NOTE: SUPPRESSION ORDERS EXIST IN RELATION TO PARAGRAPHS [14], [15], [32](a) AND [59](a) OF THIS JUDGMENT PURSUANT TO S 204 CRIMINAL PROCEDURE ACT 2011.
http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CRI-2021-004-005281
[2025] NZDC 8368

THE DEPARTMENT OF INTERNAL AFFAIRS

v

QIAN DUO DUO LIMITED
Defendant

Hearing:	11 December 2024
Appearances:	E Mok for the Department of Internal Affairs Y Mortimer-Wang for the Defendant
Judgment:	28 April 2025

RESERVED DECISION OF JUDGE P WINTER

Background

[1] The defendant-company, Qian Duo Duo Limited (QDD) operated a money remittance business in Newmarket, Auckland. The company was incorporated on 10 February 2011. The Department of Internal Affairs (the DIA) began investigating the business practices of QDD under the provisions of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML-CFT Act) in 2015. The DIA commenced civil proceedings against QDD and on 27 July 2018. QDD was ordered

to pay a civil penalty following proceedings in the High Court of $350,000.[1] The DIA then commenced criminal proceedings against QDD Limited which were laid in the Auckland District Court on 25 June 2021 under the Act.

[2] The company's first appearance in the Auckland District Court was on 25 June 2021. The company is now for sentence in respect of two representative charges alleging failure to report a prescribed transaction concluded through it within 10 working days of the transaction, without lawful justification or excuse between 25 July 2018 and 12 September 2018 respectively, contrary to the provisions of s 48A(1) and 97 of the Act. As well as a third representative charge of failing to report activity within three working days having reasonable grounds to suspect that an activity conducted through it was or may have been relevant to the investigation or prosecution of any person, for a money laundering offence contrary to s 92(1)(b)(i). The maximum penalty in respect of each of these three charges is a fine of $5,000,000.

[3] QDD, the defendant company, was subsequently removed from the Companies Office register on 18 August 2022.

[4] Prior to commencing these proceedings, the DIA had made application to the High Court to restore QDD Limited (removed) to the New Zealand Register of Companies.[2] On 6 March 2023 Associate Judge Taylor restored QDD to the Register of Companies pursuant to s 329(1) of the Companies Act 1993. To enable the DIA to continue to prosecute the company, the reasons given by Associate Judge Taylor were:

(a) the DIA's failure to lodge an objection with the Registrar of Companies for the removal of QDD in time, was due to inadvertence and:

(b) there is a high public interest element in the prosecution of the company proceeding because of the inherent deterrent factor in prosecutions under the AML-CFT Act.

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[1] *Department of Internal Affairs v Qian Duo Duo Limited* [2018] NZHC 1887.
[2] *Re Department of Internal Affairs (Qian DuoDuo Ltd*) CIV-2022-404-1840 [2023] NZHC 60 (Associate Judge Taylor).

[5] The Court accepted that the upholding of the provisions of the AML-CFT Act is important for the maintenance of confidence in New Zealand's financial system and to support the integrity of the AML-CFT Act.[3] The decision went on to record that the fact that any penalty ultimately imposed on QDD may not be recoverable, is not a reason for refusing to restore the company to the Register. Further, the fact that shareholders are being prosecuted individually is not a reason not to pursue QDD's prosecution as, QDD's criminal prosecution is a distinct matter.

[6] The Commissioner of Police has now brought forfeiture proceedings against the company and its directors under the provisions of the Criminal Proceeds (Recovery) Act 2009 (the CPRA).[4] Restraining orders in respect of the company's property and those of its directors were granted in the High Court on 18 May 2021. It is understood the forfeiture proceedings are not to be heard in the High Court until June 2026. Former investors and creditors of QDD have indicated they oppose the forfeiture orders application and in response they have filed applications for relief with the High Court. Therefore, with its assets restrained, QDD clearly has no available assets to meet any fines that may be imposed on it.

[7] On 16 September 2024 the company pleaded guilty to all three representative charges laid against it.[5] I received submissions in writing and heard from counsel in support of those submissions and reserved my decision concerning penalty, following that hearing on 11 December 2024.

The facts

[8] QDD is a foreign exchange and money remittance company that traded under the name "Li Dong Foreign Exchange". It is also a reporting entity for the purposes of the AML-CFT Act. The Act requires QDD to have an adequate and effective procedure, policies and controls to detect money laundering and terrorist financing, and to manage and mitigate its risk.

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[3] At [45].
[4] Under the provisions of s 100(b) Anti-Money Laundering and Countering Financing of Terrorism Act. CIV-2021-404-401.
[5] CRNs 21004501398 to 21004501399 and 21004501403.

[9] Between 25 June 2018 and 3 September 2019, QDD remitted NZ$4,716,451.07 for two customers. They were Xiaoyu Lu and Musabayoufu Fuati involving a total of 26 transactions. Each of those transactions was objectively suspicious for the purposes of s 40 of the Act, requiring QDD to report them to the Commissioner of Police. QDD failed to do this. Further, QDD failed to make prescribed transaction reports in respect of the 171 prescribed transactions, (being cash transactions of at least NZ$10,000 or international wire transfers of at least NZ$1,000) conducted by Messrs Lu and Fuati, totalling NZ$14,424,878.92.

[10] Overall, QDD's failure involved 197 transactions totalling NZ$19,141,329.99. This was approximately 19.2% of the gross value of all transactions undertaken by QDD between 1 July 2018 and 30 June 2019.

[11] QDD's risk assessment (as at June 2019) acknowledged that its business faced a "very high" risk of being used to launder money and that, "it is highly likely that we will face it because of the nature of our services and likely that we will face ML/FT because of the size of our transactions."

[12] The DIA conducted an onsite inspection of QDD's premises in July 2019 and obtained receipts in relation to Mr Lu and Mr Fuati. Mr Lu was described by the company in its records as a cryptocurrency trader who has had his bank accounts closed. All of his transactions were conducted in cash.[6] In relation to Mr Fuati, the company records state the company director's description of his circumstances as follows:

> …He cannot go back to China without being politically prosecuted …No bank accounts, therefore large cash which is from business [sic] which is under DIA supervision.

[13] QDD's records showed that Mr Lu remitted NZ$6,716,848.68 to China in the period 9 October 2018 to 6 January 2020 in a total of 126 transactions.[7] In relation to Mr Fuati, the company's records show that large amounts of cash were being submitted by him to China in nine transactions between 18 June and 27 August 2018 and that he remitted a further NZ$200,000 on two occasions on 12 September 2018.

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[6] Summary of Facts at [19].
[7] Summary of Facts at [21].

[14] Charge 1 is that of failing to report suspicious activity relating to transactions undertaken by Mr Lu between 18 July 2018 and 9 May 2019. This consisted of 13 transactions all of which were over $100,000 and totalled the sum of NZ$2,491,443.17 which were sent for him by QDD to China. QDD undertook these transactions in circumstances where [redacted] REDACTED] suspicious activity relating to Mr Lu using QDD services to remit large amounts of cash to China.

[15] Charge 2 relates to Mr Fuati and refers to the company failing to report suspicious activity relating to transactions undertaken by Mr Fuati between 25 July and 27 August 2018 and on 12 September 2018. The suspicious nature of these charges is set out at para 30 of the accepted prosecution summary of facts. A combination of those circumstances meant that QDD had reasonable grounds to suspect that the transactions it was undertaking for Mr Fuati, were indicative of the facilitation of a money laundering offence. QDD was therefore required to submit a suspicious activity report (SAR) in respect of each of those transactions and did not do so. [redacted] REDACTED].

[16] Charge 3 is that of failing to report certain prescribed transactions undertaken by Mr Lu. The company's records show that between 25 June 2018 and 3 September 2019 the company conducted 133 transactions on Mr Lu's behalf totalling NZ$9,928,612.92. The company was required to provide prescribed transaction reports (PTR) and international funds transfers (IFTS) in relation to those transfers, but none were submitted. Further, QDD conducted a further six transactions totalling NZ$1,366,266 for which the same reports were required but again none were submitted. QDD did not have a lawful excuse for failing to submit PTRs in relation to those transactions.

[17] QDD's previous compliance history in relation to the Act has been unsatisfactory.[8] On 31 January 2017 the DIA commenced proceedings under the Act

[8] Agreed Summary of Facts at [41].

against QDD. On 27 July 2018, QDD was found by the High Court to have engaged in acts which incurred a finding of civil liability against it contrary to the provisions of the Act, in respect of its remittances on behalf of customers during the period 9 September 2014 to 12 May 2015 which included:

(a) inaccurately recording the nature of money remittances;

(b) failing to carry out enhanced customer due diligence;

(c) failing to undertake ongoing customer due diligence;

(d) failing to keep adequate records in respect of the bulk of 1,327 transactions involving six money remitters;

(e) attempting to mislead the DIA during the course of its investigation in respect of backdated agency agreements and training logs, created retrospectively regarding its relationship with six money remitters.

Prosecution Submissions

[18] The prosecution submits that a starting point sentence of between $1.5 million and $2 million is appropriate on a totality basis in respect of all three of the offences the defendant faces. They are representative charges, and each have a maximum penalty of a fine of $5,000,000. It is submitted that a fine of that magnitude reflects the totality of QDD's breaches and is between 30 to 40% of the available maximum penalty in respect of a single charge.[9]

[19] The prosecution emphasises the policy principles applicable to sentencing in respect of charges brought under the Act. The submissions note that the Act was passed to aid in the detection, deterrence, and the prevention of money laundering and the financing of terrorism through New Zealand's financial system. Achieving those

[9] Prosecution submissions on sentence dated 20 November 2024 at [4.13].

purposes is fundamental to the integrity of our financial sector and this country's reputation internationally.[10]

[20] The purposes and principles of sentencing which are of paramount importance it is submitted are: deterrence and holding the offender accountable for harm caused to the community.

[21] A deterrent sentence, it is submitted is particularly important in the present case for these reasons:

(i) Compliance under the Act is risk-based. That provides a degree of autonomy to a reporting entity to calibrate its own response to its obligations under the Act, which means the system is open to abuse by unscrupulous operators.[11] It was noted in respect of imposing a civil pecuniary penalty order under the Act, that penalties must "deter the unscrupulous from taking a calculated business risk;"

(ii) Offending like the present case committed by QDD, is difficult to detect;

(iii) The Act and its penalties comprise a "significant step up in the regulatory framework governing financial institutions and transactions in New Zealand. It follows that it is incumbent on the Courts to deal sternly with non-compliance by those whose activities the Act regulates."[12] The Act is designed to maintain and enhance New Zealand's international reputation in respect of suspected money laundering activities.

[22] Considerable reliance is placed on the decision in *R v Jaixin Finance Ltd* with respect to tariff principles.[13] Reference is also made to the two-step sentencing process

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[10] At [2.2].
[11] *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363, [2018] 2 NZLR 522.
[12] At [2/8] Prosecution submissions on sentence.
[13] *R v Jaixin Finance Ltd, Qiang Fu and Fukin Che* [2020] NZHC 366.

now mandated in *Mo'unga v R,* when applying the sentencing methodology mandated under the relevant provisions of the Sentencing Act 2002.[14] Further reference is also made by the prosecution to s 90(4) of the Act, which provides guidance in setting penalties in respect of a civil pecuniary penalty and it is argued that this is equally applicable in assessing the defendant's criminal liability in the present case.

[23] Following the s 90(4) factors, it is submitted that:

(i) the offending was prolonged and intentional. QDD's conduct spanned a period of approximately 14 months duration. QDD had previously been found by the High Court to have contravened its obligations under the Act, for which a civil pecuniary penalty order had been imposed. Despite its awareness of its obligations QDD failed to report a significant number of transactions which were 26 suspicious transactions and 171 prescribed transactions. Further, QDD conducted only minimal customer due diligence in relation to the source of Mr Lu's and Mr Fuati's funds. The company accepted inherently unreliable forms of verification that ought to have triggered suspicion about their transactional activity;

(ii) the offending was motivated by the maximisation of profit for the company. The prosecution is unaware of the exact amount of commission the company obtained, but it is submitted that its activities were conducted to retain both Mr Lu and Mr Fuati as customers of the company. There were no suspicious activity reports filed by the company after September 2018 and QDD went on to remit approximately NZ$7,000,000 of funds from both of those customers;

(iii) the offending enabled those two customers' transactions, in circumstances where the company's remittance activity risked damaging the integrity of New Zealand's financial system.

[14] *Mo'unga v R* [2023] NZHC 1967 at [29]-[37].

> Further, QDD's actions deprived the DIA and the Police of the ability to monitor and detect activity of possible illegality.

[24] The prosecution submissions next address the mitigating factors applicable to the company. QDD was originally charged on 25 June 2021. Guilty pleas were entered but to a decreased number of charges, on 16 September 2024. It is submitted that the substance of those charges however remained unchanged. There were numerous adjournments of the trial date following defence applications. The guilty pleas were entered following those lengthy delays even though the defendants had always faced a strong prosecution case. For these reasons it is submitted that no reduction for a guilty plea is warranted in the present case.[15]

[25] It is submitted that the defendant is only entitled to a minimal discount for good character. QDD has previously been found to have breached its obligations under the civil jurisdiction provisions of the Act. QDD's present conduct can therefore not be said to be an isolated lapse of judgment. Rather, the prosecution submits it was an intentional and prolonged continuation of its previous non-compliance.[16]

[26] It is accepted that there are no personal aggravating factors of QDD's corporate offending.

[27] It is acknowledged that in imposing the inevitable sentence of a substantial fine against the company, it is unlikely that there is any realistic prospect of the company paying any quantum of fine.[17] It is submitted that such a fine should nonetheless be imposed. In doing so it is acknowledged that s 40 of the Sentencing Act 2002 requires a sentencing court to take into account the financial capacity of the offender to meet such a fine, and the need to access the policy mandate of reducing the amount of the fine that would otherwise be imposed as appropriate. It is submitted that although this provision reflects the general principle that a fine must be within the capacity of an offender to pay that fine, it is however not an absolute principle. The prosecution points to the decision in *Mobile Refrigeration Specialists Ltd v Department of Labour*

[15] Prosecution submissions at [5.1] and [5.2].
[16] Defence submissions at [5.4].
[17] At [6.1].

where it was held "there is no jurisdictional bar to imposition of a fine, even in circumstances where it appears the company makes financial capacity to pay."[18] This is because, as the Court there identified, a fine imposed on a company is not a provable debt in a liquidation and so will rarely be recovered subsequently. In that case the Court went on to observe:[19]

> there are dangers in interpreting the Sentencing Act in a matter that allows corporate offenders to readily escape financial penalties on the grounds of alleged impecuniosity.

[28] It is argued by the defence that the imposition of a substantial fine is therefore unlikely to be unduly onerous on a company or its shareholders and that one of the two shareholders, Ms Ye Hua has already been convicted of money laundering and was currently serving a lengthy sentence of imprisonment.

Defence Submissions

[29] Ms Mortimer-Wang submits that in the present case a starting point in the region of $1,000,0000 or 20% of the maximum penalty is appropriate to reflect the defendant's culpability in respect of the offending.[20] It is accepted by the defendant that the company failed to meet the reporting requirements required of it under the Act as particularised in the agreed summary of facts. However, the defendant does not accept that the offending was intentional or motivated to maximising profit. Rather, it is submitted the offending was "at most, reckless."[21]

[30] The defendant's sole director Ms Ye (Cathy) Hua received a sentence of seven years, six months imprisonment on 16 November 2023 in this Court for her involvement in money laundering charges arising whilst she was the sole director of the defendant company.

[31] QDD accepts that the relevant transactions span approximately 14 months, but the offending related to only two customers out of a total of 677 then on the company's books. It is argued the defendant's conduct was not intentional in relation to the

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[18] *Mobile Refrigeration Specialists v Department of Labour* (2010) 7 NZELR 243 (HC) at [57].
[19] At [54].
[20] Defendant's submissions on sentence at [27].
[21] At [3].

present proceedings by reference is drawn to the High Court civil proceedings decided in 2018 where it was accepted by the Court that QDD did not deliberately intend to breach the Act but had in fact misunderstood the extent of its obligations.[22] Likewise, the present offending flows from a mistaken belief as to its obligations but it is acknowledged that in law that does not constitute a lawful excuse to the charges.[23]

[32] Defence counsel relies on the following evidence in submitting the company was reckless rather than wilful in its offending:

(a) [redacted] REDACTED];

(b) QDD generally believed that its procedures for reporting prescribed transactions was correct and had started using an automated PTR system from late 2018. QDD only became aware that its processes were not compliant after police contacted the company in November 2020;

(c) QDD was fully co-operative with the DIA's investigation and provided all relevant material in its possession in respect of Messrs Lu and Fuati.

[33] Further, it is argued there is no evidence before the Court that the company was motivated by profit maximisation. The present case it is argued, therefore differs from the decision in *Jiaxin Finance.*[24] The majority of the defendant's offending including the failure to submit suspicious activity reports for Mr Lu. All of the offending involving Mr Fuati occurred prior to June 2019.

[34] In respect of the likelihood that the company's actions were such as to cause damage to the integrity and reputation of New Zealand's financial system, it is submitted that this is mitigated, by the information that was provided by QDD

[22] *Department of Internal Affairs v Qian DuoDuo Limited* [2018] NZHC 1887.
[23] Defence submissions at [16].
[24] *R v Jiaxin Finance Ltd* [2020] NZHC 366 per Walker J.

following the intervention by the DIA, in respect of the activities of Mr Lu and Mr Fuati. That cooperation would in all likelihood have assisted the investigation into their accepted criminal activities involving their use of the defendant company.

[35] It is advanced on behalf of the defendant that there are significant mitigating circumstances which operate in the defendant's favour in reducing the penalty to be imposed.

[36] It is submitted that a 25% discount is available to the defendant for what is described as an early guilty plea, which saved the time and money involved in a lengthy hearing.[25] It is submitted that the acknowledged delays and adjournments of trial fixtures were justified. For example, the application to adjourn the trial of this matter in May 2024, was as a result of fresh counsel being instructed and therefore was unavoidable so as to ensure the defendant's fair trail rights.

[37] A further discount of 5% is available for the defendant's lack of any previous convictions. That is so even though the defendant has previously been held to have civil liability for non-compliance.[26]

[38] A discount of 10% is available for the assistance provided by the defendant to the informant when conducting the investigation into the successful prosecution of Messrs Lu and Fuati. That assistance is described as, the company not withholding any information and not acting in a deceptive manner, as well as the company consenting to the prosecution application for an injunction under s 87 of the Act. It is argued that would have had the effect of minimising the costs of the prosecution.

[39] It is stated on the defendant's behalf, that the inevitable fine which will be imposed, should not exceed the offender's financial means to meet the penalty imposed.[27] In this respect counsel references the decision in *Commerce Commission v Frozen Yoghurt Limited (in liquidation)*.[28] That decision involved breaches of the

[25] Defence submissions on sentence at [33].
[26] At [39].
[27] As referenced in *Mobile Refrigeration Specialists Ltd v Department of Labour* (2010) 7 NZELR 243 (HC) at [58] and *R v Briggs* CA 323/84, 9/5/85.
[28] *Commerce Commission v Frozen Yoghurt Limited (in liquidation)* [2016] NZDC 19792.

Fair Trading Act. The fine imposed for those breaches of $135,000, was reduced to one of $35,000 in recognition that the fine may have an unfair effect upon the unsecured creditors involved in the company's liquidation. In that regard, counsel further refers to the affidavit of Zhenhua (Joshua) Qian, filed in support of the defendant's submissions.[29] In that affidavit Mr Qian, who is a shareholder in the defendant company (QDD) and is also the husband of the company's director, Ms Ye (Cathy) Hua, confirms that the company has not traded since March 2021. He further deposes that all of the company assets are subject to a restraining order granted in the High Court following an application to do so by the Commissioner of Police who also seeks forfeiture orders in respect of the company assets.[30] It is Mr Qian's understanding the restraining orders also affect the interests of those who have invested in the company, as well as some of its customers. It is possible that each of those interested parties may seek to claim a proprietary interest in the relevant restrained assets associated with QDD which is in affect a debt owed by the defendant to them.[31]

[40] To date counsel advises that one investor only, Ms Min Hu, has filed an application for relief and is seeking to have her funds of $69,700, released from the restrained assets. It is his understanding that a potential claim by those "interested parties" would exceed $1,600,000.

[41] Defence counsel notes that under s 308(a) of the Companies Act 1993, there is nothing to limit a fine, monetary penalty or reparation or other order for the payment of money which may be imposed on a company, whether before or after the commencement of the liquidation of the company, for the commission of an offence by the company. Any fine therefore which may be imposed by this Court, would stand outside of the liquidation regime.[32] Therefore, a fine imposed in these proceedings against QDD would have priority over the Crown and other creditors of QDD in terms of the distribution of any asset forfeiture orders which may be made by the High Court in subsequent proceedings. As a result, the quantity of the fine imposed could have an adverse impact on those parties beyond these proceedings.

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[29] Sworn 4 December 2024.
[30] Affidavit (Joshua) Qian at [19].
[31] At para [21].
[32] *EXFC16 Ltd (in liquidation) v NZ Customs Service* [2017] NZHC 577.

[42] Finally, it is argued that the fine would not serve the principal purpose for which it is imposed, that of having a deterrent effect on QDD which is a company in liquidation. In conclusion therefore, it is inappropriate for this Court to impose an end penalty of no fine at all. It is submitted that the purposes of general deterrence and denunciation can be achieved simply through the Court's clear indication of an appropriate starting point sentence for the acknowledged offending by the company.[33]

Decision

[43] QDD has pleaded guilty to two charges of failing to report a prescribed transaction within 10 working days of the transaction and one representative charge of failing to report laundering activity within three working days after forming that suspicion. The offending took place between 25 July 2018 and 12 September 2018. In total the offending involved $6,356,515.70. Each charge carries a maximum penalty of a fine of $5,000,000. That penalty marks the seriousness with which the legislation regards offending against the Act.

[44] There is only one senior Court authority on the sentencing tariff to be imposed in respect of the offences to which QDD has pleaded. That is the decision in *Jiaxin Finance Ltd.*[34] The timeframe of the offending involved in that case was between 21 April 2015 and 10 May 2016. In that case a Ms Shay deposited $710,722 in 14 separate cash deposits. A Mr Fu remitted $53 million over a period in 311 transactions. Some $17,000,000 of those remittances of those funds were conducted through brokers.

[45] The Court noted that the AML-CFT Act came into force on 30 June 2013 for the purposes of introducing a rigorous regime for the monitoring of New Zealand's financial system, to prevent and punish financing of terrorism and money laundering. It constitutes a significant step up in the regulatory framework governing financial institutions and transactions in New Zealand.[35]

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[33] At [64].
[34] *R v Jiaxin Finance Ltd* [2020] NZHC 366.
[35] At [12].

[46] Money remittance businesses are vulnerable to misuse by those who wish to launder money as, unlike transfers through the formal banking system where the flow of funds is transparent from start to finish, the flow of funds through money remittance is such that the defendant in this proceeding is opaque. Only the individual money remitter has true visibility.[36]

[47] The Court noted that the methodology set out in the Sentencing Act 2002 applies in the context of setting criminal penalties under the present AML-CFT Act. This requires the calculation of a starting point based on the nature and circumstances of the offending itself, adjusted to take the principal totality into consideration. The next step is to assess whether an adjustment to the starting point is required, either up or down, based on any aggravating or mitigating factors applicable to the person or circumstances of the defendants.[37]

[48] The Court referred to s 7 of the Sentencing Act 2002, which defines the purposes and principles of sentencing is relevant in deterring others as the risk of reoffending by those found guilty of these sorts of offences may in some circumstances be low, the community still requires a sentence which acts as a deterrent to others.[38]

[49] Relevant purposes of sentencing in respect of this legislation are:

(a) accountability for the harm done;

(b) promoting in the offenders a sense of responsibility;

(c) acknowledgment of that harm; and

(d) denunciation.

[50] In respect of the principles of sentencing as set out in s 8 of the Act, particular relevance should be placed on the following factors:

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[36] At [13].
[37] At [16].
[38] At [17].

(a) the gravity of the offending and the degree of culpability;

(b) the seriousness of the type of offence in comparison with other types of offences;

(c) imposition of the maximum penalty prescribed if the offending is within the most serious of cases for which the penalty is prescribed, unless circumstances relating to the offender make that inappropriate;

(d) imposing a penalty near to the maximum if the offending is within the most serious category;

(e) but also the principle of imposing the least restrictive outcome appropriate in the circumstances.

[51] The Court noted that in undertaking the sentencing exercise, the activity of money laundering is highly detrimental to the New Zealand financial system and very difficult to detect. That is one reason why the AML-CFT regime must deal robustly with non-compliance which risks permitting money laundering by third parties.[39]

[52] Compliance under the Act is risk-based. That provides a degree of autonomy to a reporting entity such as the defendant in this case, to calibrate its own response to its obligations under the Act. As a result, the system is open to abuse by unscrupulous actors. It is for that reason that a deterrent sentence for the offending is required to prevent such abuses.[40] *Ping An* dealt with the imposition of a civil pecuniary penalty under the Act, however the principle that penalties must "deter the unscrupulous from taking a calculated business risk" and that their significance must be such that, "having regard to particular gains which might be involved, it is in effect commercial suicide to seek those gains via contraventions", apply equally to charges brought under the Act in the criminal jurisdiction.

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[39] At [19].
[40] As recognised in *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363, [2018[2 NZLR 522.

[53] I accept entirely, that offending such as this is difficult to detect and that the Act is a significant step up in the regulatory framework governing financial institutions and their transactions in New Zealand. It therefore follows that it is incumbent on the Courts to deal sternly with non-compliance of those whose activities the Act regulates.[41]

[54] These aims are further recognised under s 3 of the Act which defines the purposes of the Act as:

> (a) to detect and deter money laundering and the finance of terrorism; and
>
> (b) …
>
> (c) to contribute to public confidence in the financial system.

Starting point sentence

[55] In *Jiaxin Finance Ltd* the Court adopted a starting point sentence of NZ$3,000,000 in respect of three representative charges relating to Jiaxin Finance's failures to conduct customer due diligence, keep adequate records and report suspicious transactions. That offending related to 311 transactions totalling NZ$53,000,000 which occurred over a period of slightly more than one year. In adopting that starting point the High Court reviewed starting points adopted for failures to report suspicious activity in the context of civil pecuniary penalties.

[56] In *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd,* the High Court adopted a starting point fine of $1,300,000, which amounted to 65% of the available starting point of $2,000,000.[42] In that case the reporting authority failed to file a single suspicious activity report in respect of 173 instances where it should have done so. The same starting point was adopted in *Department of Internal Affairs v Jin Yuan Finance Ltd*.[43] In that case the reporting entity filed 32 suspicious

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[41] *Ping* at [20] and [99].
[42] *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363.
[43] *Department of Internal Affairs v Jin Juan Finance Ltd* [2019] NZHC 2510.

activity reports in respect of 25,988 transactions, none of which were filed in respect of certain accounts which the reporting entity had attempted to conceal from its AML supervisor. I accept the defendant QDD's conduct in this case is less serious than those cases so far as its failure to submit suspicious activity reports is concerned because of the lesser value of the transactions in this case.

[57] In *Financial Markets Authority v Tiger Brokers (NZ) Ltd* the defendant failed to file 14 suspicious entity reports and 19 instances and filed the remaining five reports out of time.[44] The total value of transactions at issue in that case was some NZ$60,800,000. In that case the Court adopted a starting point sentence of $250,000 noting, that the failures were not deliberate and did not result in any substantive money laundering.[45]

[58] QDD's conduct in this case was more serious because of the previous civil proceedings brought against it, which leads to the irresistible inference that the company's conduct was more than reckless and constituted a continued disregard for the law and its clear responsibilities for what can only have been an underlying business motive. That was to ensure that the company was profitable, by not seeking to deter the valuable custom brought to it by Mr Lu and Mr Fuati, totalling as it did remittances to the value of NZ$19,141, 329.99 over the relevant 14 month time period. QDD's offending also involved additional significant failures to report prescribed transactions, whereas the cases previously referred to involved failures to report suspicious transactions or activities.

[59] I accept that QDD's liability does extend to the 197 transactions totalling approximately NZ$19,100,000 for the reasons submitted by the prosecution those circumstances were:[46]

(a) The requirement to submit reports of Mr Lu and Mr Fuati [redacted] REDACTED];

[44] *Financial Markets Authority v Tiger Brokers (NZ) Ltd* [2023] NZHC 1625.
[45] At [51].
[46] Prosecution submissions on sentence at [4.9].

(b) the transactions QDD was being asked to undertake did not appear to have any apparent visible economic purpose;

(c) QDD did not conduct more than minimal customer due diligence in relation to the source of Mr Lu and Mr Fuati's funds, and accepted inherently unreliable forms of verification that should have triggered the company's suspicion; and

(d) QDD was plainly aware of its obligations to provide suspicious activity reports and prescribed transaction reports, particularly because of its past civil finding against it.

[60] Based on the guidance given in *Jiaxin Finance Ltd* a fine based on the totality of the defendant's offending is appropriate. As in *Jiaxin Finance Ltd,* I find the offending was premeditated in the sense that a deliberate workaround of the AML-CFT regime was adopted by the company, in order to avoid scrutiny and to conceal Mr Lu and Mr Fuati's cash money remittances. As in *Jiaxin Finance Ltd*, the extent of the particular benefit to the defendant company is speculative. The prosecution has not presented any specific evidence of its value.[47] However, unlike the situation in *Jiaxin,* QDD's offending was a continuation of what the company, through its director would have been well aware, was an illegal course of activity. The offending here was more than simply a matter of lack of compliance and that is evident also, by virtue of the proceedings brought by the Commissioner of Police under the Criminal Proceeds (Recovery) Act, which is yet to be determined. However, in doing so I bear in mind that the present sentencing is not a substantive money laundering exercise.

[61] As noted in *Jiaxin,*[48] the imposition of a fine in a case such as this must serve two purposes. They are firstly, to ensure that the defendant does not profit from its activities. Secondly it should also impose a penalty that is higher than the profit returned by the offending, in order to deter and punish the offender.

[47] At [47].
[48] At [55].

[62] In *Jiaxin* the Court set a global starting point of 60% of the maximum fine available for a single charge on the basis the offending, which although serious, fell below the most serious of its kind in the context of the offending in that case, which was at a time when the industry coming to grips with the relatively recently created regulatory scheme.[49]

[63] In setting the fine I have regard to s 8(g) of the Sentencing Act, which mandates that the Court must impose the least restrictive outcome that is appropriate in the circumstances. Further, s 8(h) that the sentencing process must take into account the particular circumstances of the offender, if they would mean the sentence, or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance be disproportionately severe. In doing so it is necessary for me to recognise that the company ceased all trading on 17 March 2021. The company was removed from the Companies Office register on 18 August 2022 but reinstated specifically for these proceedings in March 2023. There is little likelihood that the company would be able to pay a significant fine imposed on it by the Court.

[64] As deposed in the affidavit of Zhenua (Joshua) Qian, sworn on 4 December 2024 at paras [12]-[14], the company is said to have no accessible assets of any value and as previously stated the position regarding the company's assets is further complicated by the proceedings issued by the Commissioner of Police which are presently in train. There is presently, also the application for relief filed by one of the shareholders.[50]

[65] The least restrictive starting point sentence that can be imposed in the circumstances of the totality of the defendant's offending is a fine of NZ$1,250,000 which represents a fine of 25% of the available maximum penalty.

Mitigating factors

[66] As previously stated, the prosecution submits the defendant should not receive any discount for what is described as a late guilty plea. Counsel for the defendant

[49] At [60].
[50] As noted in para [22] of the affidavit.

seeks a full discount of 25 percent, upon the basis that the plea was ultimately entered just over 3 years after the first appearance in respect of this matter which was on the 3 August 2021. It is submitted that the plea has none the less saved both time and resources which would have been expended in conducting what is described as what would have been a "lengthy hearing".[51] Further, it is argued that the delays have resulted from a necessary change of counsel which then required a fixture date to be vacated. The entry of the guilty plea was not by any means at the first opportunity, and I accept that it was entered in the face of what is described as a strong prosecution case. Some recognition, however must be given to the entry of a guilty plea under the present circumstances where there has been a reduction in the number of charges faced by the defendant, although there was an increase in the total value of the funds involved in those remaining charges. I assess that guilty plea discount at 10 percent, where a discount of 25 percent would only be available for early pleas of guilty.[52]

[67] A further discount is sought for what is described as "a lack of prior convictions".[53] Counsel for the prosecution submits that no discount should be afforded to the defendant in light of the company's (previous) civil non-compliance with the Act and also what is submitted to be a prolonged continuation of the defendant's non-compliance with the Act which was a blatant exploitation by the defendant, of the risk-based regime provided to reporting entities under the Act.

[68] It is acknowledged on behalf of the defendant that the present offending is not the defendant's first occasion of non-compliance. It is submitted however that the previous non-compliance was described as low level, and this is the first time the defendant has been prosecuted under the criminal the Act's criminal provisions.

[69] The irresistible inference attributable to the defendant's behaviour over a 14 month period following its civil prosecution, is that the defendant simply chose to disregard its legal obligations in favour of safeguarding its continuing business interests with Mr Lu and Mr Fuati. Whilst the defendant's previous civil penalty for

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[51] Defence submissions on sentence at [33].
[52] *Hessell v R* [2010] NZSC 135 where a discount of up to 25% was identified as being available in circumstances where the offender pleads guilty at the earliest stage or at the first reasonable opportunity once the offender is informed of the implication of a plea or there are significant benefits from a plea (even if late) that justify a discount.
[53] Defence submissions sentence at [37].

similar activity is not an aggravating feature of the present offending, I do not find the lack of any previous criminal conviction, to be a mitigating factor of the present offending, given the totality of the circumstances as previously described. No discount is warranted under that heading.

[70] A further discount is sought for what is described as the defendant's co-operation with the prosecuting authorities. Defence counsel notes that a discount of 10% was applied for co-operation with the departmental investigation in the *DIA v Ping An Finance* case.[54]

[71] I do not take the proposition advanced by defence counsel from the decision in the *Ping An Finance* case. Although the Court there noted that prompt co-operation with the relevant supervising entity and an early admission of liability can mitigate the penalty, in the way a guilty plea in co-operation with the authorities usually warrants a discount in sentencing in the criminal context. That was not the case in *Ping,* where the defendant never took responsibility for its manifest breaches of its obligations, nor did it co-operate in rectifying them. The absence of any acknowledgment of the compliance failures, lack of contrition and the failure to co-operate in that case were best considered as the absence of mitigating factors rather than an aggravating factor.[55]

[72] Whilst QDD did not provide misleading information to the Department as was the case with *Ping*, I have no evidence to suggest that the defendant in this case did anything else other than allow access to its business records, as it was required to do. Indeed, the email from the company attached at Tab B of the defendant's sentencing submissions, indicates a truculent and non-repentant attitude on the part of the company's director Ms Ye (Cathy) Hua. Under those circumstances I do not find that a discrete discount for the company's co-operation is warranted.

[73] The defendant seeks a reduction in the fine to be imposed upon the basis that the defendant's financial impecuniosity is such that it is simply not in a position to pay a fine of that magnitude which should otherwise be otherwise imposed upon it. Whilst I accept that the quantum of fine adjudged as being appropriate in this case may

[54]Annexed at prosecution submissions Tab 3.
[55] At [122].

ultimately not be able to be recovered in full, the appropriate fine should nonetheless be imposed.

[74] I accept the prosecution submission on this matter, that whilst s 40 of the Sentencing Act requires a Court to take into consideration the financial capacity of the offender, and whether on that basis, reducing the amount of the fine would be appropriate, that provision is not absolute. In *Mobile Refrigeration Specialists Ltd v Department of Labour,* which involved a prosecution under the then Health and Safety regime, but where a similar mitigatory argument was advanced, the Court noted that "there is no jurisdictional bar to imposition of a fine, even in circumstances where it appears the company lacks financial capacity to pay." [56]

[75] Caution needs to be exercised in circumstances when there is no clear evidence of financial incapacity supported by the appropriate disclosure of material facts. Further, I consider it necessary to recognise the principles of the Act, which are designed to protect the integrity of the services offered by companies subject to the legislation. They are to deter those seeking to launder funds in New Zealand, as well as to prevent and punish the financing of money laundering. The enforcement of compliance with the Act is necessary, in order to safeguard New Zealand's international reputation in this area.

[76] Finally, it is argued on behalf of the company, that the quantum of the fine imposed could have an adverse impact on those beyond these proceedings, who have a financial interest in the defendant companies' assets, such as the Crown or unsecured creditors. Whilst ultimately the fine imposed may have some effect on the proceeds of crime proceedings currently in train, that may be an argument for another day, given the restraining orders currently in place. Any application for civil relief filed by affected third parties, is currently limited to a single plaintiff, and is for a comparatively modest amount. The imposition of the fine is unlikely to have any unfair impact on the company's two shareholders, one of whom is Ms Ye (Cathy) Hua who is currently serving a lengthy sentence of imprisonment for her activities whilst as a director of the defendant company.

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[56] *Mobile Refrigeration Specialists Ltd v Department of Labour* HC Hamilton CRI-2009-419-94, 29 March 2010 at [57].

[77] Accordingly, I decline to reduce the penalty to be imposed on the company which will be a fine in the sum of $1,125,000.

Dated at Auckland this 28th day of April 2025

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Judge P Winter
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 28/04/2025