

# **Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

## **NEW ZEALAND**

*(Information as of 24 June 2009)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of ratification was deposited with the Secretary-General of the OECD on 25 June 2001.

### ***Implementing legislation***

The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001.

The Act came into force on 3 May 2001 and the provisions relating to offence of foreign bribery are set out in sections 105C, 105D and 105E of the Crimes Act 1961.

Key features of the legislation include:

- An offence of bribing foreign public officials carrying a maximum penalty of up to 7 years imprisonment – this made it an offence, with narrow exceptions to corruptly give, or agree to give a foreign public official with the intent of influencing them in respect of their official capacity in order to obtain or retain business or obtain an improper advantage in business;
- Application of extraterritorial jurisdiction to Convention offences enabling prosecutions to be brought for foreign bribery offences committed outside New Zealand by New Zealand citizens, residents, and body corporates or corporations sole incorporated in New Zealand;
- Limited exceptions to the foreign bribery offence where acts alleged to constitute the offence are:
  - In the form of small facilitation payments, or
  - Carried out in another country where the act was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the FPO is employed or otherwise provides services is situated.

New Zealand is currently reviewing aspects of its implementing legislation in line with recommendations made in the course of the Phase 2 Evaluation.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- Income Tax Act 2007
- Extradition Act 1999
- Mutual Assistance in Criminal Matters Act 1992

- State Sector Act 1988
- Public Audit Act 2001
- Proceeds of Crime Act 1991
- Criminal Proceeds (Recovery) Act 2009
- Protected Disclosures Act 2000
- Financial Transactions Reporting Act 1996
- Sentencing Act 2002

This legislation can be accessed on line at [www.pco.parliament.govt.nz](http://www.pco.parliament.govt.nz)

The enactment of the Criminal Proceeds (Recovery) Act 2009 is a significant enhancement to the laws governing recovery of proceeds of criminal offending and will strengthen New Zealand's ability to provide mutual legal assistance in relation to the offence of foreign bribery. The Act contains provisions amending the 1992 Mutual Assistance in Criminal Matters Act (MACMA) and introduces civil processes for providing assistance to overseas jurisdictions seeking to recover profits received from business deals secured by payments of bribes even if a conviction has not been secured. It enables New Zealand to assist foreign jurisdictions in enforcing civil and criminal restraining and forfeiture orders in New Zealand. The changes are intended to make the procedural requirements relating to the registration of foreign restraining and forfeiture orders more workable, and to minimise the risk of people re-litigating in New Zealand matters on which they have already been heard in a foreign country. The Bill amends the MACMA so that New Zealand can accept requests to enforce foreign civil as well as criminal orders.

### ***Other Information***

#### *Relevant Authorities*

##### Enforcement

New Zealand Police – Office of the Commissioner, PO Box 3017, Wellington, New Zealand  
Telephone: 0064 4 474 9499, Facsimile: 0064 4 498 7400  
Website: [www.police.govt.nz](http://www.police.govt.nz)

Serious Fraud Office – The Director, Duthie Whyte Building, Cnr Mayoral & Wakefield Streets, Auckland, New Zealand  
Telephone: 0064 9 303 0121, Facsimile: 0064 9 303 0142  
Website: [www.sfo.govt.nz](http://www.sfo.govt.nz)

##### Policy

The Ministry of Justice, Secretary of Justice, PO Box 180, Wellington, New Zealand  
Telephone 0064 4 918 8800, Facsimile: 0064 4 918 8820,  
Website: [www.justice.govt.nz](http://www.justice.govt.nz)

*Signature/ratification of other relevant international instruments*

New Zealand signed the United Nations Convention Against Corruption on 9 December 2003 and intends to ratify that Convention once domestic legislation implementing it is in place. Policy development of these proposals is underway.

New Zealand is member of the Financial Action Task Force on Anti-Money Laundering and Counter Terrorist Financing (FATF). The New Zealand Government endorsed the FATF

Forty Recommendations on Anti-Money Laundering and the Nine Special Recommendations on Counter-Terrorism Financing in June 2003.

New Zealand ratified the UN Convention against Transnational Organized Crime in 2002.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/51/62/2088257.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/57/38/37658136.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions

<http://www.oecd.org/dataoecd/7/57/42486288.pdf>