

# PERU

## Little or no enforcement

**0.2% of global exports**

### Investigations and cases

In the period 2016-2019, Peru opened no investigations and there were no cases commenced or concluded.

### Recent developments

In July 2018, Peru adhered to the OECD Anti-Bribery Convention and to the 2009 Recommendation<sup>1</sup> In March 2019, the OECD WGB published its Phase 1 Report evaluating Peru's implementation of the convention.<sup>2</sup> Since then, there have been no new significant developments in Peru regarding foreign bribery enforcement.

### Transparency of enforcement information

There are no publicly available statistics on foreign bribery enforcement. No data is published by Peruvian authorities on mutual legal assistance requests sent or received. The judiciary and the General Prosecutor's Office regularly publish reports with statistics on their anti-corruption efforts, but they use the general category "crimes against the public administration" to refer to all corruption crimes.<sup>3</sup> There is no disaggregated

information for each crime. Statistics published by the Special Attorney for Anti-Corruption Crimes (part of the Ministry of Justice) are broken down by the different types of corruption-related offences, but when the number of cases for one particular offence is not significant, it may be included in the "Other" category. As such, it is currently not possible to ascertain the number of specific investigations or cases of foreign bribery.<sup>4</sup> Court decisions are not available to the public, nor are non-trial resolutions.

### Beneficial ownership transparency

There is a central register of beneficial ownership information accessible to some oversight and law enforcement agencies. In August 2018, rules were adopted requiring the identification of beneficial owners of legal persons. These entered into force in January 2019, and were further detailed by the National Superintendency of Customs and Tax Administration (SUNAT), which is responsible for collecting information on beneficial owners.<sup>5</sup> Some authorities, including the Superintendency of Banks, Insurance and Pension Fund Administrators and the Superintendency of the Securities Market, will have direct access to this information, while others, such as prosecutors or the Financial Intelligence Unit, may have access when necessary as part of their investigations.<sup>6</sup> There is no indication that access to this information will be available to the public.

Implementation of the SUNAT registry is still in its early stages, but it will be an essential tool to improve on a deficiency identified in 2018 by the Financial Action Task Force of Latin America (GAFILAT), namely that law enforcement officials do

<sup>1</sup> <http://www.oecd.org/newsroom/peru-to-join-two-major-oecd-conventions-anti-bribery-convention-and-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters.htm>

<sup>2</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>

<sup>3</sup> Judiciary, [https://www.pj.gob.pe/wps/wcm/connect/Estadisticas/s\\_estadistica/as\\_estadisticas/as\\_documentos/](https://www.pj.gob.pe/wps/wcm/connect/Estadisticas/s_estadistica/as_estadisticas/as_documentos/); Prosecutor's Office, [https://www.mpfj.gob.pe/publicaciones\\_estadisticas/](https://www.mpfj.gob.pe/publicaciones_estadisticas/)

<sup>4</sup> Statistical information from the Corruption Crime Specialised Prosecutor's Office, <https://procuraduriaanticorruptcion.minjus.gob.pe/publicaciones/>

<sup>5</sup> The regulation of beneficial owners was approved by Legislative Decree No. 1372, <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-que-regula-la-obligacion-de-las-personas-decreto-legislativo-n-1372-1676524-5/>. This was in turn approved by Supreme Decree No. 3-2019-EF, <https://busquedas.elperuano.pe/normaslegales/aprueban-reglamento-del-decreto-legislativo-n-1372-que-reg-decreto-supremo-n-003-2019-ef-1729359-1/>

<sup>6</sup> In the case of prosecutors, according to articles 235 and 236 of the Code of Criminal Procedure, [http://spij.minjus.gob.pe/content/publicaciones\\_oficiales/img/CODIGOPROCESALPENAL.pdf](http://spij.minjus.gob.pe/content/publicaciones_oficiales/img/CODIGOPROCESALPENAL.pdf), and article 47 of the Securities Market Law, <https://www.smv.gob.pe/uploads/PeruLeyMercadoValores.pdf>; in the case of the agents of the Financial Intelligence Unit, according to Law No. 27693, [https://www.sbs.gob.pe/Portals/5/jer/NORM\\_GEN\\_LAFT/19112018\\_Version\\_Concordada\\_Ley%2027693.pdf](https://www.sbs.gob.pe/Portals/5/jer/NORM_GEN_LAFT/19112018_Version_Concordada_Ley%2027693.pdf)

not have “timely access to BO [beneficial ownership] information of legal persons”.<sup>7</sup>

## Inadequacies in legal framework

In its first evaluation of Peru, the OECD WGB indicated some deficiencies in the country’s legal framework. Regarding the foreign bribery offence, two issues were highlighted: the lack of a legal definition of “foreign official” and the absence of criminalisation of the offer or promise made but not received by the official.<sup>8</sup>

Regarding corporate liability, the OECD WGB recommended “that Peru amend the Law to (a) ensure that a legal person is liable for foreign bribery that benefits both the legal person and the natural person who perpetrated the crime (b) ensure that a legal person is liable for foreign bribery that is intended to benefit it, even if the benefit later does not materialise, and (c) ensure that legal persons cannot avoid liability for foreign bribery by using an intermediary to make bribe payments”.<sup>9</sup>

There is insufficient information on what constitutes an effective prevention model for companies. The fulfilment of a company’s duties of supervision or surveillance, which protects it from liability for foreign bribery committed by lower-level staff, is regulated by the legal entity itself. That leaves wide discretion for the company to dictate its own standards of behaviour. This defence is currently available even when the senior management of a company commits, authorises or directs a crime of foreign bribery.<sup>10</sup>

Foreign bribery enforcement against legal persons depends heavily on the Superintendency of the Securities Market (SMV), a technical institution within the Ministry of Economy and Finance. The SMV must produce a technical report with an analysis of the company’s prevention model, which binds the prosecutor’s investigation and limits its scope. If it indicates that the prevention model implemented by a company before the commission of the crime of transnational bribery was an adequate one for prevention and mitigation of

corruption risks, the prosecutor must close the investigation. In this case, prosecutors will not be able to question the report, so the determination of the company’s responsibility is no longer subject only to the prosecutors and judges, but rather to the SMV, which has no experience in the investigation and sanctioning of these cases.

Protection for whistleblowers is not mandatory in the private sector.

## Inadequacies in enforcement system

The *Lava Jato*-related investigations in Peru have exposed the limitations of the justice system to combat and punish crimes of corruption, money laundering and highly complex organised crime. International companies operate with convoluted structures, which increase the need for specific training and sufficient resources to investigate and combat foreign bribery. In addition, longer deadlines are needed for the conclusion of preliminary proceedings and preparatory investigations.<sup>11</sup>

The lack of independence within the judiciary, the Prosecutor’s Office and the National Council of Magistrates has led to the politicisation of investigations and cases, which has jeopardised enforcement.

## Recommendations

- Publish regularly updated information on foreign bribery enforcement, including data on international cooperation
- Provide transparency to non-trial resolutions and court decisions
- Ensure that the registry of beneficial ownership information is available to the public in an open-data format
- Improve foreign bribery legislation according to the OECD WGB’s recommendation, including defining “foreign official” and criminalising the offer or promise of a bribe
- Require companies to institute mechanisms to protect whistleblowers
- Reconsider the role of the SMV in assessing corporate liability in

<sup>7</sup> <http://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/peru/evaluaciones-mtuas-14/3287-mutual-evaluation-report-of-peru/file>

<sup>8</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>

<sup>9</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>

<sup>10</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>

<sup>11</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>

corruption cases and assess the risks of limiting prosecutorial discretion in evaluating companies' prevention models • Provide adequate resources and training on foreign bribery enforcement to prosecutors and judges.