introduction of DPAs in Canada may generate wide ranging reaction amongst stakeholders.

PSPC, ISED and DoJ have a strong understanding of the position of industry associations and suppliers regarding the Integrity Regime and DPAs due to regular engagement of these stakeholders and/or continued expression of their views at the Ministerial and departmental level. A broad range of internal and external stakeholder groups will be engaged through a variety of consultation methods to gather on a discussion paper.

High interest stakeholders

- Groups within this category include suppliers, industry associations and representatives of the legal profession, which will generally be well informed and familiar with the Integrity Regime and the notion of DPAs.

These stakeholders have vested interest in the Integrity Regime and the introduction of DPAs in terms of the impact on industry and have engaged with the GoC in the past. Government officials can anticipate the general orientation of their positions.

Medium interest stakeholders

- Stakeholders within this group include those who have demonstrated some interest in the Integrity Regime and DPAs, such as civil society organizations and professional communities (e.g. audit and law firms).
- It is expected that they will have informed opinions of the Integrity Regime and DPAs and may have expressed views through articles and publications.

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s.21(1)(b)

- In both cases, stakeholders are expected to have similar expertise and knowledge of compliance regimes which may highlight additional measures and best practices that may be beneficial to the Integrity Regime.

Modest interest stakeholders

- This category will generally include stakeholders such as advocacy groups
(e.g. to combat modern day slavery and human trafficking, improved tax compliance, etc.).
- These stakeholders will help inform the range of social policy objectives that may have common associations with procurement and debarment regimes.
- While there has not been any notable reaction to the Integrity Regime from the general public, it is reasonable to expect that they would be supportive of efforts to safeguard the integrity of the public procurement and real property systems, while ensuring that Canadian companies are not placed at a competitive disadvantage internationally. Given the prominence of issues related to climate change and the growing awareness of the impact of global supply chains, there may also be support for using the Integrity Regime for social and environmental policy goals.

5. Timelines

- | | |
|--|---|
| Now to
September 2017 | <ul style="list-style-type: none">• Finalize policy issues to seek views on, develop umbrella piece and a consultation guide on Integrity Regime and on a possible Canadian DPA regime. |
| September 18 -
December 10,
2017 | <ul style="list-style-type: none">• 60 day on-line consultations (ending on November 10)• Meetings would continue until December 10 |

6. Next Steps

A detailed communication plan will be developed.

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Annex A – Types of Consultation Approaches

Consultation Approach			
	Limited	Moderate	Robust
Overview	<ul style="list-style-type: none"> Offers few consultation methods for broad or targeted consultation. Typically conducted when there is little time (less than 6 weeks) and limited financial and human resource constraints. 	<ul style="list-style-type: none"> Employs multiple methods for broad and targeted consultation. Typically conducted when there is some time (6 weeks to 3 months), and financial and human resources. 	<ul style="list-style-type: none"> Employs extensive and diverse consultation methods with various stakeholders groups. Typically conducted when there is ample time (3 months +), and financial and human resources, and the subject matter is high profile and high impact.
Examples of potential engagement activities⁴	<p>Could include one or two of the following:</p> <ul style="list-style-type: none"> Discussion papers/documents for comment Telephone/mail/online survey/questionnaire or poll Open house Town Meeting Conferences/symposia 	<p>Could include a combination (two or more) of the following activities, in addition to those listed under limited approach:</p> <ul style="list-style-type: none"> Focus groups Study circles Deliberative poles On-line discussion board Interviews Bilateral meeting Workbook Toll free line 	<p>Could include various of the following, in addition to those listed under moderate approach:</p> <ul style="list-style-type: none"> Open space technology Advisory boards/committee/council Task force Social media event/activity Workshop

⁴ Engagement activities listed are not restricted to a particular consultation approach. They typically can be used across any approach.

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Annex B – Example of Consultation Approaches used by OGDs

	Consultation Approach		
	Limited	Moderate	Robust
Examples of GC Consultations	Parks Canada – Ivvavik National Park⁵ (3 weeks)	Canadian Space Agency's Space Advisory Board⁶ (Consultation period to be confirmed)	Employment and Social Development Canada's Consulting Canadians on Poverty Reduction⁷ (Approx. 7 months)
Consultation Objective	<ul style="list-style-type: none"> Engage Canadians to provide comments and ideas on the future of Ivvavik National Park and the draft plan. The draft Ivvavik Management Plan was published for comment. <ul style="list-style-type: none"> No specific questions or considerations were included. 	<ul style="list-style-type: none"> Engage Canadians to help support the development of a new vision for Canada's space sector and to define key elements of a space strategy (Overall consultation period to be confirmed). A consultation paper was published for review and comment for the consultations. <ul style="list-style-type: none"> Includes a set of questions integrated into the paper for consideration and response. 	<ul style="list-style-type: none"> Engage Canadians to gather views to help develop a Canadian Poverty Reduction Strategy (Approximately 7 months). A consultation paper was published for review and comment for the consultations. <ul style="list-style-type: none"> Includes a set of questions integrated into the paper for consideration and response.
Targeted Stakeholders	<ul style="list-style-type: none"> General public 	<ul style="list-style-type: none"> Canadians Subject matter experts from: <ul style="list-style-type: none"> disability and indigenous organizations businesses community organizers and municipal organizations academic experts Canadians who have experienced poverty 	<ul style="list-style-type: none"> Canadians Subject matter experts from: <ul style="list-style-type: none"> academia service delivery business and international expertise on poverty Members will also be representatives of Canada's diversity in terms of gender, ethnicity, regions and official languages.

⁵ Link to Parks Canada's consultation page: <http://www.pc.gc.ca/en/pn-np/yt/ivvavik/info/plan/plan1>

⁶ Link to the Canadian Space Agency's consultation page: http://www.ic.gc.ca/eic/site/ad-ad.nsf/eng/h_ad03983.html

⁷ Link to ESDC's consultation page: https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/consultation-poverty.html?_ga=2.96026268.1297639158.1499463661-2082557882.1482331214

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Consultation Approach			
	Limited	Moderate	Robust
Examples of GC Consultations	Parks Canada – Ivvavik National Park⁵ (3 weeks)	Canadian Space Agency's Space Advisory Board⁶ (Consultation period to be confirmed)	Employment and Social Development Canada's Consulting Canadians on Poverty Reduction⁷ (Approx. 7 months)
Engagement Activities (and timelines)	<ul style="list-style-type: none"> • Draft paper for comment <ul style="list-style-type: none"> ◦ Interested participants can submit comments online or by mail. 	<p>In-person consultations (approx. 1 month)</p> <ul style="list-style-type: none"> • 6 roundtables were held across Canada, by invitation only, to engage stakeholders on Canada's space sector. • 2 virtual roundtable events were hosted, targeting Canada's Youth, and Northern Canada. • Summaries of each roundtable are posted online as they become available. <p>Online consultation (to be confirmed)</p> <ul style="list-style-type: none"> • All Canadians were invited to review the consultation paper and submit comments in electronic format to an email address. 	<p>Online consultations (approx. 4 ½ months):</p> <ul style="list-style-type: none"> • Individuals and organizations are encouraged to review the discussion paper and participate in the online consultation. • A discussion forum. • Online survey. • Canadians encouraged to share their stories via video, photo, written or other. • Canadians encouraged to follow them on social media and join the discussion. • Ideas can be sent by email. • Facebook live event <p>25 In-person consultations (approx. 4 ½ months)</p> <ul style="list-style-type: none"> • 17 roundtables across Canada with targeted stakeholder groups, 4 of which were open to the public for registration. • 5 town halls with Ministers and MP in attendance, all open to the public for registration. • Trilateral consultation with 3 MPs. <p>Other</p> <ul style="list-style-type: none"> • 33 Community events across Canada (facilitated by the Tamarack institute)

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Consultation Approach			
	Limited	Moderate	Robust
Examples of GC Consultations	Parks Canada – Ivvavik National Park⁵ (3 weeks)	Canadian Space Agency's Space Advisory Board⁶ (Consultation period to be confirmed)	Employment and Social Development Canada's Consulting Canadians on Poverty Reduction⁷ (Approx. 7 months)
			<p>and its Vibrant Communities)</p> <p>Advisory committee (to operate for 1 year – outside of the consultation period)</p> <ul style="list-style-type: none"> • A public call for nominations was open to interested parties who have experience with poverty and poverty reduction from four key areas. • The call was held for approx. 1 month. • The Committee will share information, hold independent discussions; and provide advice to the Minister on a range of issues.

10-Aug-17

Stakeholders for Targeted Consultations		
Stakeholder Group	Integrity Regime	DPA
Industry		
Integrity Regime Industry Association Engagement Group		
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
Industry Associations representing additional sectors		
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
Suppliers to the GoC		
Professional Organizations		
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
Civil Society and Non-Governmental Organizations		
Academics (to be identified)		
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓
	✓	✓

Stakeholder Group	Integrity Regime	DPA
	✓	✓
	✓	✓
	✓	✓
Targeted Groups		
Indigenous Businesses		
Canadian Aboriginal and Minority Supplier Council	✓	
Women Entrepreneurs		
Women in Business Enterprise	✓	
SMEs		
Labour Organizations		
	✓	
Justice Sector Stakeholders		
Provincial and Superior Court Judges		✓
Criminal Lawyers Association		✓
		✓
		✓
		✓
	✓	✓
		✓
Provinces and Territories		
Heads of Prosecution (PT)		✓
Coordinating Committee of Senior Officials (Criminal Justice)		✓
Federal, Provincial, Territorial Deputy Heads of Public Works	✓	

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ROLLING DRAFT AS OF August 11, 2017

COMMUNICATIONS AND OUTREACH STRATEGY

Consultation for Enhancing Canada's Toolkit to Address Corporate Wrongdoing

Issue

Public Services and Procurement Canada (PSPC) and the Department of Justice (DoJ), with support from Innovation, Science and Economic Development Canada (ISED) and Global Affairs Canada (GAC), are launching a public consultation on enhancements to the Integrity Regime and consideration regarding the possible adoption of a Deferred Prosecution Agreement (DPA) regime to address corporate crime.

The consultation will provide stakeholders' perspective to help shape and frame options for the Integrity Regime and a Canadian DPA model.

Background

Corporate wrongdoing imposes significant economic, political and social costs. These behaviours undermine fair competition, threaten the integrity of markets, are barriers to economic growth, increase the cost and risk of doing business, and undermine public and investor confidence.

Governments, including Canada's, are taking action against unethical business practices and holding companies accountable for such misconduct. This is achieved through a series of laws, regulations, governance frameworks, policies, programs that seek to detect, prevent and address such practices.

The Canadian government has implemented a number of measures that are designed to deter companies from participating in corporate misconduct. These include enacting and amending legislation such as the *Corruption of Foreign Public Officials Act*, the *Competition Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and amending the *Criminal Code* to address corporate criminal liability, as well as non-legislative measures, such as the PSPC's Code of Conduct for Procurement, Fairness Monitoring Program, an Anti-Fraud Tip Line (joint initiative of the RCMP, Competition Bureau and PSPC), and the Government-wide Integrity Regime.

It is important to continually assess whether the right tools are in place to address corporate wrongdoing.

Moreover, after introducing a government-wide Integrity Regime over two years ago, the regime that precludes suppliers from doing business with the GoC if charged with or convicted of one of the listed offences, it is useful to review whether it is achieving its objectives and whether it is efficient in doing so. This assessment is an opportunity to consider how the Regime addresses new trends and risks in a constantly changing marketplace as well as within the federal procurement modernization and social procurement agenda.

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This assessment is also an opportunity to consider the possibility of introducing a Canadian DPA regime as an additional tool for prosecutors, to be used in appropriate circumstances, to ensure that corporate criminal conduct is subject to effective, proportionate and dissuasive penalties and to assist in meeting other objectives, including increasing detection and improving compliance and corporate culture.

Communications objectives

- Inform Canadians of the GoC's efforts and initiatives to address corporate wrongdoing and protect the stewardship of public funds.
- Raise awareness among key audiences and encourage participation in the upcoming consultation activities.

Key audiences/stakeholders

- Private sector
- Professional organizations
- Civil society and non-governmental organizations
- Targeted groups
- Justice sector stakeholders

The following table indicates stakeholders each stream would target to solicit views.

STAKEHOLDER GROUP	IR	DPA
Private Sector		
• Industry associations	✓	✓
• Suppliers to the GoC	✓	✓
• Companies		✓
Professional Organizations		
•	✓	✓
• Law firms	✓	✓
• Accounting firms	✓	✓
Civil Society and NGOs		
•	✓	✓
•	✓	✓
•	✓	✓
• Academics (a range)	✓	✓
•	✓	

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• To be defined		✓
Targeted Groups		
• Indigenous Businesses	✓	
• Women entrepreneurs	✓	
• Small and medium enterprises	✓	
Justice Sector Stakeholders		
• Provincial and/or Federal Court judges (TBD)		✓
• Heads of Prosecution and Coordinating Committee for Senior Officials criminal section – (PT)		✓
• Criminal Lawyers' Association		✓
•		✓
•		✓
Provinces and Territories		
• Federal, Provincial and Territorial Deputy Heads of Public Works	✓	

Beyond the consultation exercise, insights may be sought from others, such as the World Bank, the UK and US governments, regarding lessons learned and best practices.

Environmental Scan

The willingness of the GoC to broadly consult on possible modifications to the Integrity Regime is likely to be well received by interested stakeholders, especially given their criticism of the limited consultations during the development of the Integrity Regime in 2015. Consultations on the possible introduction of DPAs in Canada may generate wide ranging reaction amongst stakeholders.

PSPC, ISED and DoJ have a strong understanding of the position of industry associations and suppliers regarding the Integrity Regime and DPAs due to regular engagement of these stakeholders and/or continued expression of their views at the Ministerial and departmental level.

Some stakeholders have also published reports on the subjects, providing recommendations to the GoC. For instance, Transparency International Canada recently published a report, *Another Arrow in the Quiver?: Consideration of a DPA scheme in Canada*.

A broad range of internal and external stakeholder groups will be engaged, primarily online through the use of a discussion guide housed on the Consulting with Canadians website. Officials will also make best efforts to meet with interested parties and, when relevant,

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these meetings will be conducted jointly. For example, it is expected that engagement of industry associations will be jointly held with departmental officials to ensure efficiency of the process.

High interest stakeholders

- Groups within this category include suppliers, industry associations and representatives of the legal profession, who will generally be well informed and familiar with the Integrity Regime and the general parameters of DPAs.

These stakeholders have a strong interest in the Integrity Regime and the introduction of DPAs in terms of the impact on industry and some have engaged with the GoC on these issues in the past.

Medium interest stakeholders

- Groups within this category include civil society organizations and professional communities and they have demonstrated interest in the Integrity Regime and DPAs through articles and publications. They have knowledge of compliance regimes and may highlight measures and best practices they consider may be beneficial to the Integrity Regime.

Modest interest stakeholders

- Groups within this category include stakeholders such as advocacy groups -

They may also be supportive of using the Integrity Regime for social and environmental policy goals. These stakeholders will help inform the range of social policy objectives that may be promoted or advanced through procurement and debarment regimes.

Media Scan (August 2016 to August 2017)

See Annex A for list of related articles

- Media coverage related to public procurement and corruption was limited with 16 written articles over the analyzed period. Coverage was national in scope, mostly reporting factually on alleged fraud cases concerning companies with federal government contracts, such as SNC-Lavalin, which signed an administrative agreement with PSPC in December 2015, allowing the firm to continue doing business with the government pursuant to the Regime.
- The articles also set out the implementation of a federal contracting fraud tip line where whistleblowers can report suspected fraud, collusion or corruption in federal government contracts and real property agreements.

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- In an article on an ex-convict winning a contract to provide pharmaceuticals and medical supplies to remote northern First Nations, NDP public procurement critic Erin Weir was quoted as saying that *"wouldn't suggest a blanket ban on ex-convicts being involved in government contracts"* adding that *"there's room for improvement and that government procurement has had a lot of problems."*
- An article on the Panama Papers reported that *"Internationally, Canada has long been considered lax on white collar crime, with few prosecutions and prison sentences measured in months, not years."*
- There has been limited media coverage of DPAs in the period covered (10 articles); mostly positive and much of it related to SNC-Lavalin Inc.
- An article in the Canadian Lawyer magazine summarizes the recent report on the potential for a DPA scheme in Canada by Transparency International Canada, as well as briefly mentioning a 2015 paper by the Institute for Research on Public Policy, suggesting that DPAs could be a more effective tool for the federal government to deal with corporations caught up in wrongdoing.

Strategic considerations

Recent media coverage of federal initiatives to stop corporate wrongdoing has ranged from neutral to positive. To maintain this type of coverage, key messages will have to be tailored so that balance is kept between focusing on holding wrongdoers accountable for their action through an enhanced Integrity Regime while allowing discretion to mitigate negative impacts on innocent parties.

Communication Approach

A proactive communication approach, strongly relying on digital tools, such as email blast targeted at stakeholders, will be implemented. This will be supported by departmental efforts to provide personalized emails and/or calls to specific stakeholder organizations to raise awareness and encourage participation in the consultations. PSPC will also develop a social media calendar with LinkedIn, Twitter and Facebook components that will cover before and during the consultations, as well as reminders on the eve of its closing.

The Consulting with Canadians, the Integrity Regime, and Buy & Sell web pages will be used to promote the consultation web page hosted on PSPC's site. Consideration will also be given to a priority button on canada.gc.ca.

Conventional communication tools will also be used. For example, a news release will be issued on the day of the launch.

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Communication with internal audiences is also planned with other federal departments receiving a notice in advance of public launch as well as a PSPC *In the Know* article to be published on the week of launching. DOJ will also be invited to prepare similar communications for its employees.

Tag Line

Enhancing Canada's Toolkit to Address Corporate Wrongdoing

Hashtag

#Letstalkcorporatewrongdoing

#ParlonsActesRépréhensibles

Visual Treatment

TBD

Key messages

- The GoC is committed to taking action against unethical business practices and holding companies accountable for their misconduct.
- The GoC is assessing its tools to ensure that, in an evolving marketplace, it has the best mechanisms in place to address corporate wrongdoing.
- As such, the GoC is seeking views on possible enhancements to the Integrity Regime in alignment with procurement modernization and the social procurement agenda.
- Deferred Prosecution Agreements are a particular type of response to corporate crime in specific circumstances. It is a complex legal issue and as such, the GoC is seeking views on its possible introduction.
- The input and feedback collected from the consultations will provide valuable information which will help the Government to identify ways to further enhance the Regime and how it addresses corporate wrongdoing as a whole.

A complete set of responsive lines will be separately developed by PSPC/DoJ/ISED.

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Communication Activities

AUDIENCE	ACTIVITIES	TIME LINE	OPI (RESPONSIBILITY)
Pre-launch activities			
<u>External</u> Stakeholders/Canadians	Email blast	Email(s) will be sent on September 11	DOB with support/review from PSPC Comms.
	Personalized emails and/or calls		
	Countdown on social media	Starting on September 11 with once a week reminder	PSPC Comms.
Launching activities			
<u>External</u> Stakeholders/Canadians	Joint news release, posted by PSPC announcing the launch of the consultation. MLs, Qs and As to support release.	September 18	PSPC Comms in partnership with DoJ Comms
	Launch of the Web Page and Priority button		PSPC Comms
	Posting on social media with link to NR and web page		PSPC Comms
Stakeholders	Email blast with link to web page		DOB
<u>Internal</u> PSPC employees	<i>In the Know</i> Article		PSPC Comms
DOJ Employees	DOJ Article		DOJ Comms
Other departments and agencies	Email		PSPC DOB

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AUDIENCE	ACTIVITIES	TIME LINE	OPI (RESPONSIBILITY)
During consultation			
<u>External</u> Stakeholders/Canadians	Posting on social media with link to NR and web page	Ongoing	PSPC Comms in partnership with DoJ Comms and DOB
Stakeholders	Email blast one week prior of closing date	TBC	DOB
	Countdown on social media with a link to the discussion paper	TBC	PSPC Comms
	An automatic reply will be provided to those that submit feedback to the two generic inboxes thanking them for their participation.	Ongoing	DOB
	Meetings with stakeholders as warranted	Ongoing	PSPC/DoJ
Post consultation			
<u>External</u> Stakeholders/Canadians	A thank you message will be posted to consultation site following the final day of consultations.	TBC	DOB in partnership with PSPC Comms
	Executive summary to be posted online and promoted through social media		

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Evaluation

Success of the communication strategy will be evaluated by analyzing data from:

- Traffic on the PSPC web page (consultation page)
- Social media, tweets, retweets, share on Facebook and LinkedIn
- Number of submissions
- Media coverage (qualitative and quantitative)

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ANNEX A

1. Grand Medicine regains northern Manitoba medical contract (Melissa Ridgen, APTN NATIONAL NEWS) 2017-07-19
2. Canada: Federal Contracting Fraud Tip Line: What Your Business Needs To Know (Jordan Deering and Emily McCartney, MONDAQ) 2017-07-12
3. Decision shows Canada's anti-bribery law has teeth (Julius Melnitzer, NATIONAL POST, FP4) 2017-07-12
4. Thirteen plead guilty in Laval collusion probe (MONTREAL GAZETTE, A3) 2017-07-12
5. La corruption en héritage (Vincent Larouche, LA PRESSE, 8) 2017-07-12
6. 30 MOIS DE PRISON POUR L'EX-DIRECTEUR (JOURNAL DE MONTRÉAL, 5) 2017-07-12
7. ILS ONT PLAIDÉ COUPABLES HIER (JOURNAL DE MONTRÉAL, 4) 2017-07-12
8. MUHC fraud case back in court Sept. 27 (Andy Riga, MONTREAL GAZETTE) 2017-06-29
9. Les délais s'accumulent pour les coaccusés du CUSM (Geneviève Garon, RADIO-CANADA) 2017-06-29
10. A FORCE IN FLUX (Colin Freeze and Daniel Leblanc, THE GLOBE AND MAIL) 2017-06-29
11. EXCLUSIVE: Feds unknowingly give northern First Nations pharmacy contract to "brutal pimp" (Melissa Ridgen, APTN NATIONAL NEWS) 2017-06-09
12. Government of Canada Launches Federal Contracting Fraud "Tip Line" (LEXOLOGY) 2017-06-06
13. Whistle-blower programs usher in a new era of fighting white-collar crime (Tom Hakemi and Kaitlyn Meyer, THE GLOBE AND MAIL) 2017-05-29
14. Who ya gonna call (out)? Government of Canada introduces tip line to report federal contract fraud. (Michael S. Rankin, Timothy Cullen and Shauna Cant, LEXOLOGY) 2017-04-26
15. Panama Papers have helped fuel 'a more aggressive CRA' (Marco Chown Oved, TORONTO STAR) 2017-03-20
16. Liberals, Conservatives repay illegal SNC-Lavalin donations (Robert Fife and Daniel Leblanc, THE GLOBE AND MAIL) 2016-09-09

Deferred Prosecution Agreement

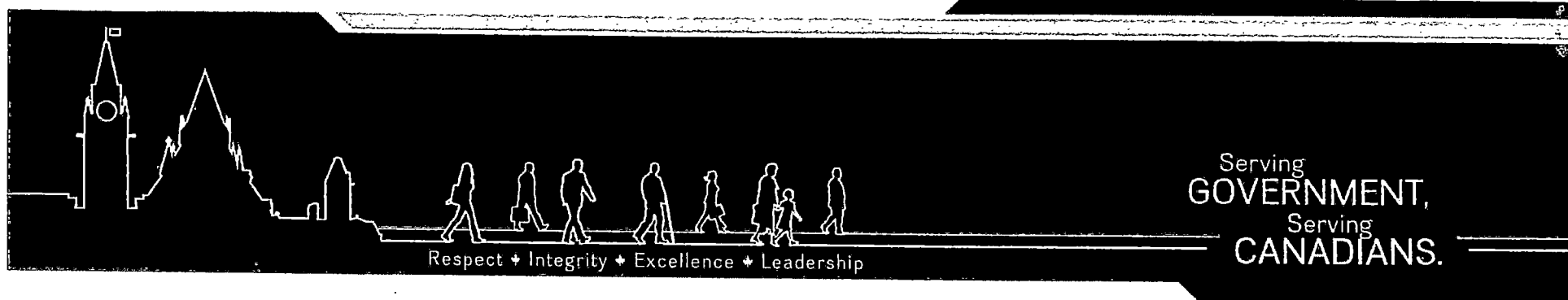
1. Does Canada need a deferred prosecution agreement process? (Jennifer Brown, CANADIAN LAWYER) 2017-07-25
2. Sunnybrook Foundation seeking \$20M in federal funding for PTSD program (Beatrice Britneff, IPOLITICS) 2017-05-17
3. SNC-Lavalin says it has been hurt by charges (RED DEER ADVOCATE) 2017-05-05
4. SNC-Lavalin says it lost foreign contracts because of criminal charges (THE CANADIAN PRESS) 2017-05-05

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5. **SNC seeks continued Caisse backing** (Nicolas Van Praet, THE GLOBE AND MAIL) 2017-05-05
6. **SNC-Lavalin says it lost foreign contracts because of criminal charges** (CAPE BRETON POST) 2017-05-04
7. **SNC-Lavalin boss repeats calls for delayed prosecution agreements amid diversification efforts** (Jesse Snyder, NATIONAL POST) 2017-05-04
8. **SNC-Lavalin says it lost foreign contracts because of criminal charges** (Julien Arsenault, THE TELEGRAM/THE CANADIAN PRESS) 2017-05-04
9. **SNC-Lavalin seeks continued Caisse backing for future acquisitions** (Nicolas Van Praet, THE GLOBE AND MAIL) 2017-05-04
10. **How accounting firm KPMG helped wealthy Canadians dodge their taxes** (Anna Maria Tremonti, CBC NEWS) 2017-03-02



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Consultation Strategy for Enhancing Canada's Toolkit to Address Corporate Wrongdoing

**Ministerial Briefing
August 14, 2017**



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Assessing the effectiveness and efficiency of tools to address corporate wrongdoing

- Behaviours linked to corporate wrongdoing undermine fair competition, threaten the integrity of markets, constitute barriers to economic growth, increase cost and risk of doing business, and undermine public and investor confidence.
- Canada has a strong set of measures to address corporate wrongdoing, including amending or updating legislation (i.e., *Corruption of Foreign Public Officials Act*, *Competition Act*, etc.) and implementing non-legislative initiatives (i.e., Codes of Conduct, Integrity Regime, Federal Contracting Fraud Tip Line, etc.).
- It is important to continually assess whether the right tools are in place.
- Time is right to now seek feedback on two elements that relate to Canada's efforts to address corporate wrongdoing: enhancements to the Integrity Regime and the possible adoption of Deferred Prosecution Agreements (DPAs) in Canada.



Consulting on enhancements to the Integrity Regime and the possible introduction of DPAs

- Consulting on the Integrity Regime is an opportunity to assess whether it is achieving its objectives in an efficient manner, ensure that it addresses new trends and risks in a constantly changing marketplace, and reflects the Government's highest ethical standards
 - Under the Regime, if a supplier is convicted of one of the listed offences in Canada or a similar offence abroad within the last 3 years, the supplier will be ineligible to be awarded a contract or real property transaction for a period of 10 years.
 - Regime is policy-based debarment scheme – similar in structure to others used by PTs and other jurisdictions internationally.
- Introduction of a DPA regime could also be considered as an additional tool to ensure corporate criminality is subject to effective, proportionate and dissuasive penalties, while strengthening detection, compliance and corporate culture.
 - Under a DPA, criminal prosecution is suspended on the accused agreeing to fulfil certain requirements including admitting to facts that would support a conviction, paying a significant financial penalty and cooperating with authorities, on completion of which, charges will be withdrawn.
 - Introduction of a DPA in Canada would require legislation; models are in place in US, UK, and a proposal is under development in Australia.



Proposed issues for consultations

Integrity Regime Enhancements	Canadian DPA Regime
<p>Expected to seek views on:</p> <ul style="list-style-type: none"> • appropriate debarment time periods (e.g., is 10 years too long, exercise of discretion) • criteria for debarment (e.g., taking action in the absence of convictions/charges) • level of discretion (e.g., recognition of provincial offences, debarments by others) • addressing organized crime (e.g., possible steps to further mitigate these risks) • achievement of other policy objectives using the Integrity Regime (e.g., consideration of labour violations, human trafficking, environmental infractions) 	<p>Expected to seek views on:</p> <ul style="list-style-type: none"> • criteria required for DPA (e.g., when should an accused be invited to negotiate a DPA) • parties to a DPA (e.g., available to corporations and/or individuals) • scope of offences (e.g., corporate crime or all criminal offences) • role of judiciary (e.g., determining whether a DPA is in public interest, approval DPA) • terms to be included in a DPA • usage of admissions in subsequent proceedings • victim restitution (e.g., should it be included) and distribution of proceeds (e.g., how should payments be used)



A strategic approach to consultation

- The following principles will underpin consultations:
 - **Inclusiveness:** broad range of groups and individuals; reasonable opportunities to provide input
 - **Transparency:** executive summary of perspectives and comments will be shared
 - **Good faith:** consultations will be meaningful and input will be taken into consideration
- Single process to seek views on the Integrity Regime and DPAs, jointly conducted by PSPC and DoJ officials, with support from ISED and GAC.
 - Creates a link between the two initiatives, and presents a comprehensive solution to better address corporate criminality, while mitigating unintended consequences.
- Consulting with Canadians will be used to establish an online presence.
 - An umbrella piece will link the two issues (i.e., Expanding Canada's toolkit to address Corporate Misconduct) with two separate streams for consultation – Integrity Regime and DPAs – along with a discussion guide for each initiative.
- To the extent possible, meetings will be held with stakeholders upon request, conducted jointly by PSPC and DoJ when relevant; international experiences and models, as well as PT approaches, can also be mined for best practices.



Current environment is focused mainly on DPAs

- Recent media coverage related to public procurement, corporate criminality and corruption has been limited.
 - Primarily focused on off-shore financial schemes (i.e., Panama Papers, KPMG), specific companies, and international initiatives (i.e., UK Summit).
- A number of industry associations and civil society organizations have taken formal positions regarding the adoption of a Canadian DPA regime, including:
 - Business Council of Canada which urged the GoC to follow the lead of the US and UK in adopting DPAs as an additional compliance tool.
 - Canadian Chamber of Commerce which had sought implementation of a robust DPA framework in Budget 2016.
 - Transparency International – Canada which proposed a set of criteria if a DPA scheme were adopted in Canada.
 - IRPP presented a roundtable discussion framework to consider whether Canada should adopt a DPA regime.



Consultations will likely be well received but will include diverse views

Companies and Industry Associations

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- Primary objective will be to push for the introduction of a Canadian DPA regime
- Likely to seek a softening of the Integrity Regime and may express concern with use of the Regime for new policy objectives and/or general strengthening

Civil society, Academics, Professional Associations and Firms

- Strong interest stakeholders, views could be made public
- Positions should be more nuanced and balanced
- Law and accounting firms will likely support adoption of DPAs, and while expressing general support for the Integrity Regime may argue for softening to ensure competitiveness of corporations
- Civil society organizations are likely to support DPAs but will include specific characteristics to avoid potential shortcomings

Advocacy groups

- Modest interest stakeholders,
-
- Expect some groups to advocate for transparency in supply chains (i.e., concerns of child labour, human trafficking, environmental enforcement)



Consultations will likely be well received but will include diverse views (cont'd)

Justice Sector Stakeholders (Judges, PTs,

- High interest stakeholders regarding DPAs
- Views will be diverse but some views will likely not be in the public domain

Media and general public

- Expected to be supportive of efforts to safeguard the integrity of the public contracting
- Might raise concerns that DPAs allow companies to pay their way out of criminal violations and perceived as a cost of doing business



Timelines and communications

- The consultation period will be open for approximately three months to ensure meaningful engagement from participants.
- Input will help frame options to address corporate wrongdoing.

Dates	Activities
Now to September 2017	Develop umbrella piece and two discussion guides, one on the Integrity Regime and another on DPAs
September 18 to December 10, 2017	Seek views during a 60 day on-line consultation period (ending on November 10, 2017)
	Conduct meetings until December 10, 2017 as required

- A series of communications tools (i.e., emails to stakeholders, social media, news release, cross promotion between departments and agencies, etc.) will be used to announce the launch of the consultation, maintain momentum and thank participants for their input.

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Next steps

Today

- Seek approval of the consultation's umbrella piece – Expanding Canada's toolkit to address corporate wrongdoing – and the respective discussion guides
- Endorse communications strategy for the launch of public consultations

Coming months

- Launch and report back on the results of the Integrity Regime and DPA consultations
-
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Key messages

- Corporate wrongdoing undermines fair competition, threatens the integrity of markets, constitutes barriers to economic growth, increases cost and risk of doing business, and undermines public and investor confidence.
- The Government of Canada is committed to taking action against improper and unethical business practices and holding companies accountable for such conduct.
- Canada has a strong set of measures to deter companies from participating in corporate misconduct, including legislative and non-legislative initiatives.
- To ensure that the necessary tools are in place to combat corporate wrongdoing within an evolving marketplace, it is seeking stakeholder views on enhancements to the Integrity Regime and on the possible adoption of a Canadian Deferred Prosecution Agreement regime.

