Deferred Prosecution Agreement
Response to Government of Canada’s Public Consultation
17th November 2017
EXECUTIVE SUMMARY

BRETTON WOODS LAW CANADA

Question 1: In your view, what are the key advantages and disadvantages of DPAs as a tool to address corporate criminal liability in Canada?

Question 2: For which offences do you think DPAs should be available and why?

Question 3: What role do you think the courts should play with respect to DPAs?

Question 4: What factors should be taken into account in offering a DPA?

Question 5: When would a DPA not be appropriate?

Question 6: What terms should be included in a DPA?

Question 7: What factors should be taken into account in setting the duration of a DPA?

Question 8: Under what circumstances should publication be waived or delayed?

Question 9: How should non-compliance be addressed?

Question 10: When should facts disclosed during DPA negotiation be admissible in a prosecution against a company?

Question 11: How should compliance monitors be selected and governed?

Question 12: What use should be made of compliance monitoring reports?

Question 13: Under what circumstances should victim compensation (i.e. anticipatory restitution) be included as a DPA term?

CONCLUSION
Executive Summary

1.1. Public authorities worldwide face important challenges in detecting, investigating and prosecuting financial crimes and related infractions. The modern business landscape, increasing reach of multinationals, rapid technological advancements as well as increasingly sophisticated offenses make it difficult to prevent and monitor complex financial criminality.

1.2. Identifying the infractions often depends on the cooperation of the very corporate actors that may be responsible for their commission, but under the current Canadian legal landscape, companies have little to no incentive to report wrongdoings on their part or on the part of their staff and, in fact, may have an incentive to hide information and resist enforcement by the authorities investigating them.

1.3. A key tool used by certain foreign government agencies as well as certain administrative agencies, in the fight against corporate misconduct, is the Deferred Prosecution Agreement (“DPA”). A DPA is a voluntary settlement negotiated between a prosecutor and a defendant. They are used in both the United States and the United Kingdom for certain corporate offenses. France has introduced a new sanction and enforcement framework in part by creating the "convention judiciaire d'intérêt public", close in spirit to the American style DPA. Australia is in the midst of a consultation for a proposed DPA legislation. Similar agreements are used by the World Bank, the Asian Development Bank, the African Development Bank and others in the multilateral development bank community in their fight against corporate misconduct.

1.4. The Canadian government’s consultation on this subject is welcome and should be viewed as an important step in what we hope will lead to the proper implementation of a DPA mechanism in Canada over the coming period.

1.5. Bretton Woods Law is generally in favour of a DPA mechanism being added to “Canada’s toolkit to address corporate wrongdoing” include in its fight to combat corruption, fraud and collusion. The implementation of a DPA mechanism in Canada should not be taken lightly as this will involves drastic change in the Canadian corporate crime enforcement landscape. While some argue that DPAs are currently possible under certain provisions of the Criminal Code, we believe that DPAs should be enacted through explicit legislation, they should be monitored by both the government administratively and by the judiciary with an aim to be transparent and protect the public’s interest.

1.6. The key elements of every DPA is the strengthening of a company’s own compliance framework which is ultimately the most effective and sustainable tool to combat corporate misconduct.
Bretton Woods Law Canada

2.1. Bretton Woods Law is a group of specialized attorneys working principally out of London, United Kingdom and Montreal, Canada with lawyers in Germany, Austria and Australia.

2.2. We are an international boutique specialized in business integrity as well as anti-bribery and corruption law. The firm has world-class credentials and experience in negotiating resolutions or settlement agreements with regulators including with international financial institutions such as the World Bank, the African Development Bank, the Asian Development Bank and other similar institutions.

2.3. More specifically, Bretton Woods Law Canada has advised clients on a wide-range of compliance related matters. We have been appointed as corporate monitors at a number of multinational corporations who have been the subject of compliance related sanctions. Bretton Woods Law Canada is currently the compliance monitor for two multinationals, one based out of Canada and one based in Japan.

2.4. Bretton Woods Law Canada also conducts internal corporate investigations on behalf of its clients to assess whether projects were affected by corruption or other kinds of misconduct. Additionally, we advise entities on compliance programme development or, when faced with allegations of compliance-related misconduct, on improvements and enhancements to their compliance infrastructure.

2.5. Additional information on the firm can be found through the corporate websites of Bretton Woods Law [http://brettonwoodslaw.com/](http://brettonwoodslaw.com/) and Bretton Woods Law Canada [http://www.bwlc.ca/](http://www.bwlc.ca/)
Question 1: In your view, what are the key advantages and disadvantages of DPAs as a tool to address corporate criminal liability in Canada?

3.1. To better frame the discussion on the advantages and disadvantages of DPAs as a tool to address corporate criminal liability, it is useful to first examine the issues currently faced by stakeholders under the existing Canadian model.

(i) Collateral Damage: Criminal punishment of Canadian corporations impacts society and prejudices innocent people far beyond the those individuals who are responsible for the misconduct.

(ii) Disincentivizes Transparency: The threat of corporate prosecution disincentivizes corporations from self-reporting misconduct or collaborating with investigations into misconduct and thereby severely curtails the ability of investigators to ascertain facts and collect evidence in fact finding exercises.

(iii) Long Delays: Investigations and trials for offences of economic crime have the tendency of becoming “forbiddingly long, expensive and complicated” (reference in the UK and AUS DPA consultations).

(iv) Rigid Outcome: Prosecution of corporate actors for corporate criminality is a binary step and gives an all or nothing outcome that does not take into account the complex reality of corporate criminality nor does it allow for proper evaluation of the internal personnel power dynamics involved in corporate crime or the root cause of such crimes.

DPAs Benefit Civil Society and the Economy

3.2. The impact of criminal prosecutions on corporations should not be minimized. Criminal prosecution can prevent a corporation from obtaining public, and sometimes private contracts, or simply eliminate the right of a corporation to bid on public contracts in Canada and internationally. Criminal prosecution also may trigger default clauses in the corporations major lending, supply and client contracts. Such consequences can mean the end of a corporation’s viability and with it the fragilization of jobs, industries and Canadian know-how.

3.3. On the other hand, DPAs do allow for effective punishment of a corporation as this will be discussed below with regards to Question 6. Through mechanisms such as publication of the DPA sanctions, compliance monitorships, monetary penalties, victim compensation, forced enhancement of ethics & compliance programmes, forced investigations, and others, corporations can be severely punished for misconduct while ensuring their viability. This directly addresses the issue identified in sub-paragraph 3.1 above in minimizing the collateral victims of corporate prosecution while maintaining effective punishment for corporate misconduct. It is also important to note that the creation of a DPA framework does not remove the possibility of traditional prosecutions, which remains a tool and a threat in the prosecutorial arsenal.

3.4. In addition, an overlooked added benefit of DPA arrangements is that they generally involve drastic rehabilitation of the sanctioned corporation. Such rehabilitation will often mean a change in management, internal controls and ethics and compliance policies that bring about healthier governance within the organization. This results in a trickle down effect whereby the reformed company becomes a change agent imposing better ethics and compliance practices on a corporation’s
stakeholders and suppliers and thus has a net benefit that reverberates within an entire economic sector. In essence, in addition to punishment, DPAs force positive change in a corporation that reaches beyond its immediate circle of influence. In a purely punitive regime, the costs strongly outweigh the benefit for all those involved with a net loss to society.

**DPAs Encourage Self-Reporting and Collaboration**

3.5. While criminal prosecution can seriously affect or completely end the viability of a corporation, a negotiated DPA allows the offending corporation to contemplate survival during and following the DPA proceedings and therefore gives the necessary path for the corporation to collaborate with the authorities.

3.6. That collaboration becomes an invaluable tool for authorities to reduce the length and cost of investigations and prosecutions as well as to receive otherwise impossible to obtain evidence in the pursuit of other targets involved in corporate criminality. In fact, and in practice, companies negotiating a DPA generally engage in broad internal investigations usually utilizing specialized counsel and consultants to conduct them. Facts uncovered during such investigation are then used as the basis for the DPA’s structure and may help investigators in other matters. In this way, the authorities can investigate and prosecute cases while minimizing reliance on their own resources.

3.7. In addition, the very fact that DPAs exist as a possible outcome, incentivises the corporation to self-report misconduct that could be otherwise completely unknown to authorities; especially if early self-reporting is a specific objective criterion that reduces the severity of the imposed sanction.

3.8. Self-reporting and collaboration with authorities is the principal guiding objectives of the DPA-like mechanisms adopted by the World Bank, the African Development Bank and the Asian Development Bank as well as other international financial institutions. These institutions are now active, prominent and highly effective actors in the fight against international fraud and corruption and that is largely because of their ability to get collaboration from corporations in exchange for administrative settlements.

3.9. The incentive to self-report and/or to collaborate with ongoing investigations directly addresses the issues identified above in paragraphs 3.2 and 3.3. Absent a DPA, the corporation has the inverse incentive of non-collaboration. With no DPA “carrot”, any collaboration with the investigation increases the chances that the corporation itself will be prosecuted.

**DPAs Create More Measured Punishment for Criminal Misconduct**

3.10. Prosecutions also create consequences that do not allow for a middle ground in punishment. By their nature, criminal accusations and convictions are the harshest result possible and could be fundamentally unjust in situations where it is unclear that the guiding mind of the corporation was involved in the activities, or where a group of rogue employees are responsible but are no longer with the corporation, or where the corporation has cooperated with the authorities and taken internal steps to remedy the misconduct. On the other hand, failed prosecutions and declarations of innocence – a consequence of the lack of collaboration – can mean that certain corporations would face little consequences for criminal activity and ultimately no longer be obliged to reform. DPAs vary in structure and consequences and thus allow tailor made
punishment to be handed out. They also generally allow the prosecution to effectively pursue and punish the offending individuals responsible for the criminal behaviour. The myriad of options for sanctions within DPAs allow for a more nuanced and more effective approach to criminal misconduct and address the weakness that currently exists in the Canadian model identified at section (iv) above.

Disadvantages

3.11. Bretton Woods Law is a strong proponent of DPAs, administrative agreements and other such alternatives to corporate criminal prosecutions as an effective means of curtailing the type of culture which leads to a prevalence of misconduct. The disadvantages with DPAs, in our view, are not with the tool itself, but in its application. The concern, for example, that a DPA regime fosters a “pay to play” dynamic is a legitimate one. If used systematically, without severe terms, corporations may accept the risk of getting caught and deem the consequences nothing more than a cost of doing business. Another oft cited concern is that a DPA model can be used by authorities to coerce defendants into settling or risk the long arduous reputational damages that comes with a mere allegation of wrongdoing. This is also a legitimate concern and has been an argument advanced by DPA opponents in the United States. Again, this is a question of application and can be avoided through a proper legislative framework and effective administrative and judicial supervision.

3.12. In both these instances, the application of the DPA is the problem, but not the tool itself. Accordingly, any DPA regime needs to be accompanied by clear guidelines from the Canadian Department of Justice or other appropriate government agencies.
**Question 2: For which offences do you think DPAs should be available and why?**

3.13. DPAs should be available for certain crimes, namely anti-competitive behavior, fraud, corruption and bribery and only for the benefit of moral persons (i.e. corporations and organizations) not individuals. These are the areas where DPAs would provide the greatest benefit in assisting law enforcement in their fight against these offenses.

3.14. Transparency International’s position on this issue is wholly adopted by Bretton Woods Law:

   “Overall, trials for corporate economic crimes are under-prosecuted and overly complex, which makes them the perfect candidate for DPAs in the event Canada elects to enact a DPA regime. However, this would, and should, not mean that prosecution of these cases would always be resolved with a DPA. In clear, egregious cases, prosecutors should prosecute a corporation to the full extent of the law.”

3.15. Extending DPA arrangements to individuals does not advance the stated objectives of the implementation of a DPA regime. The economic impact and advantage to Canadian society is unclear. Self-reporting is less of an issue as it may also clash with fundamental concepts of the right against self incrimination. Whistleblower protection is already a feature of criminal law – though could be strengthened it its own right – and therefore self-reporting individuals may already obtain benefits within the current system. The current criminal framework already allows for effective punishment and reformation of individuals and many of the positive outcomes of DPAs for corporations (such as compliance monitorships and enhanced ethics programmes) don’t apply to individuals.

---

1 Transparency International Canada, “Another Arrow in the Quiver? Consideration of a Deferred Prosecution Agreement Scheme in Canada”, July 2017, p.27
**Question 3: What role do you think the courts should play with respect to DPAs?**

3.16. The Canadian judicial system must supervise and monitor DPAs. The courts should provide an independent determination of whether the DPA is appropriate under the circumstances in question much like they are in the context of a criminal plea bargain. While, the courts should not be too interventionist, they should interfere when a DPA:

(i) Would bring the administration of justice into disrepute;
(ii) Is not in the interest of Canadian society; and
(iii) Has terms that are, unfair unreasonable, substantially more lenient or substantially more severe than other DPAs.

3.17. Intervention by the courts does not automatically mean refusal or ratification of a DPA but the court should, at a minimum, obtain satisfaction from the parties on the above aspects before approval.

3.18. This is in line with the model adopted in the UK. It is also similar to the model proposed by the Australian Attorney General though, unlike in that proposal, the petition for approval of a DPA should be made to the courts, rather than to a retired judge.

3.19. If the courts refuse a proposed DPA, the parties should then be allowed to re-negotiate the DPA or end the negotiation.
Question 4: What factors should be taken into account in offering a DPA?

3.20. DPAs should be offered at the discretion of the prosecution and therefore the most important factors should be in line with prosecutorial objectives. These factors should include:

(i) Self-reporting by the corporation;
(ii) Strong and genuine collaboration by the corporation;
(iii) Ability for the prosecutors, following a ratified DPA, to obtain otherwise inaccessible evidence against other parties involved in related corporate misconduct;
(iv) The corporation’s past record / absence of past misconduct;
(v) The corporation’s apparent on-going remedial efforts;
(vi) The prosecution’s perceived relative inability to obtain a conviction of the corporation or other related parties; and
(vii) The existence of a strong compliance programme within the corporation prior to the misconduct.

3.21. The last element is essential if there is to be real change within the Canadian corporate community. The absence of a strong anti-corruption, anti-bribery, anti-trust, anti-fraud, ethics and compliance programme should be viewed as negligence on the part of a corporation and such corporations should not be permitted to benefit from a DPA. In the UK, the absence of such a compliance programme is an offense under the UK Bribery Act. Though we do not yet suggest this for Canadian legislation as corporate compliance programmes lack the maturity of our neighbours to the south and many jurisdictions in Europe, it is important to understand the critical role compliance programmes play in preventing and detecting corporate misconduct and corporations that do not have a strong compliance programme should be presumed complicit to the commission of an offense.

3.22. In all cases, however, a clear policy with objective guidelines must be set out for prosecutors and available to the public to allow the actors a measure of predictability. A successful DPA system will require clear and detailed guidance on when a prosecutor is likely to offer DPA negotiations.
Question 5: When would a DPA not be appropriate?

3.23. DPAs would not be appropriate when:

(i) The prosecution has independently obtained evidence of misconduct and the corporation is not meaningfully collaborating with an investigation;
(ii) The corporation has a past record of misconduct;
(iii) The corporation is apparently unwilling to remediate;
(iv) The prosecution’s perceived ability to obtain a conviction of the corporation or other related parties is high; and
(v) The paucity of a corporation’s extant compliance programme is clear.

3.24. DPA should be viewed as an additional tool with the stated objective of helping to combat corporate misconduct. It should not be seen as a replacement of existing enforcement mechanisms. Anytime there is no overarching benefit to society for entering into a DPA, the prosecution should not extend the invitation to negotiate.
Question 6: What terms should be included in a DPA?

3.25. DPAs include the following essential features:

(i) Publicity;
(ii) Cooperation with law enforcement;
(iii) Financial restitution to victims;
(iv) Additional financial penalties;
(v) Meaningful internal remediation;
(vi) Forced enhancement to the compliance programme;
(vii) Administrative sanctions or debarment; and
(viii) The imposition of a monitor to ensure compliance with the terms of the DPA and as an ongoing review of the compliance programme enhancement.

3.26. Cooperation with law enforcement can go further than collaboration on the exact infraction that is the source of the DPA. For example, DPAs could potentially force corporations to conduct additional investigations on other matters unrelated to the misconduct. This aspect would be an additional added benefit to law enforcement authorities in their fight against corporate misconduct. The international financial institutions anti-corruption offices have used such a tool as an intelligence gathering exercise into corporate misconduct and to help build investigations into other parties.

3.27. Additionally, the most meaningful long term social and economic benefit of a DPA is the strengthening of corporate ethics and compliance programmes in Canada. The OECD Recommendation for further Combating Foreign Bribery, adopted in 2009, makes the promotion of corporate compliance programmes a central recommendation for governments who want to effectively combat corruption in their jurisdictions. In Canada, the Competition Bureau has won an award for its efforts in promoting corporate compliance in its regulatory sphere². Promoting corporate compliance programmes, while maintaining the threat of strong enforcement, is the most effective way of creating a long lasting ethical business culture within Canadian corporations. Corporations with strong compliance programmes become change actors in their sphere of influence, affecting their stakeholders and even imposing higher standards of ethics within their supply chains. The ripple effect of stronger corporate compliance programme incentivizes the entire market place to conduct their business ethically to ensure their commercial relations. In that sense, it is a stronger effect on the business community than the threat of criminal enforcement alone.

3.28. Finally, the best way to ensure long lasting corporate culture change and compliance programme enhancement following the ratification of a DPA is by an effective long-term monitorship as further discussed at questions 11 and 12.

Question 7: What factors should be taken into account in setting the duration of a DPA?

3.29. A useful guideline for duration of sanctions is found in the World Bank and the African Development Bank Sanctions Guidelines and we recommend using a similar structure for the factors that should be taken into account in setting the duration of DPAs.

3.30. In essence, both institutions consider that the base duration of a debarment sanction is 3 years.

3.31. The following are some of the aggravating factors listed which would be appropriate for a national law enforcement DPA guideline. Each factor could carry an additional duration of the sanction anywhere from 1 to 5 years.

(i) Severity of the Misconduct;
(ii) Repeated Pattern of Misconduct;
(iii) Sophisticated means / complexity / degree of planning / number of people involved;
(iv) Central role of upper management in misconduct; and
(v) Harm to public safety / welfare.

3.32. Inversely, the following elements may be considered as mitigating factors.

(i) Minor role in misconduct: Minor, minimal, or peripheral participant;
(ii) Voluntary corrective action taken;
(iii) Internal action against responsible individuals;
(iv) An existing effective compliance program;
(v) Voluntary restitution or financial remedy;
(vi) Ongoing cooperation;
(vii) Independent voluntary internal investigation; and
(viii) Admission / acceptance of guilt / responsibility.

3.33. Objective guidelines should be available and transparent to assist the actors in the evaluation of the duration of the DPA sanction during negotiations and to assist the courts in the evaluation of the appropriateness of the terms.
Question 8: Under what circumstances should publication be waived or delayed?

3.34. Transparency and publicity of DPAs is an important element of an effective mechanism. While most of the negotiation process could take place in private, and should be confidential, approval of the DPA should be made public and the terms therein published with an agreed statement of facts. The court discussions surrounding the approval should also be public. A corporation may be subject to adverse publicity as a result and this is part of the punishing nature of a DPA.

3.35. The main reason to delay or waive publication would be if such publication would interfere with a critical element of another prosecution or court proceedings.
Question 9: How should non-compliance be addressed?

3.36. The ultimate sanction for non-compliance with the terms of a DPA should be the termination of the agreement and the prosecution of the corporation. However, that consequence should not be the initial nor the only outcome of a breach. The nature of the breach, its materiality and the ability and willingness of the corporation to remedy the breach should be taken into account before the termination of a DPA.

3.37. A notice, with defined objectives and a strict cure period, should be given to the corporation. If the corporation is unable or unwilling to remedy the breach, it should have the ability to petition for a suspension of the effect of a breach pending review by the courts of the breach before the termination of the DPA.

3.38. In the current UK system, it is the court that determines if a breach occurred and if a DPA should be terminated. In our view, it is too onerous on the prosecution to have to petition the court to terminate a DPA. Rather, if a breach has occurred and the parties are unable to agree on the rectification, it should be up to the corporation to petition the court and convince it on a balance of probabilities that there was no breach, or that the rectification was concluded.

3.39. This approach is also more consistent with the general supervisory role given to the courts. Their role is not to exercise discretion to open or close DPAs but rather to ensure the proper administration of justice and that the interest of the public is upheld.
Question 10: When should facts disclosed during DPA negotiation be admissible in a prosecution against a company?

3.40. A corporation that signs a DPA should be shielded from further prosecution on the facts it has voluntarily disclosed within the scope of the negotiation and execution of the DPA. Evidence collected from the corporation against other corporations who are not involved in the DPA, however, should be admissible in prosecutions against said other corporations.

3.41. What is more important is that corporations obtain certainty that facts they have disclosed during negotiation (and that were not part of an independent investigative file) will not be used against the corporation if a DPA fails to be concluded. The rules on the exclusion of this evidence would be similar to the rules excluding evidence presented by witnesses, under immunity, during a public commission of inquiry when the Crown prosecutes such witnesses for similar crimes as the ones discussed during the commission. After the fact, courts will determine if the evidence brought by the prosecution was obtained independently from the DPA negotiations (similar to witness collaboration during a commission).
Question 11: How should compliance monitors be selected and governed?

3.42. Independent compliance monitors (“Monitors”) should be jointly selected by the prosecution and the corporation, and approved by the court. Monitors report directly to the office of the public prosecutor but should be engaged by the corporation in accordance with the DPA between the public prosecutor and the corporation.

3.43. Once the selection is made and ratified, the Monitor, should have a direct reporting line to the prosecution, not the corporation – though their costs will be assumed by the corporation.

3.44. There should be clear criteria on the appropriateness of Monitors. A list of pre-approved Canadian compliance specialists and firms should be drawn up by Public Services and Procurement Canada and reviewed annually.

3.45. The criteria for inclusion on the list should include the following:

(i) Experience as independent compliance monitors;
(ii) Experience in Canadian corporate ethics & compliance;
(iii) Experience in international corporate ethics & compliance;
(iv) Internal investigation know-how;
(v) Reasonableness of costs / hourly rates; and
(vi) Legal and/or accounting background in compliance.

3.46. The selection criteria currently used by Public Services and Procurement Canada in the context of the independent monitoring or verification of administrative agreements flowing from its integrity framework is generally appropriate. However, a clear set of Canadian guidelines against which a corporation’s compliance programme is to be measured must be adopted. While standards from around the world including, for example, those published by the OECD, the World Bank, the African Development Bank, the DOJ, and the SFO can be used for guidance, the Canadian department of Justice should outline its own standards on how to measure a corporate ethics and compliance programme.

3.47. The governing of the independent monitors should be through a tripartite agreement between the monitor, the prosecution and the corporation.
Question 12: What use should be made of compliance monitoring reports?

3.48. The Monitor reports are the basic tool used by the prosecution to follow and ensure the effective implementation of the enhanced compliance programme, which is critical to the continued success of a DPA mechanism in Canada.

3.49. The Monitor’s reports serve different purposes at different stages of a DPA procedure. The initial report should be a review of the existing ethics and compliance framework of a corporation along with a set of recommendations and objectives the corporation must abide with to ensure it meets the minimum standards expected by the Government of Canada.

3.50. Additional reports, at negotiated intervals, focused on specific areas, follow up on recommendations and field testing of the implementation of the enhanced compliance programme will be necessary to monitor the process after the initial report.

3.51. A material lack of collaboration by the corporation in the implementation of the Monitor’s recommendations should be viewed as a breach of the DPA and dealt with as discussed in question 9.

3.52. Monitor reports generally contain highly sensitive information about an organization and should be used solely for the purpose of administering the terms of the DPA. The Government of Canada must provide assurances to the corporation that confidentiality of the reports be respected and should never be disclosed to third parties, including through an access to information request.
Question 13: Under what circumstances should victim compensation (i.e. anticipatory restitution) be included as a DPA term?

3.53. DPAs may include provisions for addressing compensation through a contribution to be made to a fund, governed by the Government of Canada, with a specific objective of preventing and combatting corporate criminality. The funds thus collected could serve to enhance Canadian corporate crime enforcement, to assist corporations with voluntary enhancements to their corporate ethics and compliance programmes, to create educational grants in the field of ethics and compliance and corporate crime prevention, or to contribute to international anti-bribery, anti-corruption and anti-fraud efforts.

3.54. Restitution and disgorgement may also be considered if the circumstances permit, however, careful consideration must be given as victims of corporate crime are difficult to identify.
Conclusions

4.1. Some proponents of the existing regime argue that a heavy-handed and punitive approach leads to the deterrence of corporate misconduct. We respectfully disagree with this position and instead suggest that the psyche of an offending corporation be viewed in a manner similar to the juvenile offender, for which the deferred prosecution was first used in the United States.

4.2. The DPA is not a stand-alone mechanism and Canada should not move to implement the DPA simply because many of its G7 peers have or are moving in that direction. A DPA is a single tool amongst an arsenal that can be used to combat corporate crime. Absent a strong enforcement initiative or a dedicated agency and a clear set of guidelines from the Canadian Department of Justice (or other appropriate ministry), the DPA will be largely ineffective.

4.3. It is a commonly held misconception that misconduct, whether here in Canada, or abroad, is limited to a few rotten corporate citizens. In our experience, which has provided insight into the realities of corporations and organizations around the world, we can anecdotally confirm that to be false.

4.4. Companies having similar risk profiles (whether resulting from the industries on geographies in which they operate) all grapple with the same issues. Corruption, for instance, is pervasive. In certain jurisdictions, if corporations do not seek to actively avoid exposing themselves to certain risks, they can unwittingly find themselves a defendant. Effective and sustainable change in this area requires buy-in from the actors themselves. This means stronger education, prevention and enforcement. These aims would all be advanced with the introduction of a DPA.