



Q&A IN RELATION TO BRIBERY OFFENCES IN NEW ZEALAND

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1 Q&A In Relation to bribery offences in New Zealand

1. Legal Framework

What is the legal framework governing bribery in New Zealand?

- The Crimes Act 1961 (CA) is the key piece of legislation governing bribery in New Zealand. Part 6 of the CA (ss 99 – 106) deals with bribery and corruption in respect of public sector corruption in New Zealand (NZ). The Serious Fraud Office and the New Zealand Police have joint responsibility for investigating bribery matters.
- The Secret Commissions Act 1910 (SCA) deals with bribery in respect of private sector corruption. The key corruption offence criminalizes the bribing of an agent who is working on behalf of a principal.
- The Organised Crime and Anti-corruption Legislation Bill was introduced in 2014 and is now at its third reading. This bill will look to amend parts of the CA and in particular bribery provisions that deal with foreign public officials.

2. What Constitutes a Bribe?

What constitutes a bribe?

- A bribe is defined under the CA as money, valuable consideration, office, or employment, or any benefit, whether direct or indirect.
- Everyone who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer, Minister of the Crown, member of Parliament, law enforcement officer, official (Person of Position) or foreign public official in respect of any act or omission by them in their capacity in that role will be in breach of the CA.
- Every Person of Position who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for themselves or any other person in respect of any act done or omitted, or to be done or omitted, by them in their capacity in that role will be liable.

What are the principal offences under this legal framework?

The principal offenses under the CA are:

- giving, offering, or agreeing to give any bribe to a Person of Position (ss 99-106);
- accepting or obtaining, or agreeing or offering to accept or attempts to obtain a bribe as a Person of Position (ss 99-106); and
- bribery of a foreign (non-NZ) public official (ss 105C, 105D and 105E).

SCA

- A person commits an offence under section 3 of the SCA if they:
 - corruptly give, or agree or offer to give, to any agent any gift or other consideration as an inducement or reward for doing any act in relation to the principal's affairs or business.
- Every agent commits an offence under section 4 of the SCA if they:
 - corruptly accept or obtain, or agree or offer to accept or attempt to obtain, or solicit from any person, any gift or other consideration as an inducement or reward for doing any act in relation to the principal's affairs or business.

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- For the bribery offences under sections 99 to 106 of the CA, the NZ authorities have jurisdiction where any act or omission takes place in NZ.
- If the acts or omissions alleged under section 100-104 and 105(2) (relating to Person of Position) occur outside NZ, proceedings may be brought against them under the CA if they are a NZ citizen, ordinarily resident in NZ, have been found in NZ and not been extradited, or are a body corporate incorporated under the law of NZ.

4. Who may be liable?

Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

- Private individuals, judicial officers (defined in s 99), Ministers of the Crown, members of Parliament, law enforcement officers (defined in s 99), officials (defined in s 99).
- Body corporates incorporated under the law of NZ.

Can a parent company be liable for its subsidiary's involvement in bribery?

- There are no specific references in legislation where a parent company will be held liable for its subsidiary's involvement in bribery. However, on a legal principle approach, a parent company could be held liable if certain criteria are met. First, a subsidiary may in certain circumstances be an agent of its parent. Further, in *James Hardie Industries Plc v White*, it was decided that a parent company could be held liable in tort for its subsidiary where there was direct involvement by the parent in the actions that led to the breach. This could also apply to criminal cases.

5. High Risk Areas

Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- No matter how small the amount, if the facilitation payments (which are not prescribed or are outside standard procedure) meet the criteria under the CA, those payments will be considered bribes.

Does the legal framework restrict political and charitable contributions?

- A political or charitable contribution could be considered a bribe if it has been given/offered or accepted with the intention of inducing a person to act corruptly or as a reward for having done so.
- Political contributions to foreign (non-NZ) public officials will be considered bribes if they meet the criteria outlined in sections 105C and 105D of the CA.

Does the legal framework place restrictions on corporate hospitality?

- There are no express legislative restrictions with regard to corporate hospitality. However, the State Services Commission – Understanding the Code of Conduct (Commission Guidance) provides that a government official must decline gifts or benefits that now place them under any obligation or perceived influence and should not seek or accept gifts from or on behalf of someone who could benefit from influencing the individual or the organization.
- In respect of members of Parliament, the cabinet manual requires the members to disclose to the Registrar pecuniary interests and gifts accepted over NZD500, including hospitality and donations in cash or kind.

6. Legal Defences

Are there any defenses for bribery offences?

- There are no specific statutory defenses under Part 6 of the CA.

7. Regulatory and Enforcement Bodies

What are the key regulatory or enforcement bodies with regard to bribery?

- The Serious Fraud Office (SFO) and the NZ Police have joint responsibility for investigating bribery matters. The SFO will investigate matters involving complex financial trails or public officials while other cases will be dealt with by the Police.

8. Legal Consequences

What are the legal consequences of being found guilty of bribery offences?

CA

- Judicial officers face imprisonment for a term not exceeding 14 years if found guilty of corruptly accepting or obtaining, or agreeing or offering to accept or attempting to obtain, any bribe for themselves for any act or omission by them in their judicial capacity.
- Private individuals, Ministers of the Crown, members of Parliament, law enforcement officers, and officials face imprisonment for a term not exceeding seven years on conviction.

SCA

- A person who commits an offence against the SCA is liable to imprisonment for a term not exceeding seven years.

9. Deferred Prosecution Agreements

Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- As it currently stands, NZ does not have deferred prosecution agreements or other similar settlement mechanisms. Such agreements or mechanisms may possibly be implemented in the near future.

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