

| | |
|---------------|---|
| Module | ANTI-BRIBERY & CORRUPTION |
| Jurisdictions | NEW ZEALAND |
| Legal Expert | TANIA GOATLEY Partner at Bell Gully https://www.bellgully.com/our-people/tania-goatley/ https://www.linkedin.com/in/tania-goatley-0310119a/ |

Module Scope

Does the organisation conduct business transactions or activities where interactions may create a risk of, or appear to involve, the provision or receipt of benefits not legitimately due to people, other organisations or public officials as an incentive in return for acts or omissions (for example, where there may be political or charitable contributions, or where projects are not undertaken at market prices)?

Is the organisation in an industry that is particularly susceptible to bribery and corruption (as rated by the Transparency International's Bribe Payers Index), such as where there is a high degree of government regulation (such as requiring permits, licences and planning approvals) or a requirement to interact with Australian public or foreign government officials?

Does the organisation engage in overseas operations in geographical locations where the Transparency International's Corruption Perceptions Index is high, where there is a high enforcement rate of anti-bribery and corruption laws (for example, in the People's Republic of China or the United States of America), or where offering benefits in return for acts or omissions is customary?

Module Application

The NEW ZEALAND ANTI-BRIBERY & CORRUPTION module is intended to inform organisations in New Zealand of their obligation to understand and comply with their anti-bribery and corruption-related legal obligations and to implement documented policies and procedures for the prevention, detection and investigation of bribery and corruption.

Responsibility for investigating and prosecuting bribery and corruption offences in New Zealand is primarily divided between the Serious Fraud Office (SFO) and the New Zealand Police (NZP). The Companies Office may be involved in investigating breaches of the Companies Act 1993 (NZ). These obligations generally relate to directors' duties and financial record-keeping. The Financial Markets Authority may also play an enforcement role in matters concerning an organisation that is a 'financial markets conduct reporting entity', such as a registered bank or listed issuer.

Organisations operating overseas may face enforcement actions by overseas authorities such as the United Kingdom Serious Fraud Office, United States Department of Justice (DOJ) and the United States Securities and Exchange Commission (SEC).

The NEW ZEALAND ANTI-BRIBERY & CORRUPTION module covers the various regulatory instruments that must be followed in order to ensure compliance with legislated obligations:

- › Acts
- › Regulations
- › Technical standards
- › Notices

The NEW ZEALAND ANTI-BRIBERY & CORRUPTION module also covers obligations that organisations have in specific areas such as:

- › Risk identification
- › Duties of directors
- › Guidelines and policies
- › Bribery and corruption in relation to public officials
- › Private sector bribery and corruption
- › Record-keeping and financial reporting
- › Anti-bribery and corruption education and training
- › Maintaining central registers
- › Investigation and enforcement
- › Application of anti-bribery and corruption laws of foreign jurisdictions
- › Climate-reporting entities

While the module emphasises the primary duty of organisations in managing the risks of bribery and corruption, it also covers the duties with which directors must comply including the duty to act in good faith and in the best interests of the company and the duty to comply with disclosure requirements in relation to transactions in which they have a personal interest.

In carrying out its duties, the organisation should conduct ongoing assessments of specific bribery and corruption risks they face and implement proportionate risk mitigation procedures in response to identified risks. The module covers the practical elements of this process including:

- › The identification and ranking of bribery and corruption risks
- › The identification of persons responsible for overseeing and implementing anti-bribery risk assessment and management
- › The identification of the organisation's objectives for countering bribery and corruption
- › The allocation of relevant resources
- › Periodic review of risk assessment procedures
- › Having an organisational culture of compliance and respect for anti-bribery and corruption laws
- › Conducting due diligence in relation agents and third parties
- › Having in place industry-specific and business-specific risk identification and management

The module also advises organisations to develop guidelines and policies including:

- › A code of conduct
- › An anti-bribery and corruption policy
- › A gifts, travel and hospitality policy
- › Charitable and political donations policies
- › A facilitation payments policy
- › Other associated policies

Additionally, the module alerts organisations on their obligations not to bribe an agent or a public official including a foreign public official, not to trade in influence and not to corruptly use official information, not to provide a false receipt or invoice to agent or principal, and not to allow an employee to receive or agree to receive a “secret reward” for procuring a contract for another person.

The module discusses in detail to the obligation for organisations to comply with all applicable financial record-keeping and reporting requirements to ensure it has effective financial controls in place to allow it to appropriately manage its finances, and to assist in the prevention and detection of bribery and corruption.

The module advises organisations to have in place procedures to ensure its board members and employees, as well as its agents, consultants and contractors, receive anti-bribery and corruption training and understand their legislated obligations in the area of anti-corruption.

Record-keeping obligations are covered within the module. In particular, the organisation must maintain central registers of information to assist it in complying with anti-bribery and corruption laws, including registers of gifts given, offered, received and rejected, political and charitable donations made, and agents and intermediaries engaged.

The module also discusses the obligations with which organisations must comply in the areas of investigation and enforcement. In particular, organisations must:

- › Establish an effective whistleblower management system
- › Manage protected disclosures
- › Conduct internal investigations
- › Respond to external investigations
- › Respond to search warrants
- › Cooperate with regulatory authorities through the provision of request information
- › Report corrupt conduct which potentially constitutes a criminal offence to relevant authorities

Organisations conducting business overseas are also advised to be aware of and comply with applicable New Zealand legislation as well as legislation applicable in jurisdictions such as the United Kingdom and the United States.

The module is also of relevance to organisations which are climate-reporting entities. In this regard, the module explains the climate-related disclosure framework with which such entities must comply.

The module covers the possible consequences to duty holders and organisations that fail to comply with their obligations regarding bribery and corruption, which include:

- › Monetary fines
- › Criminal charges
- › Imprisonment
- › Notices
- › Shareholder actions
- › Reputational damage

The NEW ZEALAND ANTI-BRIBERY & CORRUPTION does not cover the rights of individuals who have been affected by bribery or corruption in New Zealand or overseas nor the avenues of recourse available to affected individuals.

About LexisNexis Regulatory Compliance

LexisNexis Regulatory Compliance® helps you forge a clear path to compliance.

With LexisNexis® content know-how at the core, our compliance registers, alerts, and information-driven solutions make compliance uncomplicated for GRC professionals across the globe.