

Business (pillar 13)

Summary

This pillar report examines the role, governance and capacity of the business sector in terms of the strengths of its integrity systems to address corruption.. An enabling legal environment allows companies to form and businesses to operate. The regulatory settings generally promote competition, and there is practically no evidence of corruption in government dealings with business. Business is largely free from unwarranted interference from government agencies. The regulatory frameworks in the financial sector have been significantly overhauled, both before and since the beginning of the global financial crisis, and now include stronger disclosure measures and enhanced licensing, prudential oversight, and governance requirements.

Within that overall positive conclusion, however, findings in this pillar report suggest a low level of anti-corruption awareness and behaviour both domestically and in dealings in offshore markets. A recent Serious Fraud Office survey found only 37 per cent of respondents thought the country was “largely free” of serious fraud and corruption.⁹⁹⁸ There have been numerous significant fraud cases in the financial sector in the last six years, so, in addition to the new stronger regulatory frameworks, maintaining regulatory vigilance and enforcement will be an important factor in restoring public trust. Risks are still evident in the extent of non-disclosure of beneficial ownership and financial matters allowed in respect of private companies, including all but the largest foreign-controlled companies.

More directly relevant to this assessment of bribery and corruption, there appears to be a substantial domestic black economy, which supports organised criminal activity and has given rise to concerns about tax evasion and illegal employment and immigration practices. There are grounds to argue that these activities are capable of being defined as corrupt, as they all go to the potential to “cultivate an atmosphere in which the bottom line justifies criminal activity”.⁹⁹⁹

In export markets, qualitative interviews conducted for Transparency International New Zealand (TINZ) suggest some business people, particularly in smaller exporting enterprises, view potentially corrupt or unethical business “norms” in other markets as acceptable as long as they are conducted by third-party, in-country agents who do not inform the New Zealand company of their ways of doing business.¹⁰⁰⁰ See also Chapter 3. For both large and small enterprises, there is the slightly different risk that even if they find such activities unacceptable, they may not have sufficient oversight of the activities of their overseas agents.

⁹⁹⁸ Reg Birchfield, “The Director: Cover story – Boards blase about management”, *New Zealand Management*, September 2012.

⁹⁹⁹ Jeremy Pope, *Confronting Corruption: The elements of a national integrity system*, TI Source Book (Berlin: Transparency International, 2000).

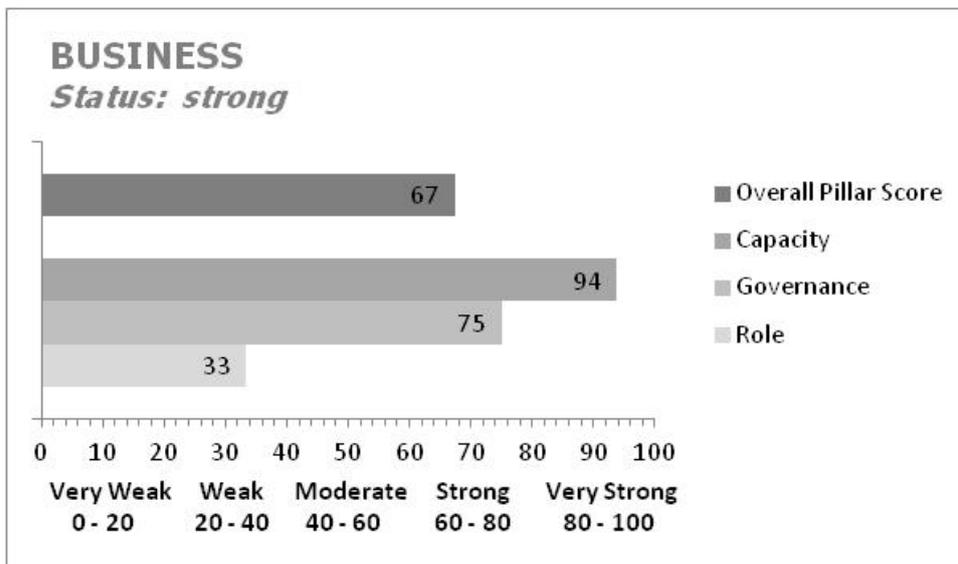
¹⁰⁰⁰ UMR Research with Transparency International, *Experiences of Corruption in Export Markets*, 2012.

The suite of company and securities laws and systems is reasonably comprehensive and effective.

While there is little sign of corruption in government dealings with businesses in New Zealand, the business community is not well informed about the criminalisation of bribery of foreign public officials and has, to date, taken a passive approach to managing its exposure to risks from bribery and corruption. Also, an overly permissive regime for company incorporation allowed some “shell companies” involved in questionable activities to incorporate in New Zealand.

The recommendations in Chapter 6 that flow from these concerns seek to raise awareness about the changing rules relating to corruption in overseas markets and generally to ensure adequate training on and awareness of corruption and integrity risks and their management. A vehicle for leading this is through good governance and recommendation 6 includes working with the Institute of Directors to encourage the highest standards of governance. Another specific recommendation that flows from this pillar report is directed at the executive and the public service – establish stronger disclosure requirements about the beneficial owners of companies registered in New Zealand.

Figure 14: Business scores



Source: Transparency International New Zealand, 25 October 2013.

Structure and organisation

According to the Statistics New Zealand Enterprise Survey, approximately 440,000 enterprises are in New Zealand.¹⁰⁰¹ Of these, Statistics New Zealand states 97,000 are not-for-profit organisations.¹⁰⁰²

¹⁰⁰¹ Statistics New Zealand, “Business directory update survey: Annual”.
www.stats.govt.nz/surveys_and_methods/a-z-of-our-surveys/bus-directory-update-survey-annual.aspx

¹⁰⁰² Statistics New Zealand, “Business directory update survey: Annual”

By far the most common size of an enterprise is five or fewer staff with over 80 per cent of enterprises being of this size. Only 2.5 per cent of enterprises employ over 50 staff, although a third of employees work for organisations with 50 or more staff.¹⁰⁰³

Most enterprises earn just sufficient revenue to continue trading. Only 6,000 earn NZ\$10 million or more per year.¹⁰⁰⁴

Of the known top 200 enterprises by revenue, most are publicly listed companies and unlisted ones that are required to disclose their results. The 200th on the list in 2012 earned revenue of just over NZ\$128 million. Of the top 200, 116 companies had more than 50 per cent overseas ownership, 48 were listed on the New Zealand stock exchange (NZX) (14 of which were more than 50 per cent overseas owned), 19 were co-operatives, 12 were state-owned enterprises, and 1 was a council-controlled organisation.¹⁰⁰⁵

Of the top 30 financial institutions, 19 had more than 50 per cent overseas ownership, 4 were listed on the NZX, and 1 was a state-owned enterprise.¹⁰⁰⁶

New Zealand is heavily import-dependent for final goods and for the raw materials that contribute to final goods. Almost all, if not all, enterprises rely on some proportion of their inputs to be imported.

In contrast, fewer than 14,000 of the enterprises exported products to overseas markets, and, of these, only 260 had revenue of NZ\$25 million or more in 2012. In the 1970s, about 50 per cent of New Zealand exports were destined for Europe. In 2012, about 50 per cent of New Zealand exports were destined for Austral/Asia. China is vying with Australia to become the largest export destination.¹⁰⁰⁷

Other features of the New Zealand business sector are as follows.

- There are 182 NZX-listed companies in 2013.¹⁰⁰⁸
- There are 12 state-owned enterprises as well as partially floated Mighty River Power.
- Other Crown-owned companies are Crown entities.¹⁰⁰⁹

Other than government services providers, tourism and international education, New Zealand's main industries are primary sector based, including dairy, red meat, wine, natural products, aquaculture, and horticulture. The Ministry of Business, Innovation and Employment oversees the regulation of businesses. The other main regulatory agencies are the Reserve Bank of New Zealand (financial regulation),

¹⁰⁰³ Statistics New Zealand, "Business directory update survey: Annual".

¹⁰⁰⁴ Deloitte, "Top 200 companies", *Management*, 2012.

¹⁰⁰⁵ Deloitte, "Top 200 companies", 2012.

¹⁰⁰⁶ Deloitte, "Top 200 companies", 2012.

¹⁰⁰⁷ Statistics New Zealand, *Overseas Merchandise Trade*, February 2013.

¹⁰⁰⁸ NZX, "NZX half year 2013 results", 19 August 2013. www.nzx.com/companies/NZX/announcements/239821

¹⁰⁰⁹ Kristin Mednis, *Integrity Plus 2013: New Zealand National Integrity System Assessment – Crown entities*, supplementary paper 1 (Wellington: Transparency International New Zealand, 2013).
www.transparency.org.nz/docs/2013/Supplementary-Paper-1-Crown-Entities.pdf

Financial Markets Authority (financial markets), and Ministry for Primary Industries (biosecurity). Other authorities cover specific regulations for the environment, electricity and gas, and telecommunications.

Laws and regulations that pertain to business cover consumer rights, health and safety, environmental protection, biosecurity, importing and exporting, and employment regulations. Codes of practice also pertain, for example, in advertising and the finance sector.

Business New Zealand represents the interests of its business members and of business in general. It works closely with the regional Chambers of Commerce throughout New Zealand, the members of which tend to be small and medium-sized businesses.

New Zealand was protected from the worst effects of the global financial crisis because most of its banking is carried out through local subsidiaries of four of the Australian-owned banks that had credit-ratings in the top 13 of the world, and were banks that had few off-balance sheet sub-prime loans. On the other hand, the Reserve Bank of New Zealand Act 1989 applied prudential oversight only to trading banks, leaving the financial services sector exposed as property price collapses impacted on the balance sheets of finance companies, the governance structures of which were too weak to respond to the rapid collapse in their revenues. In several cases, fraud and disclosure failures aggravated the situation. Recent developments in response to these events included amendments to the Reserve Bank of New Zealand Act to cover the prudential supervision of finance companies, other changes to finance sector regulation, and the creation of the Financial Markets Authority to oversee the governance of finance companies and their other advisory and financial management activities.

Capacity

13.1.1 Resources (law)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Score: 5

A comprehensive and enabling suite of companies and securities law¹⁰¹⁰ governs the corporate environment, and the court system is free from corruption and unlawful influence.¹⁰¹¹

Private property, including intellectual property rights, has reasonable protection in law.¹⁰¹² The banking and insurance sectors are licensed and prudentially regulated by the central bank,¹⁰¹³ and the Ministry of Justice oversees insurers to a limited extent.

¹⁰¹⁰ For example, the Companies Act 1993, Financial Reporting Act 1993, Limited Partnerships Act 2008, Overseas Investment Act 2005, Partnership Act 1908, Personal Property Securities Act 1999, Securities Act 1978, and Security Markets Act 1988.

¹⁰¹¹ See sections 13.1.4 and 13.2.6 in Chapter 5.

¹⁰¹² Birchfield, 2012.

¹⁰¹³ Reserve Bank of New Zealand Act 1989.

As outlined in sections 13.2.1, 13.2.3, and 13.2.5 in this pillar report, banking law and regulation have been substantially upgraded recently,¹⁰¹⁴ including anti-money laundering legislation and changes to the disclosure requirements of private issuers. Comprehensively rewritten securities legislation is before Parliament.¹⁰¹⁵

13.1.2 Resources (practice)

To what extent are individual businesses able in practice to form and operate effectively?

Score: 5

The overall economic environment is supportive of commercial enterprise so that new business start-ups can enter the market and businesses can generally operate effectively.

The creation of a new company in New Zealand is very simple, is low cost, and can be achieved within about 30 minutes online, subject to provision of signed director and shareholder documents.¹⁰¹⁶ There is no requirement for permission by a regulatory authority to register or operate a private company.¹⁰¹⁷ Concerns and evidence that this simplicity was being exploited to operate shell companies involved in commercially and legally questionable activity prompted the introduction of legislation in June 2013 requiring, among other elements, that at least one director be New Zealand-domiciled.¹⁰¹⁸ Whether this proves sufficient to prevent criminal exploitation remains to be seen, and is discussed further in section 13.2.1.

There are no significant barriers of a legal or regulatory nature to a business operating, other than health, safety, environmental, professional registration, and employment law requirements. The World Bank's annual *Doing Business* report for 2013 gives New Zealand an overall ranking of 3 out of 185 countries surveyed against 10 indicators. On measures relevant to the National Integrity System, New Zealand ranks 1 for "starting a business" and for "protecting investors", 2 for "registering property", and 17 for "enforcing contracts".¹⁰¹⁹ Both government and non-government agencies responsible for such licensing are in operation. Systemic abuse of power or corruption or susceptibility to bribes among such agencies is not apparent.

Economic policy over the last three decades has removed most subsidies and price controls. Regulatory settings may have various policy objectives, but generally are intended to promote competition.

¹⁰¹⁴ Consolidation of market conduct regulatory functions previously shared across agencies, including the NZX under the newly constituted Financial Markets Authority (Financial Markets Authority Act 2011).

¹⁰¹⁵ The Financial Markets Conduct Bill (which has passed its second reading) will replace the Securities Act 1978 and Securities Markets Act 1988 and other legislation relating to the financial markets.

¹⁰¹⁶ Companies Office, "Starting a company". www.business.govt.nz/companies/learn-about/starting-a-company

¹⁰¹⁷ Author's recent experience.

¹⁰¹⁸ New Zealand Parliament, "Legislation: Supplementary order papers – Companies and Limited Partnerships Amendment Bill". www.parliament.nz/en-NZ/PB/Legislation/SOPs/d/7/3/50DBHOH_SOP1688_1-Companies-and-Limited-Partnerships-Amendment-Bill.htm

¹⁰¹⁹ World Bank, "Ease of doing business in New Zealand", 2013. www.doingbusiness.org/data/exploreeconomies/new-zealand

At variance with this trend, some government decisions have favoured particular commercial outcomes to align with public policy or politically desired outcomes.

For example, the government's choice of Chorus¹⁰²⁰ to roll out fibre nationally for most of the government-assisted ultra-fast broadband project has led it to seek to overrule the actions of the telecommunications regulator and initiate a policy review process in conflict with the regulator's statutory mandate. The regulator proceeded as prescribed by legislation and is unhindered in legally doing so. It should be noted that this has been a source of uncertainty rather than commercial advantage for Chorus. The intent of this intervention has been to encourage faster uptake of ultra-fast broadband, which in the process also preserves Chorus's profitability.¹⁰²¹

There is no evidence at a central government level of corruption in the way businesses are treated. There are cases in which local government officials have shown preferment to certain businesses over others.

One source of potential risk to the capacity to operate effectively is the integrity of the tax collection system, the information technology systems of which are undergoing replacement and upgrade at an estimated cost of NZ\$1.5 billion.¹⁰²² Difficulty achieving competent execution of government information technology projects has been a recurring issue in New Zealand.

The current government has made business-friendly government services a key priority, including a commitment to e-government initiatives with low-cost and free services and information available seamlessly online.¹⁰²³

13.1.3 Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

Score: 5

Companies, securities, and public sector laws protect the right of private businesses to operate freely. Public officials are empowered to enforce health, safety, environmental, and regulatory requirements in accordance with the law.

Under legislation passed in 2013, the Government Communications Security Bureau may monitor some New Zealand telecommunications traffic, including corporate email and data in limited circumstances (for example, where critical national infrastructure is at risk because of sustained and sophisticated cyber-attacks). The bureau is an intelligence agency with ties to counterpart agencies in the United States, Canada, the

¹⁰²⁰ Chorus is a telecommunications infrastructure company.

¹⁰²¹ Paul McBeth and Chris Keall, "Investor, Labour, Tuanzi slam govt as Chorus price regulation put on hold", 8 February 2013. www.nbr.co.nz/article/chorus-gets-reprieve-government-puts-price-regulation-hold-pending-review-bd-135567

¹⁰²² Peter Dunne, "Dunne: Cabinet approves major IRD work", 1 May 2013. beehive.govt.nz/release/dunne-cabinet-approves-major-ird-work

¹⁰²³ State Services Commission, "Better Public Services: Improving interaction with government", 2013. www.ssc.govt.nz/bps-interaction-with-govt

United Kingdom, and Australia. Its mandate has recently been clarified under statute to more explicitly include information assurance and cyber security.¹⁰²⁴ This change has arisen following a review of legislative compliance at the bureau (resulting in the Kitteridge Report).¹⁰²⁵

13.1.4 Independence (practice)

To what extent is the business sector free from unwarranted external influence in its work in practice?

Score: 4

There is little evidence of unwarranted external influence on private businesses.

As far as could be ascertained, there is no evidence of public officials abusing their office to exploit the private sector. There is also little evidence of unwarranted interference by public officials to influence the operation of businesses inappropriately, although the Chorus and SkyCity cases are examples of interventions by the executive.¹⁰²⁶ As reported in the Transparency International Global Corruption Barometer, a locally conducted survey of 1,000 people found 3 per cent of New Zealanders said they had paid a bribe. This was reported as a warning signal.¹⁰²⁷

Governance

13.2.1 Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the business sector?

Score: 4

There are provisions to ensure annual reporting for public companies and requirements for continuous disclosure of listed companies.

Public listed companies are governed by companies and securities law,¹⁰²⁸ which specifies minimum standards for annual reporting,¹⁰²⁹ and the Listing Rules of the NZX,¹⁰³⁰ which include requirements for the continuous disclosure of material information. NZX Market Supervision, a regulatory division of the exchange, polices the

¹⁰²⁴ See section 5.2.2 In Chapter 5.

¹⁰²⁵ Rebecca Kitteridge, *Review of Compliance at the Government Communications Security Bureau*, 2013. www.gcsb.govt.nz/newsroom/reports-publications/Review%20of%20Compliance_%20final%2022%20March%202013.pdf

¹⁰²⁶ See sections 13.2.1 and 13.2.2 in Chapter 5.

¹⁰²⁷ Transparency International, "Global Corruption Barometer 2013". www.transparencynz.org.nz/index.php/indices-reports/global-reports/161-global-corruption-barometer-2013

¹⁰²⁸ Companies Act 1993, Securities Act 1978, and Securities Markets Act 1988.

¹⁰²⁹ The Financial Reporting Act 1993 is being replaced by the Financial Reporting Bill, which is at its Second Reading in Parliament, 19 July 2013.

¹⁰³⁰ NZX, *NSZX/NZDX Listing Rules*, October 2012. <https://nzx.com/files/static/cms-documents/NZSX:NZDX%20Listing%20Rules%205%20October%202012.pdf>

Listing Rules.¹⁰³¹ These rules also specify reporting and assurance requirements. Inquiries into unusual price movements are reasonably common, as are exemptions from the Listing Rules, the reasons for which are published. The NZX Disciplinary Tribunal¹⁰³² considers complaints against members and alleged breaches of the Listing Rules. The Commerce Commission,¹⁰³³ Takeovers Panel,¹⁰³⁴ and Financial Markets Authority¹⁰³⁵ provide further layers of capital markets supervision and regulation.

Issuers of securities must comply with a variety of disclosure requirements.¹⁰³⁶ These include the requirement to issue a prospectus and provide an investment statement to investors. The prospectus must contain an auditor's report and a trustee's report. Trustees must be licensed and report to both the Reserve Bank of New Zealand and the Financial Markets Authority. Under the Financial Reporting Act 1993, approved accounting standards have the force of law.

The licensing regime for auditors of issuers of financial statements¹⁰³⁷ aims, among other objectives, to ensure auditors are up to the task. It addresses a concern expressed that some small accounting firms lack the technical skills to effectively audit the accounts of complex financial institutions. From 1 July 2012, only licensed auditors or registered audit firms may conduct issuer audits.¹⁰³⁸

In the finance sector, banks must issue quarterly public disclosure statements; the full-year report must have been the subject of a complete audit and the half-year report subject to a short-form audit. The four major banks in New Zealand are Australian owned and are regulated by the Australian Prudential Regulation Authority, the prudential oversight of which also covers the banks' New Zealand operations. Because these banks are listed on the stock exchanges in both Australia and New Zealand, specific reporting and assurance requirements also apply in both countries.¹⁰³⁹

The Reserve Bank of New Zealand Act 1989 provides the framework for the registration and supervision of banks in New Zealand, including the power to recommend public disclosure requirements.¹⁰⁴⁰ New capital-related and associated disclosure requirements of Basel III have been introduced and these apply from 31 March 2013.¹⁰⁴¹

¹⁰³¹ NZX, "Market supervision". www.nzx.com/market-supervision

¹⁰³² NZX, "NZ markets Disciplinary Tribunal". www.nzx.com/regulators/DISP

¹⁰³³ www.comcom.govt.nz

¹⁰³⁴ <http://takeovers.govt.nz>

¹⁰³⁵ www.fma.govt.nz

¹⁰³⁶ Financial Markets Authority, "Who needs to comply". www.fma.govt.nz/help-me-comply/issuers/who-needs-to-comply

¹⁰³⁷ Financial Markets Authority, "Who needs to comply".

¹⁰³⁸ From 1 July 2012, the Auditor Regulation Act 2011 comes fully into force: Financial Markets Authority, "How to get licensed". www.fma.govt.nz/help-me-comply/auditors/how-to-get-licensed

¹⁰³⁹ See Reserve Bank of New Zealand, "Memorandum of understanding", 2003. www.rbnz.govt.nz/regulation_and_supervision/banks/relationships/0137035.html

See also the Australian Prudential Regulation Authority Act 1998: www.comlaw.gov.au/Details/C2013C00076

¹⁰⁴⁰ Reserve Bank of New Zealand Act 1989, section 81.

¹⁰⁴¹ Reserve Bank of New Zealand Act 1989, Part 5.

In the finance sector, considerable work has been done to improve disclosure and investor protection following the collapse of numerous non-bank deposit takers before and during the global financial crisis. The crisis hit New Zealand as the country entered a recession and suffered substantial commercial property value corrections. The regulatory framework for finance sector entities is broadly based, is consistent, and encompasses registration, reporting, and assurance components. All financial service providers must now be registered on a searchable register that the Companies Office maintains (with some few exceptions).¹⁰⁴²

In addition to the general legislative requirements of the Companies Act 1993, finance sector entities are subject to explicit regulatory audit requirements. Compliance with reporting and disclosure standards is overseen variously by the Reserve Bank of New Zealand or the Financial Markets Authority or both. Trustee companies, statutory supervisors, and auditors, who are licensed, have a direct responsibility to satisfy themselves that regulatory requirements are being met. They report their findings to the Reserve Bank or the Financial Markets Authority or both.

Amendments to the Reserve Bank of New Zealand Act 1989 were enacted in September 2008 to add provisions relating to the regulation of non-bank deposit takers.¹⁰⁴³ The Non-bank Deposit Takers Bill currently before Parliament¹⁰⁴⁴ will create a licensing regime and introduce suitability assessment of directors and senior officers. Many of these initiatives are a response to the poor governance in the sector that was exposed by the economic recession of the late 2000s.¹⁰⁴⁵ Non-bank deposit takers are not covered by macro-prudential tools made available to the Reserve Bank of New Zealand in July 2013 to manage financial system stability.¹⁰⁴⁶

Changes to privacy regulation, effective from 1 April 2012, allowed comprehensive credit reporting.¹⁰⁴⁷ This may improve credit assessments, lower credit risk, and permit greater financial inclusion for some consumers.

Public disclosure of information about financial products and providers and the right to take complaints to independent dispute resolution organisations were enhanced markedly under the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008.

These recent reforms are intended to offer improved protection for investors and depositors by providing greater transparency of the performance of companies, banks,

¹⁰⁴² Companies Office, "About the Financial Service Providers Register". www.business.govt.nz/fsp

¹⁰⁴³ Reserve Bank of New Zealand Amendment Act 2008.

¹⁰⁴⁴ New Zealand Parliament, "Legislation: Bills – Non-bank Deposit Takers Bill". www.parliament.nz/en-nz/PB/Legislation/Bills/3/7/a/00DBHOH_BILL10813_1-Non-bank-Deposit-Takers-Bill.htm

¹⁰⁴⁵ Buddle Findlay, "Legal update on banking and commercial law", 2011. www.buddlefindlay.com/legal-update-on-banking-and-commercial-law-september-2011

¹⁰⁴⁶ Reserve Bank of New Zealand, "Macro-prudential policy". www.rbnz.govt.nz/financial_stability/macro-prudential_policy

¹⁰⁴⁷ Privacy Commissioner, "Credit Reporting Privacy Code". privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code

and fund managers. But vigilance will be required to ensure the reforms are adequately resourced and working as intended.¹⁰⁴⁸

Foreign-controlled corporations must file financial accounts annually with the Companies Office.¹⁰⁴⁹ However, a proposal to remove this obligation for all but foreign-controlled firms deemed to be “large” was dropped, explicitly to improve transparency as a means of discourage tax avoidance. New Zealand-owned private companies operate in the absence of significant transparency obligations and are not obliged to file financial accounts with the Companies Office.¹⁰⁵⁰

A gap in the Companies Act 1993 raises a serious corruption and bribery risk. This legislation has been found to be easily used by people with illegal intent because it allows companies to be established without requiring the companies’ beneficial owners (that is, the real people who own the companies) to be disclosed. Beneficial ownership can be further disguised by the use of nominees. Trust law in New Zealand also allows secrecy in dealings, and there is no central register, thus allowing property and funds to be hidden in New Zealand-based foreign trusts with no identification of beneficial owners.

Tim Hunter, the Fairfax Business Bureau deputy-editor, wrote that he could not help wondering why New Zealand “maintains a regime so obviously advantageous to tax dodgers and criminals. We’re not only not part of the solution, we’re a big part of the problem”.¹⁰⁵¹

There continues to be a lack of political commitment to require beneficial ownership to be revealed for all New Zealand companies and trusts. For instance, the Companies and Limited Partnerships Amendment Bill before Parliament looked first at requiring a company “agent” to live in New Zealand, but more recently recommended that there be at least one director living in New Zealand “or who lives in and is a director of a company in a country with which New Zealand has reciprocal arrangements for the enforcement of low-level criminal fines”.¹⁰⁵²

Criticism of these measures led to the Companies and Limited Partnerships Amendment Bill being revised further in July 2013. A supplementary order paper provided for the New Zealand Registrar of Companies to be able to require a company director to give details of the beneficial owner (referred to as a “control interest”) of a

¹⁰⁴⁸ Ministry of Business, Innovation and Employment “Trading securities and derivatives”.
www.med.govt.nz/business/business-law/trading-securities-and-derivatives

¹⁰⁴⁹ Financial Reporting Act 1993, section 19.

¹⁰⁵⁰ Companies Office, “New Zealand companies”. www.business.govt.nz/companies/learn-about/updates-company-details/financial-reporting/new-zealand-companies

¹⁰⁵¹ Tim Hunter, “NZ foreign trusts among global tax havens”, *Stuff*, 22 August 2012.
www.stuff.co.nz/business/opinion-analysis/7521775/nz-foreign-trusts-among-global-tax-havens

¹⁰⁵² Commentary to the Companies and Limited Partnerships Amendment Bill.
www.legislation.govt.nz/bill/government/2011/0344/latest/DLM4928800.html?search=ts_act%40bill%40regulation%40deemedreg_Companies+and+Limited+Partnerships+Amendment+Bill_resel_25_a&p=1

company.¹⁰⁵³ It is hard to imagine any more minimal requirement for beneficial owners of companies to be disclosed.

If this wording is adopted in the legislation, the beneficial owners will need to be disclosed only when the Registrar of Companies makes a specific inquiry. They will never be disclosed on a public register, so the news media, non-government organisations, and the public, who are important contributors to the detection of corruption and crime, will not be able to discover the beneficial owners of companies.

The Financial Action Task Force emphasises the links between money laundering and corruption. Money laundering can help to facilitate corruption by providing the means to move and hide the proceeds of corruption and bribery.¹⁰⁵⁴ Tightening New Zealand companies and trust law is a priority to avoid facilitating illegal activities and to minimise corruption and bribery in New Zealand.

As a general point, the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987 are available as transparency mechanisms for people who wish to pursue details of interactions between central or local government and business organisations. Similarly, the Protected Disclosures Act 2000 is available for the disclosure of serious wrongdoing in businesses. These provisions are discussed in the public sector pillar report.

A significant deficiency exists in the level of financial literacy skills of consumers of financial products, which reflects the lack of education available for New Zealanders both in this area and in the wider frame of civics and ethics. If these areas of knowledge are not improved across the population, the benefits of enhanced transparency in the financial and business sectors will be limited. Serious attention must be given to improving financial literacy among a higher proportion of New Zealanders, to ensure a higher skills base among those whose dealings require knowledge to assess financial performance and use financial products. Improved financial literacy would complement enhanced transparency requirements.¹⁰⁵⁵

13.2.2 Transparency (practice)

To what extent is there transparency in the business sector in practice?

Score: 4

Transparency in the business sector is covered by legislation, regulation and guidelines. The NZX has strict disclosure rules for listed companies. The Commerce Commission actively polices price-setting practices in the retail sector, prosecuting

¹⁰⁵³ New Zealand Parliament, "Hansard: Companies and Limited Partnerships Amendment Bill – Second Reading". www.parliament.nz/en-nz/pb/debates/debates/50HansD_20130702_00000028/companies-and-limited-partnerships-amendment-bill—second

¹⁰⁵⁴ Financial Action Task Force, "Corruption". www.fatf-gafi.org/topics/corruption

¹⁰⁵⁵ Commission for Financial Literacy and Retirement Income (formerly the Office of the Retirement Commissioner), "Financial literacy research and reports". www.cflri.org.nz/research-and-reports/financial-literacy

where necessary.¹⁰⁵⁶ This is pursuant to the Commerce Act 1986, which regulates restrictive trade practices, including prohibiting practices substantially lessening competition such as cartel-type behaviour and price fixing.¹⁰⁵⁷ The commission is also deeply involved in monitoring regulated pricing for monopoly network services, including telecommunications, electricity transmission, shipping, airports, and pay-television. The Reserve Bank oversees disclosure in the financial sector.

Listed companies produce six-monthly and 12-monthly reports of their profitability and balance sheets, while NZX continuous disclosure rules appear effective in ensuring all shareholders are equally informed of listed company material events. Sanctions for non-compliance are available and used. Exemptions are publicly sought and granted.¹⁰⁵⁸

The introduction of registration requirements for most finance sector entities provides for online public access to current data at no cost and at any time.¹⁰⁵⁹ The Financial Service Providers Register also contains details of the dispute resolution organisation to which the provider belongs.

The Reserve Bank of New Zealand's financial stability reports¹⁰⁶⁰ provide an accessible insight into the regulator's perceptions of strengths and weaknesses and allows for informed debate.

Numerous practical information resources are available that detail compliance with legislative requirements. Some are provided by regulatory agencies; much is accessible from market participants or from the Companies Office. This information is internet based, available at all times, and available at no cost.

Again, higher levels of financial literacy would increase public awareness of these resources. Regulatory requirements introduced as a result of the finance sector review have operated for only a short time, and some refinements are likely as experience accumulates.

Recent growth in equities market trading suggests a combination of economic factors (for example, low global interest rates) is encouraging private investors back into investment areas in which they lost confidence over the last 20 or more years as a result of high-profile commercial failures and perceived inadequate regulation. This growth in trust needs to be sustained, but also balanced to avoid a situation of overconfidence that unscrupulous operators could use. Maintaining regulatory vigilance and enforcement will be important in restoring and retaining public trust.

¹⁰⁵⁶ For example, Commerce Commission, "Nufarm's prosecution brings fines in NZ's biggest cartel case over \$7.5m", media releases, 12 February 2008. www.comcom.govt.nz/media-releases/detail/2008/nufarmsprosecutionbringsfinesinnzs

¹⁰⁵⁷ Commerce Act 1986, sections 27 and 30.

¹⁰⁵⁸ For more, see NZX, *Guidance note: Continuous disclosure*, April 2011. www.nzx.com/files/static/GN_contin_disclosure.pdf

¹⁰⁵⁹ Companies Office, "About the Financial Service Providers Register". www.business.govt.nz/fsp

¹⁰⁶⁰ Reserve Bank of New Zealand, "Financial stability report". www.rbnz.govt.nz/financial_stability/financial_stability_report/

Transparency issues relating to the interactions between the executive and business were raised in a supplementary order paper creating an exclusion zone around offshore oil industry infrastructure in New Zealand's exclusive economic zone. The SOP followed representations from the oil industry about threatened protest actions against deep-sea drilling proposals.¹⁰⁶¹ Subsequent disclosures under the Official Information Act 1982 showed meetings between a multinational company and the Minister of Energy and Resources to discuss the change had been under way for months before the relevant legislation passed.¹⁰⁶² The issues are not the policy decision or the lobbying, but the lack of select committee scrutiny created by using a supplementary order paper inserted late into legislation close to its passage and the lack of transparency about lobbying.

Similar issues relating to the transparency of interactions between the executive and the business sector were raised in the Sky City project.¹⁰⁶³ In both cases, the concern primarily relates to transparency in the activities of the executive. There is no suggestion Sky City or the oil industry acted inappropriately in its dealings with the executive.

13.2.3 Accountability (law)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Score: 5

MBIE enforces rules and laws governing the oversight of the business sector and the governance of individual companies. In the finance sector, governance requirements in terms of board composition (the proportion of independent directors, their suitability for the role, and the required focus of their work), are detailed in or under the Reserve Bank of New Zealand Act 1989 and apply to registered banks¹⁰⁶⁴ and non-bank deposit takers.¹⁰⁶⁵ The Institute of Directors has taken a leadership role in regards to the responsibilities of directors.

Persons who do not meet "fit and proper" requirements cannot register or be involved in the management of financial service providers. "People who have been convicted of crimes involving dishonesty under the Crimes Act 1961, in the last five years, such as fraud, as well as anyone convicted of a money laundering, or financing of terrorism offence, will be excluded from registering or from being involved in the management of

¹⁰⁶¹ New Zealand Parliament, "Legislation: Supplementary order papers – Crown Minerals (Permitting and Crown Land) Bill", 2013. www.parliament.nz/en-nz/pb/legislation/sops/50DBHOH_SOP1646_1/crown-minerals-permitting-and-crown-land-bill

¹⁰⁶² Moana Mackey, "Joyce backroom deal led to sea protest ban", *Labour*, 30 May 2013. www.labour.org.nz/news/joyce-backroom-deal-led-to-sea-protest-ban?utm_source=twitterfeed&utm_medium=twitter – confirming documents released under the Official Information Act 1982 sighted and held by author.

¹⁰⁶³ See sections 4.2.2 and 8.3.2 in Chapter 5.

¹⁰⁶⁴ Reserve Bank of New Zealand Act 1989, s157L.

¹⁰⁶⁵ Reserve Bank of New Zealand Act 1989, s157L.

a registered financial service provider. Undischarged bankrupts and banned directors will also not be able to register.”¹⁰⁶⁶

Insurance companies must also meet fit and proper standards for board members, relevant senior officers, and appointed actuaries as part of their licensing requirements.¹⁰⁶⁷ Full licensing obligations have applied to continuing insurers from 7 September 2013 when the transitional provisions ended.

These are additional to public company legislative requirements. Companies listed with the NZX (and the Australian Securities Exchange, where dual listing is involved) face specific requirements that may repeat or be in addition to these requirements. Issuers require director certification in numerous circumstances.¹⁰⁶⁸ Certification is generally required when an issuer produces advertisements – the certificate acknowledges that the directors of the issuer have read, seen, or listened to the advertisement and that the advertisement complies with the relevant securities legislation.

Disclosures in offer documents, annual reports, and reports to supervisors must all be signed off by a director.¹⁰⁶⁹ Personal liability attaches to these. Assurance is also reinforced by audit and, where appropriate, trustee attestations. Directors of listed companies must disclose share purchases and disposals.¹⁰⁷⁰ In some circumstances trustees or auditors or both¹⁰⁷¹ must also comment on non-compliance with regulatory requirements in offer documents to regulators.

Specific disqualifications under many statutes operate to exclude unsuitable people from being a director irrespective of and before any positive qualifying attributes are assessed.¹⁰⁷²

New legislative requirements have been created and existing requirements are being made more explicit and uniform, as a result of the review of finance sector regulation over the past five years. Current requirements set higher minimum standards. As an example, inadequate prudential requirements previously agreed by some trustees with non-bank deposit takers are no longer possible, because all must now meet regulatory minimum requirements.¹⁰⁷³ Trustees continue to be free to set higher standards.

¹⁰⁶⁶ Companies Office, “Who cannot register? www.business.govt.nz/fsp/about-the-fspr/frequently-asked-questions-faqs/registration-who/who-cannot-register

¹⁰⁶⁷ Reserve Bank of New Zealand Act 1989, s157L.

¹⁰⁶⁸ Institute of Directors, “Company directors’ course”.
www.iod.org.nz/DirectorDevelopment/Courseprogramme/CompanyDirectorsCourse.aspx

¹⁰⁶⁹ Securities Regulations 2009.

¹⁰⁷⁰ Companies Act 1993, Schedule 4.

¹⁰⁷¹ Financial Markets Authority, “Who needs to comply?”. www.fma.govt.nz/help-me-comply/auditors/who-needs-to-comply

¹⁰⁷² The Companies Act amended the power of the Registrar of Companies to prohibit directors or managers of failed companies with a track record of commercial failure, from future directorships or management positions. See Companies Office, “Banned directors”, last updated 16 August 2013.

www.business.govt.nz/companies/about-us/enforcement/archived-content/banned-directors

¹⁰⁷³ Reserve Bank of New Zealand Act 1989.

13.2.4 Accountability (practice)

To what extent is there effective corporate governance in companies in practice?

Score: 3

Interviews for this section expressed concern that New Zealand's pool of experienced company directors is small and requires active development; a relatively small number of professional directors serve on the boards of numerous companies of substance. Diversity initiatives are only partially successful, although the issue is actively recognised.¹⁰⁷⁴ Succession planning for the current generation of experienced company directors and greater targeting and training of the next generation of company directors warrant further effort.

The vast majority of New Zealand businesses are at a micro scale (10 or fewer employees) by global standards. In most instances, these businesses are owner-operated and may lack formal governance arrangements.¹⁰⁷⁵

The numerous finance company failures since 2007 have highlighted inadequate past governance practices and a failure (by trustees and investors) to adequately recognise investment risk. They have also brought to light many instances of failures of integrity and transparency. As at April 2013, the Serious Fraud Office had investigated the affairs of 15 finance companies that collapsed between 2007 and 2010. Criminal charges have been laid in nine of the cases investigated, and convictions have so far been obtained in seven of those cases. Overall, 23 individuals have faced charges. Four cases remained in prosecution, with the prosecution phase likely to continue until April or May 2014. Of the six cases the Serious Fraud Office did not proceed with, four have been the subject of proceedings or regulatory action brought by the Financial Markets Authority or other agencies.¹⁰⁷⁶ Integrity, *per se*, was not an element of the charges and some directors were convicted notwithstanding a finding they had an honest belief in their conduct.

This area of weakness has tainted the non-bank deposit taker sector, and, although regulatory deficiencies have been addressed, it will take time for confidence to be restored. The successful prosecutions were undertaken under pre-existing legislation. Enforcement was not lacking, but fraud is usually detected after the event and securities enforcement for wrongful disclosure is similar.

13.2.5 Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Score: 4

¹⁰⁷⁴ Women on Boards, "About Women on Boards New Zealand." www.wob.org.nz

¹⁰⁷⁵ Capital Market Development Taskforce Secretariat, *The Structure and Ownership of New Zealand Companies and its Impact on Capital Market Development*, 2012. www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-taskforce-research/structure-of-nz-companies.pdf

¹⁰⁷⁶ Serious Fraud Office, "SFO concludes finance company investigations", 30 April 2013. www.sfo.govt.nz/n351,24.html

*As outlined in sections 13.2.1 and 13.2.3, a comprehensive overhaul of financial and securities markets law and regulation was already under way before the global financial crisis and local finance company collapses. These efforts were strengthened following finance company non-bank deposit taker collapses between 2008 and 2011.*¹⁰⁷⁷

Financial advisers must now be registered with the Financial Markets Authority, under legislation that imposes obligations broadly proportional to investor risk.¹⁰⁷⁸ Authorised financial advisers who deal with more complex matters must meet a minimum educational requirement.¹⁰⁷⁹ Securities trustee companies and statutory supervisors must be licensed also with the Financial Markets Authority.¹⁰⁸⁰

The Financial Markets Authority replaced the Securities Commission and has a more explicit enforcement mandate than the commission had.

The recently introduced insurance prudential supervisory regime¹⁰⁸¹ comes in the aftermath of the Christchurch earthquakes, reputedly the fourth largest insurance claim event ever. While the sector was “stress tested” by these events, the new legislative framework appears to be soundly based and well received.

The Secret Commissions Act 1910 criminalises private sector bribery and corruption, including giving or offering a gift, inducement, or reward to gain business advantage.¹⁰⁸² “Corruption” is not defined in the Act, and it is therefore difficult to prosecute and relevant provisions minor penalties. As outlined in Chapter 4, there is a move to update this legislation.¹⁰⁸³

Since 30 June 2013, a new regime covering money-laundering has been in force. The Anti-Money Laundering and Combating Financing of Terrorism Act 2009 sets in place regulations intended to be underpinned by a risk-based approach to allowing businesses to make decisions about how to best manage and mitigate their money-laundering and terrorist-financing risks.¹⁰⁸⁴ The regulations appear, where possible, to set thresholds to align with Australia for trans-Tasman harmonisation, to comply with the Financial Action Task Force’s recommendations, and to minimise compliance costs to the industry. The new regime for anti-money laundering and combating financing of

¹⁰⁷⁷ Simon Power, “Once-in-a-generation re-write of securities law introduced”, 12 October 2011. beehive.govt.nz/release/once-generation-re-write-securities-law-introduced

¹⁰⁷⁸ Financial Markets Authority, “Financial Advisers Act 2008”. www.fma.govt.nz/laws-we-enforce/legislation/acts-and-regulations/financial-advisers-act-2008

¹⁰⁷⁹ Financial Markets Authority, “AFA competence and assessment”. www.fma.govt.nz/help-me-comply/financial-advisers/how-to-get-licensed/afa-application-resources-and-templates/afa-competence-and-assessment

¹⁰⁸⁰ Financial Markets Authority, “Trustees”. www.fma.govt.nz/help-me-comply/trustees

¹⁰⁸¹ Reserve Bank of New Zealand, “Register of licensed insurers in New Zealand”. www.rbnz.govt.nz/finstab/insurance/4268257.html

¹⁰⁸² Secret Commissions Act 1910, section 3.

¹⁰⁸³ Matt Nippert, “NZ companies in overseas bribery spotlight”, *Stuff*, 13 May 2013.

www.stuff.co.nz/business/industries/8666764/New-Zealand-companies-in-overseas-bribery-spotlight

¹⁰⁸⁴ PwC, *Your Guide to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and Regulations* (New Zealand: PwC, 2012). www.pwc.co.nz/KenticoFiles/54/5499551c-7aeb-4161-b284-fb394ded54db.pdf

terrorism is intended to have a significant impact on those entities designated as “reporting entities”, which, in essence, are all financial organisations.¹⁰⁸⁵ It is too early to judge the Act’s impact. In addition to domestic oversight by supervisory agencies, country compliance will be assessed on a periodic basis against international standards.

Assurance requirements exist in law and regulation for most companies, particularly securities issuers. These have widened in scope over recent years and set a high standard.

13.2.6 Integrity mechanisms (practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 3

Large corporates operate internal audit procedures which increasingly include a module for testing for corrupt practices, but as a nation of small businesses, checks and balances to guard against corrupt or unlawful practice tend to be ad hoc and highly variable.

Explicit and detailed regulation applies to the finance sector, much of it resulting from the review of finance sector regulation and securities law. The oversight and supervision of regulated organisations take different forms, depending on size and scope (for example, contrast between bank and non-bank deposit taker supervision) but are extensive in nature and undertaken by government agencies established for the role. NZX requirements are applied to listed entities and are subject to public scrutiny.

Several significant cases have been brought by the Serious Fraud Office and the Financial Markets Authority, dealing in particular with non-bank deposit taker failures.¹⁰⁸⁶ The weakness of the rating on this indicator in part reflects the extent of offences and failures observed in the lightly regulated finance company sector and the fact legislative and enforcement initiatives intended to prevent recurrence are too recent to allow judgement.

Instances of fraud have been company specific rather than systematic.¹⁰⁸⁷ Bribery has not been a feature in the finance sector.

More widely, in the 2012 Deloitte New Zealand Bribery and Corruption Survey, the General Manager of the Serious Fraud Office, Nick Paterson, was quoted as saying, “It would be easy to sit back and say that New Zealand is the country perceived to have the least corruption, and that it only happens to others. However, we are seeing more

¹⁰⁸⁵ PwC, 2012.

¹⁰⁸⁶ Financial Markets Authority, “FMA releases Investigations and Enforcement Report 2013”, news release, 1 July 2013. www.fma.govt.nz/keep-updated/newsroom/media-releases/2013/fma-releases-investigations-and-enforcement-report-2013

Serious Fraud Office, “Media releases”. sfo.govt.nz/mediacentre

¹⁰⁸⁷ See section 13.2.4.

instances of domestic corruption such as bribes paid to public officials, and corrupt payments made within the private sector. Organisations need to be awake to the changing environment as well as the legal and reputational risks and consequences associated with engaging in corrupt practices”.¹⁰⁸⁸

Occasional instances of bureaucratic corruption are prosecuted under existing law and freely reported in the news media.¹⁰⁸⁹

The Serious Fraud Office has been proactive since the Canterbury earthquakes of 2010 and 2011 in seeking evidence of fraudulent commercial behaviour in an environment where reconstruction costs of NZ\$40 billion are estimated and opportunities for fraud are deemed greater than usual because of the scale, complexity, and urgency of the task.¹⁰⁹⁰ The Serious Fraud Office has been investigating two cases relating to the Christchurch rebuild since March 2013.¹⁰⁹¹

New Zealand has a so-called “black” economy. Its size is not officially estimated, and there is no internationally recognised methodology to measure this underground market. Australia has attempted to measure its underground economy, estimating it at about 2 per cent of gross domestic product.¹⁰⁹² The Commissioner of Inland Revenue has noted that a rise in the hidden economy in New Zealand could be attributed in part to the large increase in cash paid work in the wake of the Christchurch earthquakes.¹⁰⁹³

“There is a vast underground economy in New Zealand, always has been: mate’s rates, cash jobs, jobs in kind, all of those sort of things which are very hard to track down”, said Minister of Revenue Peter Dunne in December 2011.¹⁰⁹⁴

“There will be some high-level corporate evasion ... but I think in the New Zealand context, it is more likely to be those ingrained sorts of things – the mate’s rates, the ‘do a mate a favour’, which has been part of our informal system forever really.”¹⁰⁹⁵

Cash for service payments by small businesses appears to be the main form this hidden economy takes and is widely tolerated. This is at odds with the country’s self-image as an open, taxpaying democracy. Businesses operating in this way are breaking tax laws if they fail to declare income. Activities covered in this part of the

¹⁰⁸⁸ Deloitte, *Deloitte Bribery and Corruption Survey 2012 Australia and New Zealand: A storm on the horizon?* (Sydney: Deloitte, 2012), p. 4. www.deloitte.com/assets/Dcom-NewZealand/Local%20Assets/Documents/Services/Forensics/nz_Bribery_and_Corruption_Survey_2012.pdf

¹⁰⁸⁹ For example, Michelle Duff, “WINZ unit fails to stop staff fraud”, *Stuff*, 2 April 2001.

www.stuff.co.nz/national/crime/4839741/WINZ-unit-fails-to-stop-staff-fraud

Phil Kitchin, “Honeywell contract not disclosed”, *Stuff*, 23 December 2010.

www.stuff.co.nz/national/politics/4487828/Honeywell-contract-not-disclosed

¹⁰⁹⁰ Serious Fraud Office, “Serious Fraud Office focus on Christchurch”, 21 March 2013.

www.sfo.govt.nz/n345,24.html

¹⁰⁹¹ Serious Fraud Office, 2013.

¹⁰⁹² Australian Bureau of Statistics, “Feature article: The underground economy and Australia’s GDP,” 2003.

www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1350.0Feature%20Article3Oct%202003?opendocument&abname=Summary&prodno=1350.0&issue=Oct%202003&num=&view=

¹⁰⁹³ Clio Francis and Michael Field, “Economy’s \$7 billion black hole”, *Dominion Post*, 1 December 2011.

www.stuff.co.nz/dominion-post/business/6065399/Economys-7-billion-black-hole

¹⁰⁹⁴ Francis and Field, 2011.

¹⁰⁹⁵ Francis and Field, 2011.

economy also include illicit drug dealing and human trafficking by organised criminal gangs and the employment of illegal migrants at below legal minimum wage rates and employment conditions.

Although the use of foreign-flagged fishing vessels working in New Zealand waters is not part of the local black economy generated by New Zealand businesses, the New Zealand Government has taken action, and legislation to curtail these activities is before a parliamentary select committee.¹⁰⁹⁶

Interviewees suggest New Zealand's relatively small and close-knit commercial community acts as a discipline in itself on unethical or corrupt behaviour. While this may be true, it is somewhat belied by recent experience in the finance company sector. Other interviewees suggested a degree of complacency about the potential for both known and unacknowledged conflicts of interest to persist in such a relatively small economy.

Civics and business education in the New Zealand school system is weak, leading to poor general knowledge of the legitimate expectations of ethical business practice.¹⁰⁹⁷

A cohort of migrant-owned businesses that operate in relative isolation from the mainstream (for language or other reasons), may not be aware of New Zealand business practices and norms. Government needs to get information about ethical expectations to this group. Also, a collaborative effort is needed for government to better connect with small businesses. Research is lacking on the practices of small and medium-sized enterprises, which makes it difficult to assess how to connect with these businesses and identify the drivers relevant for them.

Role

13.3.1 Anti-corruption policy engagement

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Score: 2

The issue of corruption is of such little apparent relevance in the New Zealand context that it is not a major consideration by the business sector and consequently, the business sector engages little with the government on anti-corruption.

Transparency International suggests that this indicator should be used only in countries where corruption has been identified as a key problem. New Zealand's place at the top of the Corruption Perceptions Index, therefore, suggests this indicator should not be especially relevant to New Zealand.

However, some evidence suggests a level of naivety is contributing to anti-corruption being a low priority among New Zealand businesses, especially among those

¹⁰⁹⁶ Fisheries (Foreign Charter Vessels and Other Matters) Bill.

¹⁰⁹⁷ Commission for Financial Literacy and Retirement Income, "Financial literacy research and reports".
www.cflri.org.nz/research-and-reports/financial-literacy

assuming they are not complicit because in foreign markets they use local agents whose own standard of business ethics may be subject to question. This is not to say that New Zealand businesses are corrupt or unethical, but that the issue is of such little apparent relevance in the New Zealand context that it is not a major consideration. Consequently, the business sector engages little with the government on anti-corruption.

Turning to New Zealand businesses' engagement with the rest of the world, either as exporters or importers of goods and services, and with the government's resources and power to support these businesses in offshore markets, research conducted for Transparency International New Zealand in 2012 clearly shows that New Zealand exporters put a good deal of faith in the support offered by New Zealand government organisations in overseas markets.¹⁰⁹⁸ New Zealand Trade and Enterprise, for example, is often seen as a primary source of information on operating in overseas markets, including the best ways to access markets and to deal with corrupt practices in those markets.

A small to medium-sized exporter in a recent start-up, said, "Because of the language barrier I take a lot of information from New Zealand Trade and Enterprise, the New Zealand Embassy and some other organisations like the Asian New Zealand Business Association. They're good organisations to connect with. Most of the information I get is in Japanese so it's good to get that information, and others may already have had similar experiences. Having good advice is a short cut into the system".¹⁰⁹⁹

And a large food and beverage exporter said, "They won't get involved in a ...fight but they're very good on advice. They know enough about the dodgy things that go on to know what to do".¹¹⁰⁰

That said, there is one notable recent example of a large New Zealand exporter falling foul of an agent's activities.

Zespri, which controls exports of the country's kiwifruit crop under special legislation, was fined \$960,000 in a Chinese court, and two Chinese agents for the organisation were jailed for up to five years in March 2013 for their involvement in malpractice estimated to have involved \$11.6 million in gains from the practice of creating double invoices between 2008 and 2010 to avoid Chinese customs duties.¹¹⁰¹

"There are things we could have done better, but we're not corrupt", Zespri Chief Executive Jager told Television New Zealand in an interview in July 2013.¹¹⁰²

¹⁰⁹⁸ UMR Research, *Exporters' Experiences*, qualitative research for Transparency International, 2010.

¹⁰⁹⁹ UMR Research, 2010: 22.

¹¹⁰⁰ UMR Research, 2010: 22.

¹¹⁰¹ *Bay of Plenty Times*, 17 July 2013. www.nzherald.co.nz/bay-of-plenty-times/news/article.cfm?c_id=1503343&objectid=11104983

¹¹⁰² TVNZ Q&A, 28 July 2013. <http://tvnz.co.nz/q-and-a-news/susan-wood-interviews-zespri-ceo-lain-jager-5520727>

During the Q&A interview, Jager said he had no knowledge or seen any suggestion that bribery was involved. The company has acknowledged it was warned there was a “reputation risk” associated with dual-invoicing in 2008.¹¹⁰³

The New Zealand Serious Fraud Office confirmed in October that it had begun an investigation into unspecified matters relating to Zespri.¹¹⁰⁴ The *Sunday Star-Times* newspaper claimed in a report after the SFO’s confirmation that its earlier reports on the issue had led to the probe after publishing the text of a 2007 email in which a senior marketing manager for Zespri wrote “everyone in China ...does this [double invoicing] and we need to do this too to remain competitive”.¹¹⁰⁵

Business does look to government for support, indicating a level of respect for and reliance on government by New Zealand businesses operating offshore. Business New Zealand, Export New Zealand, the New Zealand Business Council for Sustainable Development, the Human Rights Commission and others have moved increasingly to adopt principles of corporate social responsibility that include building strong governance and integrity systems. See Appendix 4 for the United National Guiding Principles on Business and Human Rights.

At the same time, exporters do not seem to be actively pressuring the New Zealand government to do more to help them in overseas markets where corruption is more of a problem. The research for TINZ cited earlier suggested that this seems mainly to be because exporters do not believe there is much the New Zealand government could do – the size and importance of New Zealand relative to its export markets means it is assumed difficult for the New Zealand Government to influence other governments.

The research suggests, however, that not all exporters are committed to action by the New Zealand Government on corruption in overseas markets. It is not so much that they see government action as being wrong but as futile and possibly even naive. They see the New Zealand Government as too small to have any real influence. There is also a perception that people in many other countries see New Zealanders, and by extension the New Zealand Government, as naive. These exporters, therefore, sometimes worry that overt government action will ultimately harm New Zealand’s reputation by making the country seem quaint, overly optimistic, and able to be taken advantage of.

This reflects an acceptance by some exporters, particularly the smaller exporters participating in a UMR qualitative survey, of practices they would regard as being corrupt if they happened in New Zealand as being standard in certain export markets. These exporters often cite gifts and small facilitation payments as examples of this, especially those made by local agents. There is frequently a willingness to ignore such activities, often on a “don’t ask, don’t tell” basis where the local agent does “whatever is

¹¹⁰³ Tony Wall, “Zespri had invoice warning years ago”, *Stuff*, 26 May 2013.

www.stuff.co.nz/business/farming/agribusiness/8718065/Zespri-had-invoice-warning-years-ago

¹¹⁰⁴ “SFO confirms Zespri probe”, *New Zealand Herald*, 22 October 2013.

www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11144151

¹¹⁰⁵ Tony Wall, “Story leads to Zespri fraud investigation”, *Sunday Star-Times*, 27 October 2013.

www6.lexisnexis.com/publisher/EndUser?Action=UserDisplayFullDocument&orgId=2055&topicId=100004077&docId=I:1997966029&start=7

necessary” to make the deal or solve the problem without telling the exporter exactly what they have done. The key point here is that, while exporters often suspect that their local agents are engaged in corrupt practices, some exporters are choosing not to investigate further. Such exporters believe that, if they did not ignore such activities, they might end up losing the contract or deal to someone who would.

Exporters often feel they are too small to have real power in some of these markets – even medium-sized New Zealand exporters are often fairly small in overseas markets.

The same research did not find evidence that this finding applies to the larger New Zealand exporters. These companies often have enough gravitas in overseas markets to enforce their own standards. They expect the New Zealand government to help with this, but also expect to take on a lot of responsibility themselves.

Larger exporters may also be less susceptible than smaller exporters in their willingness to ignore the possibility of corrupt practices. Specifically, the costs of being involved in corruption and the benefits of not being involved are more likely to be seen as significant by large exporters.

Large exporters are typically involved in multiple markets, including some that have strict regulations on corruption. Some also have multiple contacts within the same market. Smaller exporters, on the other hand, are often involved in only one or two markets, and have limited numbers of contracts and contacts within each. Therefore, if a large exporter is found to be involved in corrupt practices in one market, they could be putting their reputation at risk in other markets. This risk is less likely to be present for the small exporter.

Similarly, if a large exporter loses a contract because it refuses to engage in corrupt practices, then it may well have other contracts on offer. Small exporters who lose contracts, however, may not have such alternatives.

Smaller firms tend to suffer from a lack of institutional depth, so that issues such as this may not be recognised or acted on when they occur and may not have been planned for.

The findings above derive from interviews with exporters, and the Transparency International New Zealand research it draws from did not cover importers. However, other UMR Research projects, which cannot be cited as they were prepared under non-disclosure agreements for specific clients, give some insight into the likelihood of mirror-image issues for importers to New Zealand dealing in foreign markets.

On that basis, importers who are most at risk will most likely be small importers. New Zealand’s relatively light border regulation and tariff structure¹¹⁰⁶ and its acceptance of parallel imports, to some extent, facilitate the commercial viability of smaller import businesses.

¹¹⁰⁶ “Ease of doing business in New Zealand: Trading across borders”, *Doing Business*, 2013. www.doingbusiness.org/data/exploreeconomies/new-zealand/#trading-across-borders
NZIER, *Tariffs in New Zealand*, working paper 2010/1 (Wellington: New Zealand Institute of Economic Research, 2010).

Many of the same principles identified for exporters logically also apply to importers. Small importers will often need to work with local agents, and feel they need to rely on the recommendations of those agents to be able to get the best deal.

While the costs of not being involved in corrupt practices may not be as large as for small exporters (in that there may well be other local companies they can buy through), it seems unlikely that many of these very small importers will have seriously considered the possible impact on their business, if they were found to be sourcing imported goods in a way that involved corruption in the foreign source market.

Small import businesses (including sole operators) are unlikely to have formal processes for dealing with corruption.

Large importers, like large exporters, are more likely to see the consequences of being caught as significant and to have procedures for dealing with corrupt practices. However, this area has not been tested.

In summary, New Zealand exporters of scale appear well attuned to the need to ensure their dealings in foreign markets are of a standard consistent with international best practice. However, interviews suggest New Zealand businesspeople dealing in export markets are insufficiently focused on the need to be sure their local agents are operating to a similarly high standard. The potential for a “blind eye” approach to local business agents’ commercial norms, where corrupt, has considerable potential to damage New Zealand brands and the country’s corruption-free reputation. Similar concerns exist for importers, especially those operating on a small scale.

13.3.2 Support for or engagement with civil society

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Score: 2

Considerable scope exists for CSOs to work more closely with business, both as part of developing the ethics programme and as part of the response to the Open Government Partnership.

Whether through complacency or a genuine belief that corruption is rare in this country, New Zealand companies tend not to engage at all with civil society in the task of combating corruption. Anecdotes suggest anti-corruption considerations are not rated highly as topics for a governance focus.

To what extent does the business sector engage with/provide support to civil society in fostering ethical business practice and maintaining a reputation for high integrity?

Score: 3

New Zealand businesses are arguably indifferent about their obligations to support civil society and foster ethical business practice. This may indicate that New Zealand businesses are confident the country’s relatively corruption-free environment makes this a second-order issue.

On a case-by-case basis, examples can be found of businesses that support good governance and public probity initiatives through sponsorship and education programmes, secondments, or direct involvement. However, this is not an entrenched focus of business activity. Sponsorships are sought primarily for commercial fit and advantage, or for community “licence to operate” benefits. Since corruption is not a major public issue, being seen to combat it is not a natural focus for commercially advantageous sponsorship or educational initiatives.

Governance training is provided through voluntary agencies such as the Institute of Directors, and tertiary educational short courses are available.

13.4.1 Treaty of Waitangi

The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What do the institutions that make up the business sector do to partner with Maori, to respect and affirm Maori rights to make decisions and to enhance Maori participation in their field of activity? In particular, where business sector institutions have legal rights and obligations in this respect given to them by the Crown, how well do they honour them, including any Treaty obligations passed on by the Crown?

The Treaty of Waitangi is part of New Zealand’s constitutional arrangements and creates a relationship between the New Zealand Government (the Crown) and Māori. There is no legal requirement on private sector actors with respect to the Treaty as such but the principles enshrined in Article 3 regarding equality, non-discrimination, and participation are relevant.

The Māori economic base has increased significantly in the last 20-plus years, spurred by a combination of recovery by iwi to economic health by the passage of time, higher educational attainment by younger Māori leaders, the impact of Treaty settlements on tribal assets, and the interest shown by certain classes of foreign investor in partnering with Maori for industry development and resource exploitation. In turn, this experience has provided a basis for Maori to gain the experience and to gain a position on Crown Entity, public sector, NGO and private sector boards.

In 2010, BERL, an economic consultancy, estimated the total Māori asset base at NZ\$36.9 billion, of which some NZ\$20.8 billion was the business of Māori employers, NZ\$4 billion was attached to Māori trusts and incorporations, and other Māori entities represented NZ\$6.7 billion.¹¹⁰⁷

Tribal asset-owning bodies are generally registered, with constitutions and associated reporting and fiduciary requirements, which govern collective Māori land ownership, Treaty settlement assets, and commercial ventures undertaken under tribal or sub-tribal entities.

The Federation of Māori Authorities, the Māori Trustee, and Te Ohu Kaimoana (the Māori Fisheries Commission) are charged with ensuring governance arrangements of

¹¹⁰⁷ berl.co.nz/assets/Economic-Insights/Economic-Development/Māori-Economy/Presentation-to-Summit-050511.pdf

tribal commercial entities. The Office of the Auditor-General has repeatedly raised concerns about relatively large numbers of late or incomplete audits of Māori incorporations, although there has been improvement in the latest reporting.¹¹⁰⁸ With regard to the Maori Trustee, reforms are looking to drive a greater service level ethos and capability momentum amongst those entities who interact with the MT.¹¹⁰⁹

Settlement of Treaty of Waitangi-based claims for historic injustices are delivering assets, both cash and physical assets, to most iwi, often requiring the establishment of new legally binding, but culturally appropriate, structures to ensure appropriate governance of those assets to achieve a variety of economic, social, and cultural aims. There is some evidence that asset-holding companies are better advanced than tribal incorporations in this process. It will be important for iwi to ensure that not only are asset-holding companies well governed, but that tribal authorities are able to exercise similarly skilled governance to ensure assets intended to help overcome historic economic, social, and cultural deprivation achieve their purpose. This is likely to create challenges arising from governance and accountability behaviours that are justified on cultural grounds and structures, but might conflict with the rights and needs of all stakeholders.

Hamiora Bowkett notes: “The reforms around Maori Land – Te Ture Whenua Maori – are also looking to enable landowners to utilise their assets through an enabling legislative and service framework. However, core questions of governance, management and business capability remain. There is a dialogue to be had around the extent to which Maori and iwi interests support economic development particularly around the exploitation of certain natural resources and what this means for guardianship and stewardship of these resources. Commercial and public sector partners have a journey to take now with Maori to explore these areas and understand what it means, through the Treaty relationship, to seek the types of economic and social outcomes business activities can contribute to.”¹¹¹⁰

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¹¹⁰⁸ Controller and Auditor General, “Part 4: The status of Māori Trust Board audits”, in *Central Government: Results of the 2009/10 audits*, vol. 2, 2011. www.oag.govt.nz/2011/2009-10-volume-2/part4.htm

¹¹⁰⁹ Hamiora Bowkett, email November 2013.

¹¹¹⁰ Hamiora Bowkett, email November 2013.

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