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to the United Nations
Convention against Corruption**

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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Executive summary	2
New Zealand	2



II. Executive summary

New Zealand

1. Introduction: Overview of the legal and institutional framework of New Zealand in the context of implementation of the United Nations Convention against Corruption

New Zealand signed the Convention on 10 December 2003 and deposited its instrument of ratification on 1 December 2015.

New Zealand is a constitutional monarchy with a parliamentary system of government. The Head of State is Queen Elizabeth II, who is represented by the Governor-General.

The following Acts are paramount in the implementation of the Convention: the Crimes Act 1961 (CA), the Secret Commissions Act 1910 (SCA), the Criminal Procedure Act 2011 (CPA), the Criminal Proceeds (Recovery) Act 2009 (CPRA) and the Serious Fraud Office Act 1990 (SFO Act).

The institutions most relevant to the fight against corruption are the Serious Fraud Office (SFO), the Ministry of Justice, the Financial Intelligence Unit (FIU), and the Organized Financial Crime Agency of New Zealand (OFCANZ).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

While the provisions of the Crimes Act conform to the definition of “public official” in the Convention, specific bribery offences have been established for persons holding legislative and judicial offices (sects. 99, 100, 102, CA).

Active and passive bribery of national public officials is criminalized (sects. 100-105, CA). While the promise of an undue advantage is not explicitly included, the provisions are formulated broadly and the judiciary has interpreted them to also cover promises (*Field v. R [2011] NZSC 129*). Jurisprudence has established a *de minimis* defence in relation to “gifts of token value which are just part of the usual courtesies of life” (*Field v. R [2011] NZSC 129*).

The indirect commission of the offence is not explicitly included in the bribery offences, and the use of the term “corruptly” introduces an additional element of the offence.

Active and passive bribery of foreign public officials and officials of public international organizations is criminalized (sect. 105(C) to (E), CA). The active foreign bribery offence does not apply if the act alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance of a routine government action and the value of the benefit was small (so-called “facilitation payments”) (sect. 105(C) (3), CA).

Active trading in influence can be covered through the application of section 105 (2), CA; passive trading in influence is separately criminalized (sect. 105(F), CA).

Active and passive bribery in the private sector is criminalized (sect. 3, SCA). When the undue advantage is given to an unrelated third party, it needs to be proven that the advantage was given to the third party at the agent’s request or suggestion.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized (sect. 243, CA). All offences punishable under domestic law and acts committed abroad that would be offences in New Zealand had they been committed there are predicate offences.

If a perpetrator of the predicate offence “deals” with the property proceeds of crime (sect. 243(1), CA), he or she also commits money-laundering and can be prosecuted for both offences.

Concealment is criminalized (sect. 243 (3), CA).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

In the absence of a specific embezzlement offence, theft by a person in a special relationship (sect. 220, CA) and criminal breach of trust (sect. 229, CA) are criminalized.

Apart from the corrupt use of information (sect. 105(A), CA), abuse of functions is not criminalized as separate offence, but can be covered by section 105, CA.

Illicit enrichment is not criminalized.

Obstruction of justice (art. 25)

Conspiring to defeat justice, and the use of threats, bribes or other corrupt means to dissuade a person from giving evidence or to influence a member of a jury, and wilfully attempting in any other way to obstruct, prevent, pervert, or defeat the course of justice, are criminalized (sects. 116-117, CA).

Specific acts of interfering with the exercise of official duties of certain law enforcement officials (sect. 23, Summary Offences Act (SOA)) or obstructing an SFO investigation (sect. 45, SFO Act) are criminalized.

Liability of legal persons (art. 26)

The definition of “person” extends to legal persons (sect. 2, CA; sect. 29, Interpretation Act (IA)), thus establishing their criminal liability for all offences committed by a “person”, without prejudice to the liability of natural persons. While there are no specific provisions establishing the administrative or civil liability of legal persons for offences established in accordance with the Convention (Convention offences), some civil remedies are applicable (e.g., proceedings for breach of economic tort).

While all Convention offences are punishable by imprisonment, the court can instead order the payment of a fine (sects. 39, 40, Sentencing Act (SA)).

For foreign bribery, legal persons are subject to a fine of up to 5 million New Zealand dollars or three times the value of the commercial gain (sect. 105(C)(2E), CA), while for obstruction of SFO investigations (sect. 45, SFO Act), corporations can be fined up to 40,000 New Zealand dollars. The court can also impose sanctions such as, in specific cases, the cancellation of the company’s licence or its dissolution.

Participation and attempt (art. 27)

Participation, attempt and conspiracy are criminalized (sects. 66, 72, 310, CA).

The mere taking of preparatory steps in relation to an offence is only criminalized where explicitly established by law, which is not the case for Convention offences.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Most Convention offences are punishable by a maximum term of imprisonment of between five and seven years, or fines. Certain offences criminalizing obstruction of justice are punishable by a maximum of three months to one year imprisonment (sects. 21, 23, SOA; sect. 45, SFO Act). Abuse of a position of trust or authority in relation to the victim is an aggravating circumstance (sect. 9, (f) SA).

There are no general immunities or jurisdictional privileges. To prosecute a Minister of the Crown or a Member of Parliament for bribery, the leave of a judge of the High Court is required (sects. 102 (3) and 103 (3) CA). To prosecute other public officials for bribery or passive trading in influence, and for the prosecution of bribery in the private sector, the leave of the Attorney-General is required (sect. 106, CA; sect. 12, SCA).

New Zealand applies the principle of opportunity (part 5, Crown Law Prosecution Guidelines (CLPG)). The Attorney-General can stay proceedings (sect. 176, CA). There is no statutory plea bargaining system; however, the prosecutor can indicate the starting point of the sentence suggested by the prosecution.

The Bail Act (sect. 8) takes into consideration the need to ensure the presence of the defendant in proceedings.

The Parole Act establishes that the Parole Board must make its decisions on the basis of all information available to it, which includes information on the gravity of the offence (sect. 7).

The States Sector Act (sect. 57B) contains provisions regarding the breach of minimum standards by a public official. There are no statutory provisions establishing the removal, suspension or reassignment of public officials accused of having committed an offence. Internal codes of conduct establish the applicable disciplinary sanctions.

A conviction for a Convention offence does not result in automatic disqualification to hold public office. Members of Parliament are removed from office upon conviction for an offence punishable by two or more years' imprisonment or for corrupt practices (sect. 55 (2) (d), Electoral Act). A conviction for certain Convention offences also disqualifies the offender from being a director or involved in the management of a company, including a vast majority of State-owned enterprises (sect. 382, Companies Act).

Disciplinary and criminal sanctions can be imposed for the same offence and the respective proceedings can proceed in parallel.

The Parole Act and the Sentencing Act foresee measures to promote the reintegration of offenders into society.

New Zealand encourages collaboration with the competent authorities through the mitigation of punishment, taking into account, for example, offers of amends or remedial action taken by the offender (sects. 8-10, SA). Immunity from prosecution is possible in certain cases (sect. 12, CLPG), and collaborating offenders can be protected. Assistance provided to foreign authorities can be taken into account when sentencing collaborating offenders (*Ong v. R [2012] NZCA 258*).

Protection of witnesses and reporting persons (arts. 32 and 33)

The Evidence Act 2006 (EvA) allows for the anonymity of witnesses in relation to trials for category 3 and 4 offences (sects. 110-114). A comprehensive witness protection programme administered by the police is available before, during or after a trial.

To preserve the anonymity of certain witnesses, judges can order a variety of measures, including the giving of evidence by video link (sect. 116, EvA; sects. 5 and 6, Courts (Remote Participation) Act 2010) or screened off from the defendant, or in closed court (sect. 116, EvA). Measures ensuring physical protection can also be taken. Experts can equally benefit from such measures; however, their anonymity cannot be protected.

The views and concerns of victims can be presented through victim impact statements (17AA, 20, Victims' Rights Act 2002).

Witnesses can be relocated domestically and internationally, and New Zealand has concluded arrangements in this regard.

Protection for reporting persons is established through the Protected Disclosures Act 2000 (PDA). Persons having made a protected disclosure and claiming to have suffered retaliatory action may have a “personal grievance” (an action or other remedy) against the employer (sect. 17, PDA; sect. 113, Employment Relations Act 2000).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

CPRA provides for the restraint and forfeiture of property derived as a result of “significant criminal activity” without the need for conviction. Significant criminal activity is defined as activity engaged in by a person that if proceeded against as a criminal offence would amount to offending that consists of or includes one or more offences punishable by a maximum term of imprisonment of five years or more, or from which property, proceeds or benefits of a value of 30,000 New Zealand dollars or more have, directly or indirectly, been acquired or derived (sect. 6, CPRA).

The Sentencing Act establishes conviction-based forfeiture of instruments used in the commission of “qualifying instrument forfeiture offences”, which are offences punishable by a maximum term of imprisonment of at least five years (sect. 142N, SA).

Most Convention offences comply with these thresholds except for the specific offences established in accordance with article 25(b) of the Convention.

Restraining and forfeiture orders can be made (a) in relation to specific property (sects. 24 and 50, CPRA), if the court is satisfied that it has reasonable grounds to believe that the property is “tainted property”; (b) in relation to all or part of the respondent’s property (sects. 25 and 55, CPRA), if the court is satisfied it has reasonable grounds to believe that the respondent has unlawfully benefited from significant criminal activity; or (c) in relation to instruments used in the commission of an offence (sects. 26 and 70, CPRA; sect. 142N, SA). The latter does not apply to instruments destined for use in the commission of an offence.

Tainted property (sect. 5, CPRA) includes property derived as a result of significant criminal activity that has been transformed or converted. Forfeiture of an asset that has been partially acquired with property derived from significant criminal activity and partially with property acquired from legitimate sources is also possible, as well as forfeiture of any benefits or income derived of any such properties.

Restrained and forfeited assets are managed and disposed of by the Official Assignee (sects. 103, 111 and 113, CPRA).

Bank records can be seized based on a judicial order (sects. 104 and 105, CPRA).

Offenders are not required to demonstrate the lawful origin of alleged proceeds of crime, but the required evidentiary standards have been lowered by introducing civil forfeiture proceedings (see CPRA).

The interests of bona fide third parties are protected (sects. 30 and 31, CPRA; sect. 142L, SA).

There is no general bank secrecy provision. The Director of SFO may require the production of documents and the supply of information from any person in the banking business (sects. 5 and 9, SFO Act). The FIU and the police can access financial information based on a court order (sects. 104 and 105, CPRA; sects. 70-79, SSA; sects. 118, 132 and 143 (a), AML Act; principle 11 (a), Privacy Act).

Statute of limitations; criminal record (arts. 29 and 41)

Most Convention offences are category 3 and 4 offences (sect. 6 CPA) not subject to any statute of limitations (sect. 25 (1) and (2), CPA). Some of the offences criminalizing obstruction of justice are category 2 offences, for which a charging document must be filed within six months after the commission of the offence (sect. 25 (3), CPA). There is no interruption of the statute of limitations if the alleged offender has evaded the administration of justice.

Convictions in certain other States may be taken into account as evidence (sects. 4, 43 and 139, EvA) if they comply with a level of propensity or veracity.

Jurisdiction (art. 42)

New Zealand has established territorial jurisdiction and jurisdiction over offences committed on board a Commonwealth vessel or a New Zealand aircraft (sects. 5 and 8, CA). For certain offences committed by or in relation to certain persons, it has also established extraterritorial jurisdiction (sects. 7A, 105D and 105E, CA).

An offence is deemed to have been committed in New Zealand when any act or omission forming part of any offence or any event necessary to the completion of any offence occurred there (sect. 7, CA).

Jurisdiction over offences committed against the State has not been separately established.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The third edition of the Government Rules of Sourcing allows for the exclusion of a supplier from a contract opportunity owing to a conviction for serious crimes or offences, or for acts or omissions that adversely reflect on the supplier's commercial integrity (rule 41). Contracts can be rescinded on the grounds of fraudulent misrepresentation (sect. 7 (3) (a), Contractual Remedies Act 1979).

In criminal proceedings, a court may impose reparation if an offender has caused loss of or damage to property (sects. 12 and 32 (1), SA; sect. 5, IA). In civil law, those having suffered damage as a result of corruption can initiate proceedings based on the law of torts.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

SFO is the specialized authority investigating and prosecuting serious or complex financial crime, including corruption offences. The Attorney-General is responsible for SFO (sect. 29 SFO Act); however, the SFO Director is independent in any matter relating to any decision to investigate any suspected case of serious or complex fraud, or to take proceedings relating to any such offence or any offence against the SFO Act (sect. 30, SFO Act). The FIU closely cooperates with SFO and OFCANZ in the investigation of Convention offences. There is no specific protection against dismissal of the SFO Director and the Head of the FIU.

OFCANZ has been established to increase inter-institutional cooperation regarding serious and organized crime and investigates and prosecutes money-laundering. SFO has several memorandums of understanding with other institutions and regularly raises awareness on its mandate.

The SFO Director can issue production orders for any documents that may be relevant to a suspected fraud case, and can require any person to answer questions in that regard (sects. 5 and 9, SFO Act). Refusal to follow such orders is an offence (sect. 45, SFO Act). The FIU receives suspicious transaction reports (sect. 40, AML Act) and trains financial institutions on matters related to countering money-laundering. SFO has developed a corruption-risk assessment tool for companies and, in collaboration with civil society, an anti-corruption online training.

SFO participates in awareness-raising events and has established a dedicated website interface for the reporting of crimes.

2.2. Successes and good practices

- The personal scope of application of the offence criminalizing bribery in the private sector, extending to any person desiring or intending to be employed by or acting for another person, and to any person by whom an agent intends or desires to be employed or for whom an agent intends or desires to act (art. 21)

- The absence of immunities or jurisdictional privileges (art. 30, para. 2)
- The establishment of a civil forfeiture regime (art. 31)
- The establishment of a victims code, setting forth the rights of and services available to victims; and of an offender levy that is used to fund grants for services for victims of serious crimes (art. 32)
- Victim impact statements have been used during trials for corruption offences (art. 32, para. 5)
- The broad personal scope of application of the Protected Disclosure Act, protecting public and private sector employees, former employees and volunteers reporting serious wrongdoings (art. 33)
- The risk assessment tool and online anti-corruption training module available on the SFO website (art. 39, para. 1)

2.3. Challenges in implementation

It is recommended that New Zealand:

- Monitor the application of the legislation to ensure that the indirect commission of bribery offences is criminalized and that the additional element of the use of the term “corruptly” does not constitute an obstacle to prosecution. If the judiciary does not interpret the law in this way in the future, legislative reform is required (arts. 15, 16, 18 and 21)
- Amend its legislation to abolish the exception established for so-called “facilitation payments” (art. 16, para. 1)
- While the conduct can be covered through sections 220 and 229 Crimes Act, assess whether the establishment of a separate offence of embezzlement, misappropriation or other diversion of property by a public official would be beneficial (art. 17)
- Monitor the application of the legislation to ensure that active trading in influence is criminalized. If the judiciary does not interpret the law in this way in the future, legislative reform should be considered (art. 18 (a))
- Consider criminalizing illicit enrichment (arts. 19 and 20)
- Consider establishing a separate offence of embezzlement in the private sector (art. 22)
- Specifically criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by all justice and law enforcement officials (art. 25, subpara. (b))
- New Zealand may wish to explicitly criminalize the preparation for Convention offences (art. 27, para. 3)
- Ensure that an appropriate statute of limitations period is established for offences established in accordance with article 25 (b) of the Convention, and establish an even longer period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice (art. 29)
- Consider increasing the sanctions for the category 2 offences criminalizing obstruction of justice (art. 30, para. 1)
- Consider establishing clear procedures to remove, suspend or reassign public officials accused of having committed Convention offences (art. 30, para. 6)
- Consider regulating the disqualification of persons convicted of Convention offences from holding public office and from holding office in an enterprise owned in whole or in part by the State, beyond the scope of section 382 of the Companies Act (art. 30, para. 7)

- Enable confiscation and seizure in relation to offences established in accordance with article 25 (b) of the Convention and of instruments destined for use in Convention offences (art. 31)
- New Zealand could monitor whether previous convictions in other States may be considered in criminal proceedings (art. 41)
- New Zealand could establish extraterritorial jurisdiction:
 - Over offences committed against the State (art. 42, para. 2 (d))
 - Regarding Convention offences not listed in sections 7A, 105D or 105E, CA, over offences committed:
 - By or against a national (art. 42, para. 2 (a) and (b))
 - By a stateless person who has their ordinary residence in New Zealand (art. 42, para. 2 (b))
 - By a person who is present in New Zealand and is not being extradited (art. 42, paras. 3 and 4)

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed by the Extradition Act 1999 (EA), which sets forth different schemes applying to (a) certain treaty countries, certain Commonwealth countries and certain other countries (part 3, EA); (b) Australia and designated countries (part 4, EA); and (c) individual requests to which the Act is extended (part 5, EA), and any relevant treaties, which, in general, take precedence (sect. 11, Mutual Assistance in Criminal Matters Act 1992 (MACMA)). New Zealand is party to 45 bilateral extradition treaties.

Dual criminality is a fundamental requirement for extradition under the Act (sects. 4 and 5, EA) but may not be required under a treaty. Under the Act, all offences punishable in both New Zealand and the requesting country for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty are extraditable (sect. 4, EA). Most but not all Convention offences fulfil this requirement.

New Zealand does not make extradition conditional on the existence of a treaty and recognizes Convention offences as extraditable offences subject to the requirements of the Act.

Extradition is possible for offences that are not extraditable offences to States to which part 3 of the Act applies if the requested person consents to the extradition and all other relevant conditions are satisfied (sect. 29, EA).

Convention offences are not considered political offences (sect. 2 (3) (a) (i), EA).

Should extradition for the purpose of executing a sentence be refused because the sought person is a national, New Zealand cannot enforce the sentence imposed abroad or the remainder thereof.

Nationals can be extradited unless an extradition treaty, an Order in Council under section 16 of the Extradition Act, or any arrangements or undertaking among the requesting State and New Zealand provides otherwise (sects. 30 (2) (c) and 48 (1) (a), EA). There is no obligation to submit a case for prosecution when a request for extradition is denied on the sole ground that the requested person is a national.

New Zealand deems all Convention offences that meet the minimum punishment threshold set forth by the Act included in its extradition treaties.

Expedited extradition proceedings are possible if the requested person consents to extradition (sects. 28 and 53, EA), and the timelines established by the Act (sects. 36 and 57, EA) contribute to expediting the extradition once a surrender order is made.

Persons requested for extradition can be taken into custody (sects. 19, 20, 41 and 42, EA).

Extradition must be refused if it is sought to prosecute or punish the person on discriminatory grounds or would prejudice the requested person's position for discriminatory reasons (sect. 7, EA). Extradition cannot be refused solely on the ground that the offence is also considered to involve fiscal matters.

In practice, New Zealand consults with requesting States prior the submission of the extradition request, but does not consult with them prior to refusing extradition. Requesting States have no legal standing in the extradition proceedings.

New Zealand cannot transfer sentenced persons or criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is regulated by the Mutual Assistance in Criminal Matters Act 1992 (MACMA) and several bi- and multilateral treaties.

The Act allows for the provision of a wide range of assistance, also with regard to offences for which a legal person may be considered responsible. The taking of statements from or giving of evidence by suspects in New Zealand in response to an MLA request is only possible with the person's consent (sect. 33 (1), MACMA). Witnesses can be compelled to give evidence (sect. 32(1), MACMA).

Informally, New Zealand can share information with other countries without a request (sect. 5, MACMA). In practice, New Zealand endeavours to comply with requests to keep information so received confidential.

New Zealand does not decline to render assistance on the ground of bank secrecy, but it may refuse to render assistance (a) in the absence of dual criminality or (b) when the request relates to proceedings under CPRA, but the offence, had it been committed in New Zealand, would not have constituted significant criminal activity (sect. 27 (2), MACMA).

New Zealand can consider the Convention as a legal basis for MLA.

Sections 38 to 41A of the Act address the temporary transfer of persons detained or serving a sentence to another State for the purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings.

The Attorney General is the central authority for MLA (sect. 25, MACMA). This authority has been delegated to the Solicitor General, and is normally delegated in turn to a Deputy Solicitor General. In practice, the Crown Law Office (CLO) acts as central authority, of which the Secretary-General of the United Nations has been notified. CLO evaluates incoming MLA requests, advises the Deputy Solicitor General whether the assistance requested can be granted and informs the requesting State of this decision.

Outgoing MLA requests are prepared by CLO in consultation with the prosecuting agency and consented to and signed by the Deputy Solicitor General.

Requests are accepted in English, and New Zealand has notified the Secretary-General of the United Nations accordingly. Requests can be received by CLO in hard copy and by email. Requests can also be received through the International Criminal Police Organization (INTERPOL). The authorities confirmed that New Zealand accepts oral MLA requests insofar as they are subsequently confirmed in writing.

In line with the possibility of hearing witnesses through video link in domestic proceedings, such hearings can also be conducted via videoconference in relation to MLA requests.

New Zealand has established the principle of speciality for information received as a result of MLA (sect. 23, MACMA). In practice, New Zealand can comply with requests to keep information confidential and consults with the requesting State if it would be required to disclose information when executing an MLA request.

Section 27 of the Act sets forth mandatory and discretionary grounds for refusal of MLA. These grounds do not include the offence also being considered to involve fiscal matters. Requesting States are informed of the reasons for refusal (sect. 28, MACMA).

New Zealand consults with the requesting State to ensure that all information required to make a decision on the execution of a request is available, but does not necessarily consult the requesting State prior to refusing assistance. New Zealand can also make the provision of MLA subject to conditions (sect. 29, MACMA).

New Zealand bears the ordinary costs of the execution of MLA requests despite the absence of a provision in this regard.

New Zealand may, at its discretion share documents that are not publicly available subject to any conditions it may deem appropriate.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement authorities cooperate through organizations and networks such as INTERPOL, the Egmont Group, the APEC Anti-Corruption Working Group, the Economic Crime Agency Network, the International Anti-Corruption Coordination Centre, and the Pacific Islands Police Chiefs. The SFO and police have liaison officers working in several other jurisdictions, and law enforcement agencies have concluded a number of agreements and memoranda of understanding with international counterparts.

Law enforcement agencies can cooperate on the basis of the Convention.

SFO and the police make use of electronic crime laboratories to assist with the evidential preservation of information from electronic devices, which can be used when cooperating with other law enforcement agencies. New Zealand also cooperates through the International Association of Computer Investigative specialists.

New Zealand could carry out joint operations on the basis of information-sharing agreements formed with overseas agencies (sect. 51, SFO Act).

On the basis of the Search and Surveillance Act, New Zealand can use special investigative techniques for the investigation of Convention offences. On a case-by-case basis, such techniques can be used at the international level.

As relevant evidence, the evidence obtained through special investigative techniques is admissible in court (sects. 7 and 8 EvA).

The Customs and Excise Bill, which is aimed at, inter alia, extending the use of controlled delivery at the international level to most corruption offences, had been presented to Parliament at the time of the country visit.

3.2. Successes and good practices

- New Zealand reviews and consults with requesting States on draft extradition and MLA requests (art. 44, paras. 1 and 17; art. 46, paras. 1 and 16)
- New Zealand's role as active provider of technical assistance to law enforcement agencies in the region (art. 48)

- New Zealand can supply to and receive information from any person in any other country whose functions are or include the detection, investigation or prosecution of fraud (sect. 51, SFO Act)

3.3. Challenges in implementation

It is recommended that New Zealand:

- Ensure that all offences established in accordance with article 25 (b) of the Convention are extraditable (art. 44, paras. 1 and 7)
- New Zealand may wish to grant extradition in the absence of dual criminality; and to grant accessory extradition in cases in which the requested person does not consent to the accessory extradition and in cases not involving States to which part 3 of the Extradition Act applies (art. 44, paras. 2 and 3)
- Deem all offences established in accordance with article 25 (b) of the Convention included in its extradition treaties (art. 44, para. 4)
- If a request for extradition is refused solely on the ground that the sought person is a national, submit the case to its competent authorities for prosecution at the request of the requesting State (art. 44, para. 11)
- If extradition is refused because the requested person is a national, consider the enforcement of the sentence imposed abroad or the remainder thereof (art. 44, para. 13)
- Consult, where appropriate, with the requesting State party prior to refusing extradition to provide it with an opportunity to present its opinions (art. 44, para. 17)
- New Zealand may wish to consider entering into agreements on the transfer of sentenced persons (art. 45)
- Facilitate the taking of statements from suspects even when they do not consent (art. 46, para. 3 (a))
- New Zealand is encouraged not to refuse providing MLA in the absence of dual criminality and when the request relates to proceedings under CPRA but the offence, had it been committed in New Zealand, would not have constituted significant criminal activity; it should at least render assistance not involving coercive measures in such cases (art. 46, para. 9)
- Ensure consultations with the requesting State prior to refusing or postponing the execution of an MLA request (art. 46, para. 26)
- Consider the possibility of transferring criminal proceedings (art. 47)
- New Zealand is encouraged to further the adoption of the Customs and Excise Bill, ensuring that, for the use of controlled delivery at the international level, it allows methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced, in whole or in part, for all Convention offences (art. 50, para. 4)