

# NEW ZEALAND

## ● Limited enforcement

**0.2% of global exports**

### Investigations and cases

In the period 2016-2019, New Zealand opened seven investigations, commenced no cases and concluded no cases with sanctions.

The countries involved in the investigations were Fiji (two), Indonesia, Israel, the Solomon Islands and Tonga. No information was provided about the country involved in the seventh ongoing investigation.<sup>1</sup>

### Recent developments

No notable new measures have been introduced since the last *Exporting Corruption* report in 2018. In February 2020, the cabinet approved proposals to strengthen whistleblowing legislation, but has not presented them to Parliament.<sup>2</sup> In June 2018, the New Zealand Ministry of Business, Innovation and Employment released a discussion paper on the extent to which New Zealand companies and limited partnerships should be required to hold and disclose information about their beneficial owners.<sup>3</sup> The paper excluded all trusts from the proposed

provisions, on the grounds of privacy and confidentiality.

### Transparency of enforcement information

No comprehensive public information exists in relation to foreign bribery enforcement. The Serious Fraud Office (SFO) provides some limited statistics and brief accounts relating to investigations in its annual reports, but does not always single out foreign bribery cases.<sup>4</sup> Limited statistics are provided on requests for mutual legal assistance (MLA) by Crown Law (the Central Authority), through its annual reports.<sup>5</sup>

Some information is also provided by the SFO on its website and in annual reports. The SFO may make a public statement about an investigation if information about it is already in the public domain or disclosing it is in the public interest.<sup>6</sup> Requests made under the Official Information Act can provide limited additional information.

Most decisions of higher-level courts (where any foreign bribery cases would be heard) are published by the courts.<sup>7</sup>

### Beneficial ownership transparency

New Zealand has no central register of beneficial ownership for companies or trusts. While it operates a publicly accessible Companies Register within the New Zealand Companies Office, this does not include beneficial ownership information. Foreign trusts have had to register with the Inland Revenue

<sup>1</sup> The 2020 information provided by the Serious Fraud Office (SFO) differs from that provided in 2018, which reflects an internal decision by the SFO to re-classify the basis of earlier investigations. The SFO is the lead foreign bribery investigative organisation, which decides the course of action.

<sup>2</sup> The latest cabinet documents relating to whistleblower legislation are at <https://ssc.govt.nz/assets/SSC-Site-Assets/Proactive-Releases/Cabinet-Paper-Review-of-Protected-Disclosures-Act-2000.pdf>. The paper is entitled "Reform of the Act: Cabinet Paper – Review of the Protected Disclosures Act 2000". In terms of the Act being unfit for purpose, see, for example, Brown, A. J. and Lawrence, S. A., "Strength of Organisational Whistleblowing Processes: Analysis from Australia and New Zealand. Further results of the Whistling While They Work 2 Project", Griffith University, Brisbane, 2017.

<sup>3</sup> "Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships", <https://www.mbie.govt.nz/assets/8a3f53e039/increasing-the-transparency-of-the-beneficial-ownership-of-new-zealand-companies-and-limited-partnerships.pdf>; The MBIE Discussion Paper proposes three options: (1) require corporate entities to hold updated information about their beneficial owners, to be released on request by authorised agencies (2) include information on beneficial ownership in the current registers with access restricted to specific law enforcement agencies and approved entities (3) provide public access to this information.

<sup>4</sup> <https://www.sfo.govt.nz/annual-report>

<sup>5</sup> These merely list the total number and average hours expended on MLA and extradition requests.

<sup>6</sup> <https://www.sfo.govt.nz/news>. Accessed 12 March 2020. The information dates back to 2009.

<sup>7</sup> District Court and Senior Courts (Access to Court Documents) Rules 2017 (via the Judicial Decisions Online database). A charitable foundation (NZLII) provides additional case decisions, [http://www.nzlii.org/databases.html#nz\\_cases](http://www.nzlii.org/databases.html#nz_cases). Both sites are free, but coverage remains incomplete.

since 2017. This register includes information relating to beneficial ownership, but it is not publicly accessible.<sup>8</sup>

The Register of Companies can compel companies to provide information on beneficial owners for law enforcement purposes.<sup>9</sup> The SFO can require that information on beneficial owners be provided once an investigation is underway.<sup>10</sup> The Inland Revenue Department can compel companies and trusts (and others) to provide information, including aspects relevant to beneficial ownership.<sup>11</sup>

## Inadequacies in legal framework

Some elements of the legal regime are inadequate, including the lack of specific statutory obligation for auditors to report foreign bribery to relevant authorities, the lack of a positive requirement for the private sector to prevent bribery, the requirement that the Attorney General must approve prosecutions relating to foreign bribery and the continued legality of facilitation payments. The OECD WGB noted in its Phase 3 Follow-Up Report in 2016 that while amendments to the Crimes Act in 2015 clarified the nature of such payments, they failed to address the continued uncertainty around their use.<sup>12</sup>

Whistleblowers are not well protected in New Zealand and the Protected Disclosures Act 2000 is widely seen as unfit for purpose. There is no formal obligation for financial professionals to report evidence of foreign bribery. The Anti-Money Laundering and Countering Financing of Terrorism Act 2015 expanded the legally recognised right of auditors to inform relevant authorities in cases of suspected money laundering and other offences,

but this explicit right to inform does not mention foreign bribery.

The trust sector in New Zealand remains only lightly regulated, which has long been a source of concern for anti-corruption campaigners.<sup>13</sup> This has been recognised by the New Zealand Police Financial Intelligence Unit and others as a point of weakness in the legal framework in relation to money laundering, which remains an issue in New Zealand.<sup>14</sup> Other weaknesses recognised by the New Zealand Financial Intelligence Unit and relevant to foreign bribery include the use of shell companies and alternative banking platforms.<sup>15</sup>

## Inadequacies in enforcement system

The enforcement of foreign bribery allegations in New Zealand remains limited. Although the legislative framework provides an adequate, if imperfect, criminal system for the prosecution of foreign bribery cases, they do not take place. The SFO is a small agency and has limited resources which, according to its reporting statements, are mostly focused on domestic fraud.<sup>16</sup> There is no specialist anti-corruption agency. The Attorney-General's consent is required before foreign bribery prosecutions can proceed.

## Recommendations

- Improve availability of statistics and information on investigations, MLA requests and cases in relation to foreign bribery
- Develop central registers (new or existing) to ensure public accessibility of beneficial ownership information for all New Zealand companies and trusts
- Remove the "routine government action" (facilitation payment)

<sup>8</sup> NZ resident trustees of a foreign trust must disclose details of all beneficiaries and persons "with a power to control" the trust. An annual financial return must be provided to the Inland Revenue Department, including details of beneficiaries. Tax Administration Act 1994, Sections 59B and 59D.

<sup>9</sup> Under the Companies Act 1993 and Limited Partnership Act 2008.

<sup>10</sup> Serious Fraud Office Act 1990, s. 5.

<sup>11</sup> Tax Administration Act 1994.

<sup>12</sup> <https://www.oecd.org/daf/anti-bribery/New-Zealand-Phase-3-Written-Follow-Up-Report-ENG.pdf>

<sup>13</sup> For example, <https://www.stuff.co.nz/business/78436709/new-zealand-shell-company-linked-to-unaoil-global-oil-industry-bribery-scandal>

<sup>14</sup> NZ Police FIU, "National Risk Assessment of Money Laundering and Terrorism Financing", 2019, <https://www.interest.co.nz/news/102839/nz-police-anti-money-laundering-assessment-cites-trusts-among-attractive-money>; [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12288182](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12288182)

<sup>15</sup> NZ Police FIU, "National Risk Assessment of Money Laundering and Terrorism Financing", 2019, <https://www.interest.co.nz/news/102839/nz-police-anti-money-laundering-assessment-cites-trusts-among-attractive-money>, p.52

<sup>16</sup> <https://www.sfo.govt.nz/annual-report>, p.3.

exemption from Section 105C of the Crimes Act • Introduce clear and specific legislative protection for auditors (and others) who report suspicions of bribery to the relevant authorities • Improve protection for whistleblowers by strengthening the provisions in the Protected Disclosures Act, and other legislative amendments (e.g. extension of auditor protection under the Anti-Money Laundering and Countering Financing of Terrorism Act 2015 to include foreign bribery) • Introduce a positive requirement for commercial organisations to prevent foreign bribery by introduction of an offence of failure to prevent bribery (see The UK Bribery Act 2010, s7) • Give greater priority and resources to the proactive investigation of foreign bribery to assess its extent in New Zealand • Consider creating an independent anti-corruption agency, whose remit includes managing foreign bribery investigations • Remove the requirement that the Attorney-General consent to foreign bribery prosecutions.