



Implementing the OECD Anti-Bribery Convention



Phase 4 Two-Year Follow-Up Report: Chile

Chile – Phase 4

Two-Year Follow-Up Report

This report, submitted by Chile, provides information on the progress made by Chile in implementing the recommendations of its Phase 4 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 12 March 2021.

The Phase 4 report evaluated and made recommendations on Chile's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the 44 members of the OECD Working Group on Bribery on 13 December 2018.

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Chile Phase 4 – Two Year Written Follow-Up Report Summary and Conclusions

Summary of findings¹

1. In December 2020, Chile submitted its Phase 4 written follow-up report to the OECD Working Group on Bribery (WGB or the Working Group). The report outlined Chile’s efforts to implement the 48 recommendations and to address the follow-up issues identified during its Phase 4 evaluation in December 2018.² In light of the information provided, the Working Group concludes that Chile fully implemented 3 recommendations, partially implemented 17 recommendations, and did not implement 28 recommendations.

2. The Working Group considers that while Chile has deployed efforts to address a number of Phase 4 recommendations, they remain largely limited in several key areas. Regarding the detection of foreign bribery, the Working Group congratulates Chile for strengthening foreign media monitoring by overseas missions, which has led to the detection and investigation of one new foreign bribery case. Other positive measures include the publication and broad circulation of typologies of money laundering schemes predicated on foreign bribery. However, in the absence of an adequate legislation, private sector whistleblowers remain insufficiently protected. Additionally, while enforcement authorities take into account self-reporting by alleged wrongdoers in the resolution of foreign bribery cases, guidance on voluntary disclosure has yet to be adopted. As regards the investigation and prosecution of foreign bribery cases, the Working Group welcomes Chile’s increased efforts to assess credible allegations of foreign bribery. However, important issues persist, notably obstacles concerning prosecutors’ access to financial information, although Chile has taken some initial steps to reduce delays and increase cooperation with financial institutions. The Working Group also regrets that Chile took limited measures to address deficiencies regarding non-trial resolutions. Additional guidance on one of the two instruments that can be used to resolve foreign bribery cases was adopted, but is still lacking for the other. Additionally, the lack of judicial oversight and transparency of non-trial resolutions’ terms persist. Chile’s efforts to address the Working Group’s recommendations on corporate liability are also insufficient. In particular, Chile took no concrete steps to alleviate the Working Group’s concern over the lack of guidance on the model compliance programme (“offence prevention model”, or OPM). Certification of OPMs by external certifiers remains

¹ The evaluation team for this Phase 4 two-year written follow-up evaluation of Chile was composed of lead examiners from **Greece** (*Mr. Dimosthenis Stingas*, Appellate Judge and Counsellor for Justice Affairs, Permanent Representation of Greece to the European Union, and *Mr. Efstathios Tsirmpas*, Director of the Hellenic Financial Intelligence Unit and Senior SDOE Customs Officer/Special Investigative Officer) and **Spain** (*Mrs. Alazne Basáñez*, Senior Judge, First Instance No. 2 in Alcobendas (Madrid), and *Mrs. Isabel Serantes*, Public Auditor, Institute of Accounting and Accounts Auditing, Ministry of Finance) as well as members of the **OECD Anti-Corruption Division** (*Ms. Elisabeth Danon*, *Ms. Alice Berggrun* and *Ms. Lucia Ondoli*, Legal Analysts). See [Phase 4 Procedures](#), paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

² <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>

under regulated, thus perpetuating the risk to undermine effective corporate compliance. This risk is compounded by the persisting lack of clarity of the weight that Chilean authorities accord to the certification of an OPM.

3. A bill to adopt a new Criminal Code is scheduled to be introduced before Parliament in early 2021.³ The new Criminal Code could be relevant to and, according to Chile, possibly address some of the issues identified by the Working Group, including those pertaining to sanctions (recommendation 4(a)), value confiscation of foreign bribery proceeds (recommendations 4(c) and 5(d)), the essential elements of an OPM (recommendation 6(b)), as well as false accounting offences and corporate liability for such offences (recommendation 9(a)). The envisaged reform would likely introduce other significant modifications, notably on certain aspects of the foreign bribery offence, and on the overall system of criminal liability of legal persons. The Working Group will thus closely follow up this development.

4. The Working Group notes a lack of progression of enforcement, which contrasts with the situation at the time of Phase 4. Indeed, in 2018, the Working Group commended Chile for increasing the level of enforcement since Phase 3 (2014) and successfully concluding two foreign bribery cases. In 2015, the *Asfaltos Chilenos* case was resolved through a “conditional suspension of proceedings” against a company and an individual. In 2016, one individual was convicted in the *Serlog* case. This conviction, which was still under appeal before the Supreme Court at the time of Phase 4, was the first foreign bribery conviction in Chile. Nevertheless, the Phase 4 Report emphasised serious concerns regarding enforcement, in particular because some foreign bribery allegations had not been fully investigated. It also raised concerns about the framework for resolving corruption cases through non-trial resolutions.

5. Since Phase 4, the status of foreign bribery enforcement is as follows:

- Five new allegations of foreign bribery involving Chilean individuals or entities have surfaced. Of these five allegations, three are currently under investigation and two are being assessed by Chile.
- The investigation that was ongoing when the Phase 4 Report was adopted has not progressed to prosecution. There are thus four ongoing investigations (one dating back from Phase 4, and three new), and no case is currently being prosecuted.
- No investigations have been concluded, nor provisionally filed or discontinued. At the time of Phase 4, one investigation had been concluded without charges and six investigations were provisionally filed or discontinued. None of these has been re-opened since.
- No new foreign bribery cases have been concluded. The Chilean Supreme Court confirmed the conviction in the *Serlog* case, which became final.

6. The Working Group’s Summary and Conclusions on Chile’s implementation of the Phase 4 recommendations are presented below. They should be read in conjunction with the report prepared by Chile.

³ The preliminary project for a new Criminal Code was drafted by a commission of experts convened by the Executive in October 2018. It was published and is available online (last accessed on 12 January 2021): https://www.minjusticia.gob.cl/media/2018/10/Anteproyecto_de_C%C3%B3digo_Penal_2018.pdf.

Regarding the detection of foreign bribery:

- ◆ *Recommendation 1 (a) – Not implemented.* The Working Group regrets that despite deficiencies identified since Phase 2 (2007), Chile has yet to adopt an appropriate regulatory framework to protect private sector employees who report suspicions of foreign bribery. A bill that “Establishes a new statute of protection in favour of the denouncer”, introduced before Parliament in June 2020, calls for the development of reporting channels and protection of both private sector and public sector employees, but its scope is limited to misconduct against the Chilean public administration. With the exception of providing confidentiality to the whistleblowers, the bill does not include remedies or sanctions for discriminatory or disciplinary actions taken against whistleblowers in the private sector. Similarly, a new bill introduced to regulate and protect whistleblowers in the financial sector is insufficient to address the recommendation, as it is limited to violations of the General Banking Law, the Securities Market Law, and other matters regarding the Chilean financial market. Thus, even if adopted, none of these bills would alleviate the Working Group’s concerns regarding the lack of protection of private sector whistleblowers reporting suspicions of foreign bribery.
- ◆ *Recommendation 1 (b) – Not implemented.* Chile did not take measures to provide comprehensive and adequate protections to whistleblowers in the public sector. The bill that “Establishes a new statute of protection in favour of the denouncer”, if adopted, would protect public sector whistleblowers, but apply only to reports of illegal acts against the public administration. In any event, the bill has yet to be approved by Parliament.
- ◆ *Recommendation 1 (c) – Partially implemented.* Chile took limited steps to enhance the Public Prosecutors’ Office’s (PPO) capacity to detect foreign bribery cases. Trainings delivered by the Ministry of Foreign Affairs (MOFA) are a positive development but do not reflect a specific effort to increase detection by the PPO, and are mostly relevant to recommendation 1(f). Other measures reported by Chile, although positive, remain insufficient to demonstrate a proactive effort to enhance detection. While the recommendation called for sustained measures that would support detection by the PPO, Chile did not provide any specific information related to human resources, expertise, foreign language skills, training, and software to monitor foreign bribery allegations.
- ◆ *Recommendation 1 (d) – Partially implemented.* The PPO still does not monitor foreign media. Since Phase 4, overseas missions have detected one new foreign bribery case through media monitoring, and referred it to the PPO. Increased communication between the MOFA and the PPO thus seems to have palliated, at least to some extent, the lack of monitoring of foreign media by the PPO. Concrete efforts within the PPO to do so would further enhance detection of foreign bribery.
- ◆ *Recommendation 1 (e) – Not implemented.* Chile did not take concrete measures to increase consistency in public officials’ reporting obligations under the Code of Criminal Procedure, Administrative Statute, and Law 19 913. While Chile contemplates developing an “explanatory statement” of the provisions, it has yet to be adopted and while it could help clarify the reporting obligations, it will not address inconsistencies in the legal provisions. Also concerning is the fact that the Police, i.e. one of the three authorities who receive foreign bribery reports, is not part of the initiative. Additionally, training on public officials’ reporting obligations is still lacking and no steps have been taken to ensure that officials who do not comply with their duty to report are subject to sanctions.

- ◆ *Recommendation 1 (f) – Fully implemented.* Chile made important efforts to improve detection by overseas missions, in particular through circulars and training. While Chile took limited steps to analyse the failures of overseas missions to detect prior cases, it appears that the situation has improved in practice, since one foreign bribery case currently under investigations was detected by overseas missions through media monitoring. For this reason, the recommendation is implemented. Nonetheless, considering that the new circular is very recent, the WGB could follow up on the efficiency of the reporting process in practice in next phase of monitoring.
- ◆ *Recommendation 1 (g) – Fully implemented.* In October 2020, Chile published typologies of money laundering that specifically address foreign bribery, drawing on successfully concluded enforcement actions and materials from foreign sources. This document has been widely distributed and is accessible to the public. Chile then conducted one training for the Financial Intelligence Unit (FIU) staff, and an e-learning course for public and private reporting institutions. The WGB hopes that Chile will continue to promote the dissemination of foreign bribery typologies, including through regular and systematic trainings.
- ◆ *Recommendation 1 (h) – Not Implemented.* The Working Group regrets that Chile has not taken steps to enhance detection by external auditors. External auditors do not actively look for material misstatements in a company’s financial statements that could be caused by foreign bribery; external audit companies are still not required to report crimes to competent authorities; auditors who report suspected wrongdoing reasonably and in good faith to competent authorities are still not adequately protected from legal action; and no steps were taken to improve audit quality standards.
- ◆ *Recommendation 1 (i) – Not Implemented.* The Working Group regrets that Chile failed to establish a policy for companies to self-report foreign bribery despite the fact that, as noted in Phase 4, the PPO’s Specialised Anti-Corruption Unit (UNAC) considers self-reporting when deciding whether to resolve corruption cases through conditional suspensions and abbreviated procedures. Incentives for self-reporting will likely be included in a revised version of the General Prosecutorial Instruction 440/2010 and the 2014 UNAC Practical Guide, but the revisions have yet to be finalised.

Regarding the investigations and prosecutions of foreign bribery:

- ◆ *Recommendation 2 (a) – Fully Implemented.* The Working Group welcomes the measures taken by Chile to ensure that prosecutors and judges apply the autonomous definition of foreign public official under Chilean law. In Phase 4, the Group noted that the Criminal Code definition of foreign public official appeared in compliance with the Convention, and the Court of Appeal in the *Serlog* case had adopted a functional approach, under which the bribe recipient’s legal status as an official under foreign law is relevant but not determinative. However, several prosecutors continued to consider evidence of the individuals’ legal status as conclusive proof of whether they were foreign public officials, and did not further inquire whether these in fact performed public functions. Since then, the PPO issued General Prosecutorial Instruction 472/2020, which specifically underlines that, even if foreign bribery is committed outside Chile, prosecutors should apply both the elements of the crime and the autonomous definition of a foreign public official under Chilean law. Furthermore, the Supreme Court confirmed the Court of Appeal’s decision in the *Serlog* case, and reaffirmed the autonomous nature of the definition of foreign public official, thus providing useful guidance for both prosecutors and judges. Nevertheless, the Phase 4 Report had noted that these principles were not applied correctly in practice, and none of Chile’s foreign bribery cases moved beyond the investigative stage since then. The Working Group will therefore follow up whether prosecutors and judges apply the autonomous definition of foreign public official in practice.

- ◆ *Recommendation 2 (b) – Partially implemented.* Chile has taken some steps to enhance the expertise in forensic accounting and information technology of officials who may be involved in foreign bribery investigations. In particular, relevant courses and training were undertaken by both UNAC staff and police officers of the *Brigada Investigadora de Delitos Funcionarios* (BRIDEF). Additionally, General Prosecutorial Instruction 472/2020 introduced a section on minimum investigative steps, under which prosecutors are instructed *inter alia* to request that UNAC financial analysts perform an assets and liabilities analysis of the defendant, his/her family group and corporate partners. The Working Group encourages Chile to pursue its efforts to enhance resources and expertise, and will follow up the use of these resources in foreign bribery investigations.
- ◆ *Recommendation 2 (c) – Partially implemented.* In Phase 4, the Working Group considered that several aspects of the prosecutors’ expertise in and knowledge of foreign bribery investigation and prosecution could be improved. Training remained insufficient, especially in technical areas including corporate investigations and the model compliance programme. Since then, several prosecutors participated in a 2-day workshop organised by the PPO and the Asia-Pacific Economic Cooperation Secretariat. Panellists discussed law enforcement agencies’ experiences in investigating and prosecuting domestic and foreign bribery, monitoring and evaluation of compliance programs, as well as tools and practices for investigating bribery by legal persons. Nevertheless, while this workshop is a welcome initiative, it was an isolated event, rather than a continued effort. It thus seems insufficient, given the complexity of the issues at stake. Moreover, the program focused extensively on corporate compliance, and did not address all the areas for improvement that prompted this recommendation. The Working Group therefore encourages Chile to provide further training to prosecutors, while continuing to organize and attend workshops where law enforcement officials from different countries can share experiences and best practices.
- ◆ *Recommendation 2 (d) – Partially implemented.* Chile has made progress with regards to both (i) assessing credible allegations of foreign bribery when they surface, and seriously investigating the offence, and (ii) using proactive steps to gather information from diverse sources to increase sources of allegations and enhance investigations. The opening of three new investigations, as well as the fact that Chile systematically resorted to MLA, constitute positive developments. Chile also reports to have used information received from missions abroad and informal international cooperation mechanisms to confirm the seriousness of allegations appearing in the international media. However, these measures were taken in investigations that remain ongoing. It would therefore be premature to consider this recommendation as fully implemented.
- ◆ *Recommendation 2 (e) – Not implemented.* This recommendation derived from the concern that certain investigative techniques such as undercover agents and informants are available in money laundering but not in foreign bribery investigations. A bill recently introduced to Parliament, if adopted, would amend the Code of Criminal Procedure to extend the application of special techniques to all crimes committed in a context of organized crime, including foreign bribery.⁴ The proposed amendment would potentially make certain investigative techniques available in foreign bribery investigations. Until its enactment, however, the Working Group cannot take it into consideration in assessing the level of implementation of this recommendation.
- ◆ *Recommendation 2 (f) – Partially implemented.* Concerning the recommendations that Chile align the rules for lifting bank secrecy in foreign bribery cases with the rules applicable in domestic

⁴ The “Bill that modernizes the crimes that sanction the organized crime and establishes special techniques for its investigation” (“*Proyecto de Ley Que moderniza los delitos que sancionan la delincuencia organizada y establece técnicas especiales para su investigación*”) was announced by the President of the Republic on 27 December 2020 and was introduced to Parliament on 28 December 2020.

bribery cases, tax offences and money laundering, and ensure that the information subject to banking restraints are readily available to prosecutors and not subject to bank secrecy rules, the situation remains unchanged since Phase 4. First, the issue identified in the Phase 4 Report was that the requirements for lifting bank secrecy are very cumbersome and that legislative amendments lessened this burden for the investigation of several crimes but not foreign bribery. The legislative framework does not appear to have changed since Phase 4. As to the second point, Chile did not report measures to address the main issue identified by the Working Group, i.e. that access to other bank information not covered by bank secrecy often faces the same restrictions in practice. Conversely, Chile has taken significant steps to reduce delays and improve the co-operation of financial institutions when providing the required financial information. In particular, a 2019 legislative amendment to the General Banking Law established time limits for banks to comply with a request for information as well as sanctions for non-compliance.⁵ Chile also reports initiatives to increase cooperation between the PPO and the Financial Market Commission (which became the successor of the Superintendence of Banks and Financial Institutions in June 2019), as well as an ongoing technical assistance project.

Regarding conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs):

- ◆ *Recommendation 3 (a) – Not implemented:* Chile did not take measures to ensure that non-trial resolutions (NTRs) can be used against natural persons. Two types of NTRs may apply to foreign bribery cases in Chile: conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs). An SCP amounts to what is commonly referred to as a deferred prosecution agreement, while in an ABP, the defendant is found guilty, but the parties can negotiate the charges and sanctions. Both systems can be used under conditions defined by law. In Phase 4, the then recent Law 21 121 raised sanctions for corruption crimes, which made corruption offences committed by natural persons ineligible for SCPs unless mitigating factors reduce the actual sentence to three years or less. At the time, the WGB considered that making SCPs unavailable for natural persons in most corruption cases denied prosecutors a very important enforcement tool in foreign bribery cases. While Chile reports that General Prosecutorial Instruction 472/2020 does not prohibit the use of SCPs and ABPs against natural persons, the Instruction has no bearing on the legal conditions to use NTRs, and is thus irrelevant to ensure that SCPs remain available to resolve matters against natural persons.
- ◆ *Recommendation 3 (b) – Partially implemented.* In Phase 4, the WGB identified three important deficiencies with SCPs and ABPs:
 - Limited guidance. Guidance for prosecutors on the use of SCPs was limited, and was non-existent for ABPs. As a result, prosecutors relied on inconsistent criteria to use NTRs. Their decisions were thus vulnerable to criticism of being arbitrary or improperly motivated, and the lack of guidance increased inconsistency in the resolutions.
 - Lack of transparency of resolutions. The reasons for using a NTR were not systematically communicated to the public, nor were the reasons for changing a charge or omitting certain facts from an indictment after negotiations between the prosecutor and the accused. In this situation, and without information on why or how the conditions of an NTR were chosen, or on the facts underlying the case, the public could not satisfy themselves that the use of an SCP/ABP was justified, or that the penalties imposed were effective, proportionate and dissuasive.

⁵ Law that Modernizes Banking Legislation, No. 21 130 of 12 January 2019, which added two paragraphs to Article 154 of the General Banking Law.

- Lack of judicial oversight. Judges did not inquire into why an SCP/ABP was used but only verified that the pre-conditions in the CPC for using these measures were met. For an ABP, a judge gave detailed reasons for the sentence. For an SCP, a judge was supposed to determine the terms (CPC Art. 237) but in practice the accused and the prosecutor agreed on the terms, and the judge did not question whether they were appropriate.

Regrettably, Chile took limited steps to address these deficiencies. Since Phase 4, Chile issued additional guidance on SCPs through the General Prosecutorial Instruction 472/2020, which provides nine conditions and sets forth that a SCP can be used if four out of these nine conditions are met. The Working Group welcomes this initiative and will follow up on the guidance application and interpretation in practice. It regrets, however, that the additional guidance on ABPs provided in the Instruction is irrelevant to foreign bribery cases. It is also regretful that Chile did not take measures to address the lack of transparency and judicial oversight of resolutions.

- ◆ *Recommendation 3 (c) – Not implemented.* Chile did not amend its legislation to ensure that all appropriate measures and confiscation are equally available under an SCP and a conviction. As a result, confiscation remains unavailable under an SCP. On the other hand, a legal person can be ordered to implement an OPM, i.e. a compliance programme, under an SCP, but not upon conviction. This is possible thanks to a “catchall” provision, which allows the court to impose “any other appropriate condition proposed by the prosecutor” under a SCP. In several bribery cases, this provision has also been used to require the offenders to pay penalties in excess of the maximum that would have been available upon conviction.
- ◆ *Recommendation 3 (d) – Not implemented.* The Working Group regrets that Chile did not take measures to address the lack of transparency on how the terms of SCPs are determined. Statutory provisions prescribe the terms that may be imposed as part of an SCP, as well as “any other appropriate condition proposed by the prosecutor”. In Phase 4, the WGB was concerned that in the absence of guidance on the selection of terms for SCPs, it was unclear why prosecutors would choose certain terms, for instance a donation to a charity rather than a fine. While General Prosecutorial Instruction 472/2020 provides new rules regarding vetting of NGOs, it does not require prosecutors to disclose why they would opt for a charity donation rather than a regular pecuniary sanction. Vetting of NGOs is covered under recommendation 3(f)(iii).
- ◆ *Recommendation 3 (e) – Not implemented.* Under a SCP, a legal person can be required to implement a compliance programme (“offence prevention model”, or OPM). But the responsibility for verifying the adequacy of the OPM, which should rest with enforcement authorities, is delegated to a certifier. General Prosecutorial Instruction 440/2010, which is in the process of being updated, may include measures to ensure that OPMs implemented by companies as a term of a SCP are adequate, but this has yet to be confirmed once the update is finalised.
- ◆ *Recommendation 3 (f) – Partially implemented.* In Phase 4, the fact that offenders were often required to donate to a charity *in lieu* of paying a fine raised several concerns. Requiring donations is a less severe sanction than a fine of the same monetary amount because it carries less stigma. A charitable donation may also be tax deductible in some cases, which lessens the financial impact. Additionally, in Phase 4, there was no guidance on the choice of the charity receiving the donation, or an express requirement to verify whether the charity is appropriate. General Prosecutorial Instruction 472/2020 addressed part of the WGB’s concerns by providing that when a payment is made to a charity, prosecutors should include as a condition that the defendant may not request a tax deduction for the payment made on this account. Additionally, where the payment of a sum of money to a charity is to be imposed as a term of an SCP, prosecutors are now instructed to verify in advance the “suitability, prestige and transparency of the NGO”. Nonetheless, the

recommendation is not fully implemented, because Chile did not take measures to ensure that the conditions of an SCP which include a donation are effective, proportionate and dissuasive.

Regarding sanctions and confiscation:

- ◆ *Recommendation 4 (a) – Not implemented.* Chile has not taken any steps to ensure that sanctions against natural persons are effective, proportionate and dissuasive in all foreign bribery cases in practice. No measures were taken to address the issue of “*media prescripcion*” or the suspension of the limitation period while the bribed official is in office. Since the Anticorruption Act of 2018, a 3 to 10 years imprisonment sanction is applicable for the foreign bribery offence, substitutable with lower sanctions in practice. The bill for the adoption of a new Criminal Code proposes that foreign bribery be sanctioned with a non-substitutable penalty of 1 to 3 years imprisonment or 18 to 30 months of reclusion. Should the new provisions in fact override those set forth in the Anticorruption Act, this development would be a significant step back in Chile’s efforts to impose effective, proportionate, and dissuasive sanctions. Indeed, Chile explains that these new measures would be more adequate because unlike the “theoretical” sanctions provided in the Anticorruption Act, the new sanctions would not be subject to the substitution system. Thus, sanctions imposed under the new provisions would effectively apply, and arguably address the fact that imprisonment is rarely imposed in practice under the current system. However, if prison sentences were to be imposed, they would be significantly shorter than the ones envisioned by the Anticorruption Act, which was enacted in part in response to criticisms from the Working Group in Phase 3. As a result, imprisonment sanctions could be more frequent in practice, but their term would be insufficient to ensure that sanctions are effective, proportionate and dissuasive. In addition, the new provisions would reintroduce the differentiation between domestic and foreign bribery in terms of sanctions.
- ◆ *Recommendation 4 (b) – Not implemented.* Chile still does not maintain detailed statistics on sanctions imposed in domestic and foreign bribery cases.
- ◆ *Recommendation 4 (c) – Not implemented.* Chile has not amended its legislation to provide for the confiscation of property, including the value of which corresponds to that of the proceeds of a foreign bribery offence for natural persons, nor did it provide for monetary sanctions of comparable effect when the bribe and the proceeds of foreign bribery cannot be confiscated. Chile reports that the bill to adopt a new Criminal Code, if adopted, would address this deficiency by allowing confiscation of the value corresponding to that of the proceeds of the crime for natural persons. However, the bill has yet to be adopted, and therefore the Working Group cannot take it into consideration in assessing the level of implementation of this recommendation.
- ◆ *Recommendation 4 (d) – Partially implemented.* Chile did not demonstrate that confiscation had been routinely sought and imposed in corruption cases against natural and legal persons. General Prosecutorial Instruction 472/2020, adopted after Phase 4, imposes minimum investigative proceedings for a prosecutor in the conduct of a corruption investigation. Among those, the prosecutor must request UNAC’s financial analysts to perform an inventory of the assets of the defendant, his/her family group and corporate partners. Although a positive step, it remains to be seen whether the Instruction will help ensure that confiscation is routinely sought and imposed in corruption cases.

Regarding international co-operation:

- ◆ *Recommendation 5 (a) – Partially implemented.* Measures taken by Chile since Phase 4 could enhance proactivity in following up outstanding MLA requests. Since October 2019, Chile has implemented a system to ensure the systematic follow up of both active and passive MLA. Since

then, Chile sent 20 follow-up requests to 12 foreign authorities, including one in a foreign bribery investigation. However, it is too early to assess the effectiveness of this system and whether it will be regularly used to follow up requests made in the context of foreign bribery investigations. Chile also reports that the IberoAmerican Network of Prosecutors Against Corruption is used as an informal channel to follow up MLA requests. However, Chile could not indicate whether this channel has been used for foreign bribery investigations. Nevertheless, the Working Group commends this development and encourages Chile to use other informal channels as well, including the Working Group's Informal Meeting of Law Enforcement Officials.

- ◆ *Recommendation 5 (b) – Partially implemented.* Prosecutors received general training on seeking MLA. The International Cooperation and Extraditions Unit (UCIEX) organised both a basic training on international cooperation, which was delivered to all prosecutors of the Regional Prosecutor's Offices, and an advanced training for representatives of all these offices. Prosecutors also attended international workshops and webinars on international cooperation, such as those organized by the IberoAmerican Association of Prosecutors. Nonetheless, as provided in the Phase 4 Report, prosecutors would greatly benefit from receiving more targeted training on seeking MLA in foreign bribery cases.
- ◆ *Recommendation 5 (c) – Not implemented.* Chile did not adopt measures to ensure that it will not deny MLA in foreign bribery cases on grounds of bank secrecy. This recommendation originated from the concern that the issues identified under recommendation 2(f) would also arise in the MLA context. The main issue is that the requirements for lifting bank secrecy are very cumbersome, and legislative amendments reduced these obstacles for the investigation of several crimes (including money laundering) but not foreign bribery. As Chile did not report changes to this legislative framework since Phase 4, these issues could still arise in relation to MLA requests received in connection with foreign bribery investigations. Moreover, Chile states that it does not deny MLA requests on grounds of bank secrecy and reports that, since December 2018, the PPO received 21 MLA requests seeking the lifting of bank secrecy, of which 6 were completed and 15 are still pending because more information is needed for lifting bank secrecy. However, as explained by Chile, all these requests concern alleged money-laundering offences. Since the requirements for lifting bank secrecy in money laundering investigations are less cumbersome, it is not possible to draw conclusions concerning foreign bribery investigations from the figures provided.
- ◆ *Recommendation 5 (d) – Not implemented.* To date, Chile did not implement measures to ensure that it can provide MLA for confiscation of property the value of which corresponds to the bribe and the proceeds of foreign bribery ("value confiscation"). At the time of Phase 4 value confiscation could be imposed against legal persons, but the same measure was available against natural persons only in money laundering, not foreign bribery cases. Chile explains that such "value confiscation" is possible and has been imposed on natural persons, despite the absence of a special provision to that effect. Moreover, the envisaged reform of the Criminal Code might resolve this issue. However, in the absence of an express provision authorizing value confiscation against natural persons (as mentioned under recommendation 4(c)), and since such confiscation has not been imposed in domestic or foreign bribery cases to date, the Working Group's concern that Chile might be unable to provide value confiscation as MLA under certain circumstances remains.
- ◆ *Recommendation 5 (e) – Partially implemented.* Chile has taken some positive steps to reduce the time that the PPO takes to execute incoming MLA requests. In particular, UCIEX has implemented a system to follow up pending MLA requests, by requiring regular updates to the prosecutors in charge of these. In addition, as reported under recommendation 2(f), a 2019 legislative amendment to the General Banking Law has the potential to significantly reduce the time financial institutions

take to comply with requests for information. However, according to additional information provided by Chile in relation to recommendation 5(c), banks “usually take a very long time to respond”. This suggests that the issues that had been identified in Phase 4 might not be resolved yet. Moreover, as concluded under recommendation 2(f), procedural and practical obstacles to the provision of financial information persist. These might also negatively affect the provision of financial information as MLA.

Regarding the liability of legal persons:

- ◆ *Recommendation 6 (a) – Not implemented.* Chile did not take measures to ensure that a legal person cannot use a compliance defence in cases where senior corporate officers commit foreign bribery. Similarly to what the WGB noted in Phase 3, Chile’s statement suggests that the implementation of an offence prevention model (OPM), or lack thereof, is mostly relevant to an offence of failure to prevent, rather than a defence. In that case, the burden would thus be on the government to prove that the OPM is deficient, in an attempt to demonstrate that the company failed to prevent the offence. The Working Group will follow up on this point.
- ◆ *Recommendation 6 (b) – Not implemented.* The Working Group is concerned with Chile’s lack of effort to develop guidance on the OPM, despite the urgency stressed in Phase 4. More guidance on how to create an effective anti-foreign bribery corporate compliance programme has been needed since Phase 3. Article 4 of Law 20 393 describes the six minimum requirements of an OPM, including a risk assessment and reporting system, but guidance is lacking on the features that these elements must have to be effective, as well as the additional measures that are needed on top of the minimum requirements. Additionally, the law does not mention measures that specifically prevent foreign bribery, such as corporate policies on gifts, facilitation payments, etc.
- ◆ *Recommendation 6 (c) – Not implemented.* Chile did not Amend Law 20 393 to ensure that the requisite independence of prevention officers is determined based on all relevant factors, and not only the size of the company’s revenues. Chile continues to argue that since the OPM is not mandatory, imposing rules that may be too resource-intensive for companies to apply would dissuade them from developing an OPM.
- ◆ *Recommendation 6 (d) – Not implemented.* The Working Group is highly concerned that Chile did not strengthen the rules regarding certification of OPMs. Certification is performed by external auditing companies, risk-rating agencies or other entities registered with the *Comisión para el Mercado Financiero* (CMF). The requirements on the qualification of certifiers are minimal, and expertise in anti-corruption corporate compliance is not a prerequisite. As Law 20 393 stipulates only the minimum elements for an effective OPM, the standards and methodology for certification vary widely. CMF Instruction 302/2011 requires certifiers to develop a methodology but does not specify its contents. These lax rules are exacerbated by an almost complete lack of oversight by Chilean authorities.
- ◆ *Recommendation 6 (e) – Not implemented.* In Phase 4, the lead examiners were highly concerned with the weight that Chilean authorities would accord to the certification of an OPM. Although Law 20 393 allows OPMs to be certified, it does not provide that certification would necessarily allow a company to escape liability for bribery. While General Prosecutorial Instruction 440/2010 and the 2014 UNAC Practical Guide, which are currently being revised, should address the WGB’s concerns, this remains to be seen until the revisions are finalised.

- ◆ *Recommendation 6 (f) – Not implemented.* Despite a recommendation dating back from Phase 3, Chile did not amend its legislation to clearly provide territorial and nationality jurisdiction to prosecute legal persons for foreign bribery.

Regarding engagement with the private sector:

- ◆ *Recommendation 7 – Partially implemented.* Chile has taken relevant measures in terms of engagement with the private sector. The fact that MOFA's Subsecretary for International Economic Relations (SUBREI) is now the National Contact Point and the entity responsible for the Anti-Bribery Convention within the government has the potential to boost awareness raising and capacity building efforts, as evidenced by the various activities undertaken since Phase 4. ProChile's Brochure and its wide dissemination should also contribute to raising awareness of foreign bribery among companies. Nonetheless, more could be done when it comes to SMEs, and Chile does not report on efforts by entities besides SUBREI and ProChile, even though the WGB noted in Phase 4 that other government entities should be mobilised in awareness-raising efforts.

Regarding anti-money laundering measures:

- ◆ *Recommendation 8 (a) – Not implemented.* Chile has not taken any steps to require non-financial entities such as lawyers, accountants and auditors to report suspected money laundering transactions related to foreign bribery. The fact that Chile continues to depart from established international standards and does not intend to address this deficiency is a serious cause for concern.
- ◆ *Recommendation 8 (b) – Not Implemented.* Chile did not take sufficient measures to more effectively enforce its money laundering offence in connection with foreign bribery cases and ensure that in practice an individual is simultaneously convicted of money laundering and foreign bribery, where appropriate. The new process to better coordinate enforcement actions between the PPO's Specialised Unit in Money Laundering, Economic Offences and Organised Crime and UNAC reported by Chile was already operative at the time of Phase 4. Furthermore, Chilean authorities reference Article 27 of Law 19 913, which allows for simultaneous conviction of money laundering and foreign bribery, but recommendation 8(b) refers specifically to its applicability in practice. Finally, Chile has not provided systematic training to improve enforcement of the money laundering offence predicated on foreign bribery.

Regarding false accounting:

- ◆ *Recommendation 9 (a) – Not implemented.* Chile did not amend its legislation to prohibit both natural and legal persons from engaging in the full range of conduct described in Article 8(1) of the Convention, and subject such conduct to effective, proportionate and dissuasive sanctions. This recommendation originated from the issue that Chile had several legislative provisions sanctioning accounting misconduct, contained in different legislative acts (Criminal Code, Company Law, Securities Market Law, General Banking Law, and Tax Code). All these provisions, however, presented limitations, with the consequence that the range of accounting misconduct described in the Convention was not fully covered. These provisions have not been amended and Chile did not enact new false accounting offences since Phase 4. Moreover, the Working Group had also raised the issue that Chile could not impose criminal liability against legal persons for false accounting, which is still the case. Chile reports that the envisaged reform of the Criminal Code might establish more comprehensive false accounting offences, and extend the scope of criminal liability of legal person to such offences. While these would constitute positive developments, the project remains at an early stage, and it would be premature to consider it in the current assessment.

- ◆ *Recommendation 9 (b) – Not implemented.* The Working Group does not possess sufficient information to assess whether Chile is vigorously enforcing false accounting offences, in particular when perpetrated for the purpose of committing or concealing bribery. Since Phase 2, the Working Group noted Chile’s weak enforcement of false accounting offences, as well as the lack of information or statistics on actual enforcement of these offences. Under recommendation 9(c), Chile provided statistics on the enforcement of false accounting that amounts to tax offences. These statistics show that financial sanctions have been imposed for violations of certain offences under Article 97 of the Tax Code. However, Chile is unable to indicate whether, in any of these cases, false accounting was in connection with domestic or foreign bribery cases. Moreover, Chile did not provide information on enforcement of other false accounting provisions.
- ◆ *Recommendation 9 (c) – Not implemented.* Based on the information provided to date, it is not possible to conclude that Chile maintains adequate statistics on enforcement of false accounting offences. As mentioned under the previous recommendation, Chile provided some statistics on the enforcement of false accounting that amounts to tax offences. However, Chile is unable to indicate whether, in any of these cases, false accounting was in connection with domestic or foreign bribery cases. In particular, Chile explained that the National Revenue Service does not keep the requested information in its databases, since its powers are related to tax crimes. Moreover, as mentioned, Chile did not provide information on enforcement of other false accounting provisions.

Regarding tax-related matters:

- ◆ *Recommendation 10 (a) – Partially implemented.* As reported under recommendation 1(c), Chile is in the process of implementing a communication and coordination channel between UNAC and the Legal Subdirectorate of the SII. One of the purposes of this channel is to periodically inform SII of foreign bribery convictions, as well as of SCPs in which any of the conditions imply a disbursement of money, to prevent the deduction of such amounts from taxes and allow SII to systematically re-examine the relevant tax returns. While this constitutes a very positive development, this recommendation cannot be considered as fully implemented because the implementation and formalisation of this channel is still ongoing.
- ◆ *Recommendation 10 (b) – Partially implemented.* Chile does not appear to have incorporated the essential elements of the 2013 OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors into the SII’s Standard Plan for Tax Audits. However, Chile is in the process of developing training for tax examiners on how to detect bribery during tax examinations. This includes an 8-hour online course which will be freely available to all SII officials. Chile also reports that training on the topics addressed by the OECD manual has been integrated in a SII workshop on prevention systems, and future versions of this workshop will further elaborate on bribery and foreign bribery. These are positive developments and Chile is encouraged to continue developing and providing training to SII officials, to ensure that they receive appropriate guidance as to the type of expenses that are deemed to constitute bribery of foreign public officials and how to detect such bribery. As for examining why SII has failed to detect proven cases of bribery, Chile appears to have provided, to the extent of its abilities, an explanation of why SII failed to detect bribes in the *Serlog* case. As mentioned in the Phase 4 and in previous evaluations, however, Chile should also conduct a system-wide review of its detection framework. In light of the explanation provided by Chile on this point, such a review could be useful, for instance, to identify how SII can improve its ability to detect suspicious transactions and its coordination with other public bodies.
- ◆ *Recommendation 10 (c) – Partially implemented.* Chile reports some steps taken to make SII officials’ obligations to report foreign bribery more consistent. In particular, the SII Manual on tax

matters related to the prevention of Money Laundering, Civil Servant Crimes and Terrorism Financing, as updated by Circular No. 12/2020, contains some useful clarifications concerning the procedure for reporting suspicious transactions. This document, however, mainly focuses on reports to the Financial Analysis Unit. It only contains one mention to circumstances under which officials should also make parallel reports to the prosecutorial or police authorities. This document therefore does not directly address the issue that triggered this recommendation, i.e. that SII officials are subject to multiple provisions that could require them to report allegations of foreign bribery to different authorities. SII officials would therefore benefit from receiving additional clarifications concerning these reporting obligations, and eventually guidance or training on their reporting duties and relative procedures.

Regarding public advantages:

- ◆ *Recommendation 11 (a) – Not implemented.* Chile has not taken steps to encourage public contracting authorities to routinely check the debarment lists of multilateral financial institutions in relation to public procurement contracting. As regards the second portion of the recommendation, Chile reported that ChileCompra’s Directive No. 31 includes specific references to internal controls, ethics and compliance for companies seeking procurement contracts. However, neither the Directive nor any of the other measures reported by Chile are directed at procuring entities and their examination of a supplier’s anti-corruption compliance programme (OPM). Indeed, those measures only aim at raising suppliers’ awareness.
- ◆ *Recommendation 11 (b) – Not implemented.* Chile has failed to implement key aspects of the 2016 OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption. As reflected in Phase 4, Chile has taken some steps to implement the 2016 Recommendation, including Clause 14 stating that an AGCID standard ODA contract must be terminated if the officials or employees of the party implementing the project engage in corruption, including foreign bribery. Pursuant to national legislation and donor’s regulations, AGCID would also debar individuals and companies that have been convicted of foreign bribery from ODA contracts. However, Chile did not adopt additional measures since Phase 4.
- ◆ *Recommendation 11 (c) – Partially implemented.* Chile adhered to the 2006 OECD Recommendation on Bribery and Officially Supported Export Credits when it acceded to the OECD Convention in 2010. Chile further took part in the adoption of the 2019 Recommendation and thereby adhered to it on 3 April 2019. Regarding other portions of the recommendation, Chile has implemented several measures that it was considering to introduce at the time of Phase 4. Among those, the CORFO Program’s regulations and its Operating Manual require financial intermediaries to have policies in place to prevent money laundering, bribery and the financing of terrorism. However, CORFO does not require financial intermediaries to verify if a multilateral financial institution (e.g. the World Bank) has debarred an exporter.

Dissemination of the Phase 4 report⁶

The Phase 4 Report was published by MOFA, along with a Spanish translation of the recommendations, press release and executive summary.⁷ Following adoption of the Phase 4 Report, the Chilean government organised a public-private informative event during which representatives of Ministry of Justice, the PPO, the FIU, the Ministry of Foreign Affairs (SUBREI and the Directorate for International Security) shared views about the evaluation and the report. In 2020, SUBREI has made available on its website new information about the Convention and Chile's evaluations, as well as a link to the Phase 4 Report.⁸ Finally, a link to the report was added in the new booklet for public officials.⁹

Conclusions of the Working Group on Bribery

Based on these findings, the Working Group concludes that of Chile's 48 recommendations, 3 have been fully implemented (recommendations 1(f), 1(g), and 2(a)), 17 have been partially implemented (recommendations 1(c), 1(d), 2(b), 2(c), 2(d), 2(f), 3(b), 3(f), 4(d), 5(a), 5(b), 5(e), 7, 10(a), 10(b), 10(c), and 11(c)), and 28 have not been implemented (recommendations 1(a), 1(b), 1(e), 1(h), 1(i), 2(e), 3(a), 3(c), 3(d), 3(e), 4(a), 4(b), 4(c), 5(c), 5(d), 6(a), 6(b), 6(c), 6(d), 6(e), 6(f), 8(a), 8(b), 9(a), 9(b), 9(c), 11(a), and 11(b)). The Working Group invites Chile to report back in writing within two years (i.e. by March 2023) on outstanding recommendations 1(a), 1(b), 2(d), 3(a) to (f), 4(a), 6(a) to (f), 8(a), and 9(a), as well as on the status of foreign bribery enforcement, and the status of the draft Criminal Code. As per the Phase 4 procedures (para. 60), Chile may also ask for additional recommendations to be re-assessed at that time. The Working Group will continue to monitor follow-up issues as case law and practice develop. Chile will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

⁶ The [Phase 4 procedures](#), para. 50, provide that "the evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation".

⁷ <https://minrel.gob.cl/minrel/noticias-antiores/conclusiones-del-grupo-de-trabajo-de-la-ocde-sobre-cohecho-en-las>.

⁸ <https://www.subrei.gob.cl/ejes-de-trabajo/cer/convencion-anticohecho>.

⁹ https://www.subrei.gob.cl/docs/default-source/punto-nacional-de-contacto/informativo-de-prevencion-del-cohecho-extranjero-para-funcionarios-publicos.pdf?sfvrsn=f1591355_2.

Annex – Written Follow-Up Report by Chile

PHASE 4 EVALUATION OF CHILE: WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 55-67).

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat on or before 1 December 2020.

Name of country: CHILE

Date of approval of Phase 4 evaluation report: 13 December 2018

Date of information: 1 December 2020

Impact/management of the Covid-19 crisis:

With regards to the Covid-19 crisis, Chile is invited to report on additional measures it has taken to comply with the Phase 4 Recommendations and Follow-Up issues, or related to foreign bribery enforcement, including consequences, challenges and innovative approaches to overcome these challenges.

Action taken as of the date of the follow-up report:

The Covid-19 crisis has affected all aspects of our lives, including the work done by public officials. The health situation and its multiple impacts have demanded paramount efforts and resources from the State as guarantor of public health and promoter of economic recovery, highlighting a strong commitment of institutions and their officials. This included an intense administrative and legislative agenda, aimed at finding a pathway to face this health-economic crisis.

In 2019 Chile initiated a [Constitutional Process](#). This process has also meant allocating important efforts since 2019, including administrative and legal initiatives.

Notwithstanding, additional measures were taken during these months as explained below.

Regarding additional measures taken, in April 2020 Chile provided more information in its response to the *OECD WGB Covid-19 impact survey*.

Finally, specific integrity and anticorruption initiatives related to Covid-19 had been implemented during 2020:

In April 2020, the *Financial Analysis Unit*, following FATF guidelines, launched 2 information booklets aimed at the public and private sectors, related to the prevention of money laundering and terrorist financing during the context of Covid-19. Identifying, on the one hand, the phenomena that could be ML/TF risks for the financial system and, on the other, the measures that each sector can adopt to avoid ML/TF risks during the pandemic.

ChileCompra has strengthened its focus on transparency to promote integrity. This work has been done with the support of technology as a main component. Especially, the [Observatory](#) which, is a department within *ChileCompra*, performs a permanent [daily monitoring of all direct contracting that are associated with "COVID procurement"](#). This information is public, any citizen can access the information through the electronic platform www.mercadopublico.cl This information is made available to the public through different means and activities by *ChileCompra*, as detailed in recommendation **11(a)**. *ChileCompra* has also reinforced its networking with different public agencies: DIPRES, MINSAL, CGR, CAIGG, SUBDERE, and included the new Red Flags proposed by OCDS related to the pandemic.

Within the framework of the [Anticorruption Alliance of UNCAC](#), a working group that brings together representatives of public and private institutions, academia, civil society organizations and multilateral agencies, a series of webinars were organized during June and July 2020 under the slogan **“In times of pandemic, integrity is not neglected”**, whose details are as follows:

- June 4th: Anticorruption, transparency and accountability in times of COVID-19.
Jorge Bermudez, Comptroller General; and Marcela Ríos, UNDP Assistant Resident Representative.
- June 11th: Transparency and Public Procurement in Pandemic.
Tania Perich, National Director of ChileCompra, Public Procurement and Contracting Direction; and Jorge Jaraquemada, President of the Chilean Transparency Council.
- June 18th: The situation of whistleblowers in Chile.
Jorge Abbott, National Prosecutor; and Juan Antonio Peribonio, President of the State Defense Council.
- June 25th: Official Duties in Times of Crisis.
Eugenio Rebolledo, General Auditor of the Government General Internal Audit Council (CAIGG); and Francisco Silva, Head of the Legal and Institutional Affairs Division of the Civil Service.
- July 2nd: Challenges and limitations to citizen control.
Alberto Precht, Executive Director of Chile Transparente, Chilean Chapter of Transparency International; and María Jaraquemada, Advocacy Director at Espacio Público.

Also, in September 2020 the Anticorruption Alliance launched in a **“Decalogue of Recommendations of Good Integrity Practices in Times of Pandemic”**.

- 1. Facilitate the use of new information technologies**, which allow the State and the providers of different goods and services to continue operating, avoiding the risks of the pandemic, as long as the proper safeguards of the information that is shared are adopted.
- 2. Ensure legal compliance**, in the understanding that contracts for the supply of goods and services to the State must conform to applicable regulations, with emphasis on technical and economic justification to define the contract and the need to which it responds, being especially relevant that the contracts are made at fair prices, as well as that payments to suppliers are made as soon as possible.
- 3. Strictly adhered procedures to the principle of probity**. The actions of the State during this exceptional period will be guided by a criterion of urgency, which allows the use of more simplified procedures, but this does not imply that the basic rules of public integrity, such as those prohibiting conflicts of interest, should not be respected, ignoring rules of transparency.
- 4. Keep internal and external controls available and apply them with a sense of urgency**. The acts and contracts of the State must be rigorously controlled, with the objective of verifying that there are no conflicts of interest in the decision-making process, nor fraud, embezzlement or other actions that are at odds with probity. To this end, it is necessary to respect the full exercise of the existing internal and external control systems, which, in addition to the traditional techniques inherent to these functions, should consider the option of making intensive use of information technologies, data analysis and risk assessment methodologies. This respect and use of new technologies should also apply to administrative and criminal audits and investigations, as appropriate.
- 5. Strengthen inter-institutional coordination and information exchange among the public sector**, but also with civil society and the private sector, avoiding asymmetry of information in decision-making and taking into account that the prevention and detection of corruption is a task that should involve all actors in our society, and that there are various channels available for reporting irregularities and illegal actions.
- 6. Ensure standards of transparency and accountability**. Information regarding public expenditures associated with the pandemic, public procurement, and both health and economic recovery measures, should be published in a timely manner and in open data format so that it is easily accessible and in clear language. Necessary safeguards for the protection of personal and sensitive data should also be implemented. It is recommended that new initiatives related to access to information be promoted, making transparent and explicit the criteria regarding the beneficiaries of aid policies, the origin of their financing, and the way in which such funds and resources are managed.
- 7. Forge agreements between political and social actors that allow for the design of effective governance strategies**. It is important to deliver responses that are inclusive, transparent and under the protection of the rule of law, guaranteeing the adequate functioning of institutions during the pandemic. There must be a society-wide approach in which citizens can participate constructively.
- 8. Strengthen the implementation of integrity systems** that guarantee that those who work in the public sector, regardless of their employment and/or contractual relationship, understand their duties and responsibilities in matters of integrity and can trust the procedures established for their participation, such as the channels for reporting and consultation, which should enhance the reporting and systematization of these matters for subsequent accountability.

9. Enhance the commitment of senior management to the implementation of public integrity systems, defining goals, supporting dissemination within the organization and monitoring their implementation through means of verification.

10. Permanently disseminate and raise awareness on integrity issues, both within the institutions and with the citizens, in response to the risks and vulnerabilities posed by the emergency.

In the context of the current pandemic, the need for urgency in response, does not override standards of probity, does not tolerate conflicts of interest and does not authorize acts of corruption or waive sanctions, so the Anticorruption Alliance recommends that all actors involved be aware of their responsibility to maintain standards of public integrity and prevention of corruption, hoping that they will guide their actions to meet the common good.

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 1(a):

1. With regards to the **detection of foreign bribery**, the Working Group recommends that Chile:

(a) Adopt as a matter of priority an appropriate regulatory framework to protect private sector employees who report suspicions of foreign bribery from discriminatory or disciplinary action [2009 Recommendation IX.iii and Phase 3 Recommendation 11(c)]

Action taken as of the date of the follow-up report to implement this recommendation:

On May 19th 2020, the Government introduced amendments to the bill No. [10,162-05](#), in order to regulate and protect “whistleblowers” in the private financial sector. The bill states that any person could report illegal acts to the Financial Market Commission (“CMF”) and provide information in connection with such illegal act. Nevertheless, please note that the bill only regulates whistleblowers regarding matters that are under the supervision of the CMF (General Banking Law, Securities Market Law, among others matter regarding financial markets).

The bill states that the identity of the whistleblower is confidential and the violation of this obligation could be sanctioned with a fine of 30 UTM (1983 USD) and with jail or destitution of his/her position, if the person is a public servant. In addition, the bill states that service agreements cannot be terminated because of the information provided by the whistleblower (also the whistleblower cannot be fired because of his condition, but this is a consequence of the current Labour Code).

On June 4 of 2020, the Government presented to the National Congress, a bill that *Establishes a new statute in favor of the denouncer of acts against the administrative probity* ([Bulletin N°13.565-07](#)), that was refunded with a parliamentary motion, that *Modifies law N° 18. 834, Administrative Statute, to promote the denunciation, by the public officials, of the crimes and other irregular facts of which they have knowledge* ([Bulletin N°13.115-06](#)); hereinafter, bill that “Establishes a new statute of protection in favor of the denouncer” (consolidated bulletins [13.565-07](#) and [13.115-06](#)). This legal initiative is currently in the first stage of consideration in the Chamber of Deputies.

Among the priority objectives of this bill, we can mention:

(i) Facilitate the presentation of complaints about disciplinary infractions, administrative misconducts, or actions that constitute corruption or affects public goods or resources, by any person, through the

regulation of an electronic and centralized channel of complaints, administered by the General Comptroller of the Republic (CGR).

(ii) Provide an appropriate regulatory framework to protect the complainant from possible acts of retaliation or harassment.

While the project promotes the denunciation of a wide range of irregular behavior through the channel, it places particular emphasis on capturing reports of acts of corruption. To this end, the project incorporates a non-criminal definition of "corruption" to incorporate an all-encompassing notion of the phenomenon in the Administration, which includes, for example, the preemptive detection of malpractices (e.g., the improper meeting, the improper gift, etc.), and the receipt of information that, although not related directly to the commission of a crime, has the potential to serve to detect irregularities committed in the Administration.

Furthermore, while the project provides for the creation of a special protection status for those who perform public functions - who are obliged to report any irregularities they become aware of due to their position - there are also common protection measures available to all whistleblowers, including those who work in the private sector. The following can be mentioned:

1. Protection of the identity of the whistleblower, in the case of the administrative complaint filed through the channel of the General Comptroller's Office.

The project gives the complainant the right to request the secrecy of his or her identity at the time of filing the complaint through the Comptroller channel. If, from the content of the denunciation, it appears that the facts have the character of a crime, or could generate administrative responsibilities of the competence of another control or supervision authority, the Comptroller's Office must denounce these facts to the competent authorities, so that they can exercise their attributions, but always maintaining the secrecy of the identity of the person who made the denunciation, if this has been requested.

2. Protection of the identity of the complainant, in the criminal procedure system, and another protective measures.

In the case of a denunciation, made by any person, of an act that has the characteristics of a crime, the project modifies the Code of Criminal Procedure, in order to recognize the possibility of the denouncer to require the confidentiality of his or her identity.

Likewise, the denouncer may also request the Public Prosecutor's Office to adopt protective measures in his or her favor when the entity or nature of the denounced facts, or the status of the reported subject, indicate that there is a plausible risk that he or his family may be the victims of harassment, threats, or other attacks in connection with the complaint.

3. Sanction against public officials in case of harassment against denouncers, witnesses, or their family.

The initiative punishes public officials who perform acts of harassment against any person who makes a complaint according to the law or declares as a witness in an administrative investigation or in context of a judicial process, or executes actions of this nature against their relatives, with the penalty of removal from office, qualifying this situation as a severe lack of probity.

4. Crimes

In order to reinforce the seriousness of the complaint, the Criminal Code is modified with respect to the crime of slanderous accusation. In addition, the already existing regulation on violation of secrecy is complemented in order to offer a better protection of the confidentiality of the information handled by the system, in particular, the identity of the complainant who has requested its secrecy.

Notwithstanding the above, through the parliamentary indications presented by some deputies throughout the legislative process, some protection mechanisms were also reinforced, especially for workers in the private sector. This is the case of the proposed amendment to the third paragraph of Article 485 of the Labor Code, which regulates the action to protect the fundamental rights of workers under the jurisdiction of the labor courts.

5. Action to protect the fundamental rights of workers

This protective action *"allows the worker to claim the protection of his fundamental rights within the scope of the labor relationship, when those rights are deemed to have been damaged by the exercise of the employer's management and administrative powers"* (Supreme Court, case N° 10.972-13; section 8).

According to the current third paragraph of Article 485 of the Labor Code, it will be understood that there is an injury or violation of the fundamental rights and guarantees indicated in that provision¹⁰ *"when the exercise of the powers that the law recognizes to the employer limits the full exercise of those rights without sufficient justification, in an arbitrary or disproportionate manner, or without respect to their essential content. Shall be understood as such, the reprisals against workers for the exercise of judicial actions, for their participation in them as witnesses or having been offered in such capacity, or as a result of the supervisory work of the Labor Department".*

Although retaliation against workers could be subsumed under the generic grounds of labor protection actions (*limitation to the full exercise of the fundamental rights of the workers without sufficient justification, in an arbitrary or disproportionate manner, or without respect to their essential content*), the bill promotes a clearer view of this situation, explicitly stating that this notion includes *"reprisals against workers for filing complaints or lawsuits, related to acts of corruption of which they have become aware in the exercise of their functions, for the exercise of judicial actions, for their participation in them as witnesses or having been offered such capacity, or as a result of the supervisory work of the Labor Department"*.

¹⁰i) The right to life and to the physical and psychological integrity of a person, provided that its violation is a direct consequence of acts occurring in the work relationship. ii) Respect for the protection of the private life and honor of the person and his family and, likewise, the protection of his personal data. iii) The inviolability of all forms of private communication. iv) Freedom of conscience, the expression of all beliefs and the free exercise of all religions that are not opposed to morality, good customs or public order. v) Freedom to express an opinion and to inform, without prior censorship, in any form and by any means, without prejudice to the responsibility for crimes and abuses committed in the exercise of such freedoms. vi) Freedom of work and the right to its free choice. Likewise, this procedure shall be applied for the knowledge of the discriminatory acts contemplated in article 2 of the Labor Code. The Code establishes two other fundamental rights which may be protected by this procedure, through its articles 62° bis and 292° of the Labor Code, which are the right not to be discriminated against regarding remuneration and the right to freedom of association, in the event of the occurrence of unfair or anti-union practices.

The action of the protection of fundamental rights has a special nature; it is an action of restoration (by ordering the cease of wrongful acts), and at the same time it is a punitive action (it contemplates fines and inabilities to celebrate contracts) and a compensatory action. It has a limited period of discussion, it's ruled by the principles of celerity and simplification, and it addresses highly complex issues, which are difficult to demonstrate and have relevant consequences. In relation to jurisdiction, the conflict is resolved in a single instance before an eminently specialized and protective tribunal.

Among the specificities of this action, we can mention:

- Preventive actions. *"The judge, either ex officio or at the request of the plaintiff, shall order, in the first resolution he issues, the suspension of the effects of the contested measure, when it appears from the records accompanied to the process that there is risk of injuries of special gravity or when the reported violation may cause irreversible effects, under the warning of a fine of fifty to one hundred monthly tax units, which may be repeated until due compliance with the decreed measure is obtained. This may also be decreed at any time, according to the records"*. No appeal is allowed against this resolution (article 492 Laboral Code).

- Dynamic burden of proof. *"When the background information provided by the complainant, shows sufficient evidence of the violation of fundamental rights, it shall be the responsibility of the reported party to explain the grounds for the measures adopted and their proportionality"* (art. 493 Laboral Code). As Professor Héctor Humeres explains, *"A mere indication of proof is sufficient for the worker or the affected person to consider that [the violation] it has been sufficiently proven, and the defendant must explain the grounds for the measure adopted in relation to its objective"¹¹*.

Supporting material:

20200519 Government amendments to the bill No. 10,162-05

If no action has been taken to implement recommendation 1 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(b) Provide comprehensive and adequate protection to whistleblowers in the public sector [2009 Recommendation IX.iii and Phase 3 Recommendation 11(c)]

Action taken as of the date of the follow-up report to implement this recommendation:

The bill that *Establishes a new statute of protection in favor of the denouncer* (consolidated bulletins 13.565-07 and 13.115-06)", as indicated, has among its main objectives:

1. To facilitate the filing of complaints about disciplinary infractions or administrative misconducts, actions that constitute corruption or affects public goods or resources, by any person,

¹¹HUMERES NOGUER, Héctor: Derecho del Trabajo y de la Seguridad Social. Derechos individuales del trabajo y procedimiento laboral, tomo I. Santiago: Editorial Jurídica, 2009. P. 461.

through the regulation of an electronic and centralized channel of complaints, administered by the General Comptroller of the Republic.

2. Provide an appropriate regulatory framework to protect the complainant from possible acts of retaliation or harassment.

This protection system is applied with greater intensity in the case of the denouncer who is a public servant, through a set of preventive and corrective measures, which are mentioned below:

1. Protection of the identity of the whistleblower, in the case of the administrative complaint filed through the channel of the General Comptroller's Office.

This initiative regulates the existence of a centralized and electronic channel for complaints, administered by the General Comptroller of the Republic, so that any person may, in a quick and simple manner, report and provide information about disciplinary infractions, administrative misconducts or actions that constitute corruption or affects public goods or resources, in which public officers or a Administration's agency are involved. Under the premise that the confidentiality of the complainant's identity is one of the essential measures to protect him/her from possible acts of retaliation or harassment, the project grants the complainant the right to request the reserve of his/her identity when submitting the complaint through the channel.

2. Preventive protection measures.

Notwithstanding the reserve of identity, all public officers who make a complaint through this channel, regardless of the form of their contract or designation, may request the Comptroller's Office to adopt one or more protective measures, in order to protect them from being subjected to acts of retaliation that can affect their integrity or job stability. These preventive protection measures must be maintained as long as the causes that originated them persist. Thus, this new protection regime in favor of the complainant who is a public servant represents a substantial improvement in order to overcome the shortcomings of the current protection measures regime, provided by Law No. 20.205, from the perspective of its subjective, objective and temporary scope.

3. Claim of illegality of the act that has the character of retaliation for the denunciation.

Complainants who are public officers, and that as a result of having filed a complaint through the channel, have suffered reprisals as consequence of the formal activity of the Administration, that can affect their indemnity or job stability, shall have the right to appear before the Comptroller's Office, so that it may determine whether these actions or decisions suffer from vices of illegality, for the purpose of ordering their invalidation and the eventual instruction of disciplinary procedures.

This Claim of Illegality, by effect of the parliamentary debate, has been extended to anyone who, even without being a public officer, as a result of having filed a complaint through the means established by this law, is affected in his or her possibilities of entrance, promotion, continuation or renewal of employment in the public service. The same allegation may be made by the spouse, civil partner, ascendant, descendant and collateral up to the second degree, who, by reason of the complaint made by his/her relative, suffers any of the effects described in this paragraph.

4. Rights under Articles 90A and 90B of the Administrative Statute and Articles 88A and 88B of the Administrative Statute of Municipal Officials.

The initiative proposes to strengthen the current protection rules of Articles 90A and 90B of the *DFL N° 29, which establishes a rewritten, coordinated and systematized text of Law N° 18,834 about administrative status* and Articles 88A and 88B of the *Law N° 18,883, which approves administrative statutes for municipal officials*, in favor of public or municipal officials who report in their respective services. The idea was to design a new system of complaints before an external body (the Comptroller's Office) that is well-reconciled with the one, within the institution, that currently governs in favor of public and municipal officials.

5. Sanction in case of harassment against the complainant or witness.

The initiative punishes public officials who perform acts of harassment against any person who makes a complaint according to the law or declares as a witness in an administrative investigation or in context of a judicial process, or executes actions of this nature against their relatives, with the penalty of removal from office, qualifying this situation as a severe lack of probity

6. Protective measures in favor of the complainant in the criminal procedure system.

In the case of a complaint, made by any person, related to an act that has the characteristics of a crime, the project modifies the Code of Criminal Procedure, in order to recognize the possibility of the denouncer to require the confidentiality of his or her identity. Likewise, the denouncer may also request the Public Prosecutor's Office to adopt protective measures in his or her favor when the entity or nature of the denounced facts, or the status of the reported subject, indicate that there is a plausible risk that he or his family may be the victims of harassment, threats, or other attacks in connection with the complaint.

7. Crimes.

In order to reinforce the seriousness of the complaint, the Criminal Code is modified with respect to the crime of slanderous accusation. In addition, the already existing regulation on violation of secrecy is complemented in order to offer a better protection of the confidentiality of the information handled by the system, in particular, the identity of the complainant who has requested its secrecy.

If no action has been taken to implement recommendation 1 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(c):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(c) Enhance the Public Prosecutors' Office's capacity to detect foreign bribery cases [2009 Recommendation IX.ii]

Action taken as of the date of the follow-up report to implement this recommendation:

The PPO (UNAC) has taken several steps aiming at enhancing its capacity to detect foreign bribery.

As part of the reinforcement of the coordination with the Ministry of Foreign Affairs through the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs (which is also in charge of the OECD National Contact Point), during this year several online training workshops were held for the Chilean missions in Argentina, Brazil, Uruguay, Bolivia, Perú, Paraguay, Colombia, Ecuador, Costa Rica, Cuba, México, Panamá and Venezuela, in which also participated representatives from its counterparts in Chile, members of the desks of the Directorates of South America and North America, Central America and the Caribbean, both dependent on the General Secretariat of Foreign Policy of the Ministry of Foreign Affairs. Personnel stationed in the aforementioned countries from PROCHILE, MOFA's trade promotion agency, also participated in the workshops.

These workshops addressed foreign bribery from both theoretical (offence and sanctions) and practical (cases and examples) perspectives, with a special emphasis on the crucial and key role that Chilean overseas missions play in its detection. A total of **80** Chilean public officials participated, including ambassadors and consuls.

Regarding training and other actions implemented by the Undersecretariat of International Economic Relations (SUBREI) from the Ministry of Foreign Affairs (MOFA) with missions overseas, please refer to **recommendation 1(f)**.

Additionally, and as has happened since the beginning Chile participated in the Third Meeting of LAC LEN, which was held virtually, actively intervening in Session 3 (working with witnesses, informants and whistleblowers) through the presentation made by UNAC's Director. In this way, Chile, and particularly the PPO, maintains its strong commitment to this initiative that began in 2018 in Buenos Aires and then in Brasilia in 2019, which allows us to maintain fluid communication channels and informal contacts with our colleagues in the region, which constitutes an important tool to reinforce the detection of foreign bribery cases involving Chilean individuals and companies in a region with a significant presence of Chilean investment.

Furthermore, an updated communication channel has been established between UNAC and the Legal Subdirectorates of the SII (Internal Taxation Service), in order to strengthen coordination and information exchange in all matters relating to corruption offences. In more concrete terms, it is contemplated to develop a model official letter that prosecutors will use to inform the SII every time there is a conviction for foreign bribery, and also when an SCP is adopted in which any of the conditions involve a disbursement of money. Training on foreign bribery for auditors and other officials of the SII is also considered.

See also response to **recommendation 3(f)**.

If no action has been taken to implement recommendation 1 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(d):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(d) Monitor not only the Chilean but also the international media for foreign bribery allegations involving Chilean companies or individuals [2009 Recommendation IX.ii]

Action taken as of the date of the follow-up report to implement this recommendation:

UNAC monitors the international media through Google alerts. Several alternatives of companies specialized in monitoring international media were sought, but no suitable supplier was found. The external company contracted by the Chilean PPO which monitors the national media on a daily basis unfortunately does not provide the service in respect of the international media.

To overcome this shortcoming UNAC has, as said before, strongly reinforced its coordination with the Ministry of Foreign Affairs through the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs, in order to have more and better information from Chilean missions abroad regarding foreign bribery cases.

As a matter of fact, a foreign bribery investigation involving a Chilean capital company has recently been opened on the basis of media information sent by a mission abroad.

Regarding the actions implemented by the MOFA-SUBREI with missions overseas, please refer to **recommendation 1(f)**.

If no action has been taken to implement recommendation 1 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(e):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(e) Make efforts to increase its public officials' reporting of foreign bribery by (i) making the reporting obligations under the CPC, AS and Law 19 913 more consistent; (ii) training its officials on and raising their awareness of the mechanisms for reporting foreign bribery, such as by providing guidelines; and (iii) enforcing the obligation of public officials to report suspicions of crimes and imposing sanctions on those who breach this obligation [2009 Recommendation III.i, III.iv and IX.ii]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) During 2020, a collaborative work started between the institutions with competence in matters of reporting obligations by public officials, namely, National Prosecutor's Office, Comptroller General of the Republic and Financial Intelligence Unit, with the support of the Ministry of Foreign Affairs. The objective is to work on explanatory statement that clarifies the consistency of the different mechanisms. The objective would be to make this information accessible in a public website – possibly in www.anticorrupcion.cl-, with the aim that all public officials and the people can access this information. This information could also be used as a basis of future training of public officials.

The portal www.anticorrupcion.cl, is the result of a joint effort between the General Comptroller's Office (administrative control), the Public Prosecutor's Office (criminal prosecution) and the State Defense Council.

The portal fulfills a double objective, on the one hand to educate citizens about the mandate and powers of the organs involved. In this context, it offers detailed information on the actions of each institution, on how they contribute to combating corruption at the national level, and on their internal integrity systems.

The portal also provides a single platform for access by individuals, including public officials (public officials, civil society organizations, the private sector, and citizens in general) to file complaints on corruption issues. To the extent that the portal explains the scope of each party's powers, it facilitates the action of the denouncer, who can understand the difference between a denunciation of administrative irregularities (made to the CGR) or of crimes (to the Prosecutor's Office). It is planned that the portal will also have an accountability tool where information on the results of complaints will be made available to citizens.

Currently the portal is being updated to be relaunched on the next months.

In addition, the bill that *Establishes a new protection statute in favor of the denouncer* (consolidated bulletins 13.565-07 and 13.115-06), contributes to systematize the statutory duties of denunciation that are incumbent upon public officials, providing that the denunciation through the channel, allows to fulfill the statutory duties of denunciation established in the Code of Criminal Procedure, in the *DFL N° 29, which establishes a rewritten, coordinated and systematized text of Law N° 18,834 about administrative status*, and in the *Law N° 18,883, which approves administrative statutes for municipal officials*. From now on, once the irregularity has been reported to the Comptroller's Office (administrative misconduct or disciplinary infraction), it becomes its responsibility to determine whether the administrative irregularity reported is also a crime or is within the jurisdiction of another authority. In addition, it should be noted that, in view of the use of the concept "State Administration personnel" contemplated in the project, the statutory duties of denunciation are extended to all those who perform public service, regardless of the legal status in which they do so, that is to say, of the form of their contract or designation.

(ii) Different institutions have implemented training actions and guidelines, as follows:

Anticorruption Alliance: Capacity-building activities for public servants carried out by the Anti-Corruption Alliance 2019-2020:

- (2019) Workshop "Tools for managing corruption control" for managers and public officials, version held in the city of Concepción (south of Chile).
- (2019) [Best practices contest](#) against corruption in which an initiative of the [Internal Revenue Service \(SII\) was awarded a prize](#) within the public sector (based on Administrative Jurisprudence)
- (2020) Cycle of 7 webinars [In Pandemic Times Integrity is not left unattended](#) which covered general topics on combating corruption, but also sessions of interest to public servants ([anti-corruption](#), [transparency and accountability](#); [transparency and public procurement](#); [public servants' duties in times of crisis](#); [Information management in the fight against corruption](#))
- (2020) Development of the [Decalogue of Good Integrity Practices in Pandemic Times](#);
- (2020) [Monthly dissemination of activities](#) of free access to the public (public servants and private sector);

Ministry General Secretariat of the Presidency: In September 2019 the [Public Integrity Agenda](#) was launched. It seeks to put an end to corruption with mechanisms that will allow to prevent future cases that

weaken democracy by piercing the very foundations of our political system. It also has legislative and administrative measures that are currently in various stages of implementation.

These include a bill called "Transparency Law 2.0" that will improve our current regulations on access to public information, expanding the institutions subject to its obligations, increasing the information that agencies must make available to citizens and modernizing the corporate governance of its oversight body: the Council for Transparency.

The *Public Integrity and Transparency Commission* (established via [Supreme Decree No. 14 of 2018](#)) created the *Public Integrity Network* with the purpose of building a State close to citizens, with transversal values of integrity and citizen participation. This space is an instance that incorporates efforts to consolidate a culture of integrity, through training that allows professionalizing the roles associated with the matter, opening spaces for collaboration and co-creation among public officials, with the aim of strengthening ethics behavior of public officials.

The Public Integrity Network is aimed at the Claims and Suggestions (OIRS), Transparency and Lobby officials. During 2020, various activities have been carried out, among them the Conference called "Advancing in the Integrity of Public Services in Alliance with Key Actors". Different public institutions have collaborated in these sessions, such as the Office of the Comptroller General of the Republic, the Council for Transparency, Chile Attend and the Public Criminal Defense Office. Civil society has also participated in various organizations, including Chile Transparente, Multitudes and Espacio Público. The topics addressed are related to the attention of the Public, the processing of personal data and anti-corruption, the commission coordinates and summons these activities.

Next, a brief description of the modules presented in said Conference:

- Good practices to strengthen probity in working with citizens: Review of the concepts of **probity and corruption**, the risks of corruption faced by officials in their work with citizens, to end the ethical dilemmas and relevant opinions. (Module taught by the General Comptroller of the Republic).
- Access to information and data protection as axes in public integrity: Understand and reflect on the role of the Right of Access to Information and Protection of Personal Data to promote integrity in public officials, identify other guiding principles for social control that citizens have. (Module taught by the Council for Transparency)
- From corruption to public integrity in the citizen axis: Brief description of how the perception of the acts of corruption has changed, the need to address public integrity as a fundamental axis in the work of officials, tools available to officials. citizens to get involved in the management of public affairs and the value of citizen participation. (Module taught by Chile Transparente).
- Anti-corruption agenda in Chile (progress and challenges): Review of the current situation of the anti-corruption agenda in Chile, its main progress in recent years and what are the pending challenges, with a particular look at the health crisis. (Module taught by Espacio Público).
- Strengthening of care in public services: dignified and equal treatment of citizens, strategies to improve the quality of care and strengthening of collaborative network work. (Public Integrity and Transparency Commission).

In addition, The *Open Government Partnership (OGP)* is a multi-stakeholder initiative created in 2011, based on voluntary commitments by its members. The member states commit to take action to promote transparency, accountability, citizen participation, and innovation and use of technologies for openness. Each country presents successive action plans, each lasting two years, containing concrete and measurable commitments. The Alliance is composed by 78 national governments and 20 local governments.

Fourth Action Plan (2018-2020): It has 12 commitments in natural resources, social and educational policies, transparency and integrity, and modernization of the State. It is currently being implemented and is 76% complete.

The Open Government Board is made up of the Deputy Secretary General of the Presidency, who presides over this body, a representative of the Open Government Civil Society Network and a representative of the Open Government Academic Network, who are elected by their respective networks every two years, plus representatives of international organizations as observers (ECLAC and UNDP).

Currently, the co-creation of the fifth Open Government Action Plan is underway, a space where we have had to adopt digital media to connect with the citizenry. It represents a challenge, but also an innovation in terms of participation and impact of civil society organizations in public decision-making.

Office of the General Comptroller: Capacity-building activities for public servants carried out 2019-2020

| Name of the Activity (2019) | Trained officials |
|---|-------------------|
| Administrative Obligations and Responsibilities | 15 |
| Accounting | 404 |
| Municipal Codes of Ethics | 81 |
| International Anti-Corruption Seminar | 187 |
| Strengthening Integrity in State-Owned Enterprises | 34 |
| Corruption Control Tools Workshop | 44 |
| Principles of Probity Management | 48 |
| Probity and Accounting | 54 |
| Accounting Procedure | 87 |
| Accounting Resolution N°30/2015 | 30 |
| Administrative Responsibility and Accounting | 21 |
| Advanced State Administration Induction | 872 |
| General Induction to the State Administration | 8.782 |
| General Induction to the State Administration: Municipal Sector | 99 |
| Total | 10.758 |

| Name of the Activity (2020) | Trained officials |
|---|-------------------|
| General Induction to the State Administration | 7.811 |
| General Induction to the State Administration: Municipal Sector | 597 |
| Advanced State Administration Induction | 706 |
| Educational Capsules "Electronic Accounting System – SISREC" | 2.442 |
| Ethics, transparency and lobbying | 1.795 |
| Electronic Accounting System | 88 |
| Total | 13.439 |

Financial Analysis Unit: National Prosecutor's Office trained 43 Financial Analysis Units' officials on foreign bribery. The training was held on May 18, 2020, online, with the assistance of the Ministry of Foreign Affairs.

In April 2020, the Financial Analysis Unit, following FATF guidelines, launched 2 information booklets aimed at the public and private sectors, related to the prevention of money laundering and terrorist financing during the context of Covid-19. Identifying, on the one hand, the phenomena that could be ML/TF risks for the financial system and, on the other, the measures that each sector can adopt to avoid ML/TF risks during the pandemic.

Ministry of Foreign Affairs: Regarding institutional advancement, a modernization process took place in the MOFA structure, that transformed certain units that required new control mechanisms. PROCHILE was transformed in a new General Directorate and DIRECON was transformed in an Undersecretariat. These involved the following actions:

PROCHILE: As a new General Directorate since 2019, PROCHILE took the following steps:

- By means of Exempt Resolution J-149, of August 1, 2019, the Compliance Officer before the UAF is appointed.
- By means of Exempt Resolution J-375, of October 7, 2019, the Manual of the System for the Prevention of Money Laundering, Financing of Terrorism and Official Crimes, LA/FT/DF, was approved.
- On September 12, 2019, a lecture was given to all officials of the institution on matters of integrity, including bribery of public officials for the external network, connected via streaming for this event.
- On November 15, 2019, all the headquarters in Santiago received training on money laundering and information security, including bribery of foreign public officials.
- The induction program for new Commercial Attachés, in force since July 1, 2019, includes a presentation on the prevention system of LA/FT/DF. All new trade attachés have been trained in these subjects.
- In the coming weeks in 2020 PROCHILE will be relaunching a mini-site on integrity issues, which includes an explanatory video on the LA/FT/DF prevention system.
- Finally, for the first half of 2021, the following actions are planned:
 1. Update the "OECD Convention to combat bribery" in PROCHILE's website.
 2. Specific training to the external network in these matters.
 3. Training to other specific areas of the institution on these subjects.

Undersecretariat of International Economic Relations: As a new Undersecretariat since 2019, SUBREI took the following steps:

- *System for the Prevention of Money Laundering, Financing of Terrorism and Government Official Crimes (ML/FT/GC)*
 - Through Exempt Resolution No. H-265, of December 27, 2019, the Responsible Officer (Compliance Officer) is appointed for the implementation and operation of the ML/FT/GC Prevention System.
 - In 2020, the Responsible Official conducts Tools Course to establish a preventive anti-money laundering and anti-corruption system in public institutions, taught online by the Financial Analysis Unit (UAF-in Spanish).
 - In 2020, the Responsible Official takes the Money Laundering Awareness Course, developed online by the National Comptroller's Office in conjunction with the UAF.
 - In 2020, creation of an information platform on measures to prevent and combat ML/TF/GC for government officials.
 - Joint communication from the Division of Responsible Business Conduct and the Responsible Official to all government officials of the warnings of the Latin American Financial Action Group (GAFILAT-in

Spanish) about the occurrence of issues that, in the framework of the COVID-19 virus pandemic, could turn into money laundering and terrorist financing risks.

- Joint communications from the Responsible Official and the Information Security Officer, making available to officials the alerts issued by the Commission for the Financial Market (CMF-in Spanish) regarding illegal activities.

- By the end of 2020, the elaboration of the Manual of the ML/FT/OC Prevention System will be finalized, currently this Manual is under review.

• *Integrity System*

- Through Exempt Resolution No. H-150 of June 3, 2020, the Institutional Integrity Coordinator is appointed, whose main function is to create management strategies in order to implement actions and tools conducive to strengthening an organizational culture.

- Integrity System (under development), includes the implementation of the system's infrastructure, the construction of its technological platform, and the training and dissemination of its elements.

- By the end of 2020, appointment of technical advisers of the Integrity System and creation of the Integrity Committee, a purposeful and consultative body representing the government officials.

- By the end of 2020, progress will be made in meeting the specific requirements set by the National Civil Service Directorate for the implementation of the Integrity System.

- Due to the impact of COVID-19, the creation of the Code of Ethics is postponed to 2021, which will have a participatory, representative and transversal institutional process.

• *Other measures by SUBREI-RBC Division*

During 2019 and 2020, three additional measures were taken by the RBC Division:

- 2019, Internal informative meeting with the control and management divisions, with representatives from Transparency, Planning and Management Control and Internal Audit Departments. The meeting had the purpose of informing about the new responsibilities related to the OECD Antibribery Convention in SUBREI, the outstanding recommendations given to MOFA, and possible options to initiate a collaborative work.

- In 2020, a special meeting was held with the International Department team of PROCHILE, in order to reinforce the different international standards to promote a sustainable and ethical trade, including the OECD Antibribery Convention and the measures committed by PROCHILE during the Phase 4 evaluation process.

- In 2020, a decision was made to start actively working as a member in the Anticorruption Alliance, joining several groups: *standards* (group 3), *promotion of integrity* (group 1) and *legislative initiatives* (group 4).

- During 2019-2020, various capacity building activities with public officials have taken place, with the participation of the NCP, promoting the OECD Guidelines and Antibribery Convention:

| Title | Date (dd/mm/yyyy) | Location | Size of audience | Targeted audience <i>e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc.</i> | Theme <i>e.g. the OECD Guidelines, the NCP activities on sector due diligence guidance documents, etc.</i> |
|--------------|-----------------------------|--------------------|-------------------------|--|--|
| Presentation | 6 May 2019 | Ministry of Energy | 10-50 | Government representatives | OECD Guidelines including Antibribery Convention and RBC due diligence and Guidance for Meaningful Stakeholder Engagement in the Extractive Sector |

| | | | | | |
|--|--------------|------------------------------------|-------|---|---|
| Presentation | 31 May 2019 | National Institute of Human Rights | 10-50 | Government representatives | OECD Guidelines including Antibribery Convention and NCP good offices process |
| Capacitación Comercio Sostenible | 12 June 2019 | On-line | 10-50 | Government representatives – PROCHILE National Regional offices | OECD Guidelines, including Antibribery Convention and RBC due diligence |
| Class | 13 June 2019 | Diplomatic Academy | 10-50 | Future diplomats | OECD Guidelines, including Antibribery Convention and RBC as an element of trade policy |
| Taller Comercio Sostenible y CER - Directores Regionales PROCHILE | 27 June 2019 | Ministry of Foreign Affairs | 10-50 | Government representatives | OECD Guidelines, including Antibribery Convention and RBC due diligence |
| Punto Nacional de Contacto de Chile como mecanismo de participación y consulta ciudadana | 30 July 2020 | SUBREI | 10-50 | Public Officials | OECD Guidelines, National Contact Point and OECD Anti-bribery Convention |

- In addition, SUBREI, with the assistance of the PPO, edited an information booklet for public officials, based on the previous work done and including the changes of the new reform from 2018. This booklet was published in their [webpage](#). In addition, it was submitted via email to N°813 SUBREI and PROCHILE officials in November 2020.

• *Chilean Consensus Framework for Multi-Stakeholder Ethical Collaboration in the Pharmaceutical and Medical Device Sectors, APEC.*

Since September 2019, SUBREI, Regulatory Division, with the assistance of the RBC Division, Chairs and leads the APEC Consensus Framework, working towards a common ethical standard, among other objectives. More information in the [Status Report on Consensus Frameworks in the APEC Region](#) (p7).

Regarding training and other actions implemented by the MOFA-SUBREI with mission overseas, please refer to **recommendation 1(f)**.

(iii) The *Bill that establishes a new statute of protection in favor of the denouncer* (consolidated bulletins 13.565-07 and 13.115-06), promotes the fulfillment of the duty to denounce by the public official, through two channels:

1. Acknowledging the complainant who has participated in the acts that are the subject of the complaint, a mitigating circumstance of liability for effective cooperation in administrative proceedings, for the purpose of reducing his sentence (in criminal proceedings, the acknowledgment of a mitigating circumstance for effective cooperation is currently recognized in Articles 11 No. 9 and 260 quater of the Criminal Code). "Effective cooperation", for these purposes, shall mean the provision of accurate, truthful, and verifiable data or information that necessarily contributes to the determination of the administrative, civil, or criminal liabilities of those involved.

2. Assigning the complainant certain benefits, such as the granting of a merit notation.

Supporting material:

- FIU Training activity supporting documents
- FIU Booklets
- PROCHILE Exempt Resolution J-149
- PROCHILE Exempt Resolution J-375
- PROCHILE Training activity supporting documents
- SUBREI Exempt Resolution H-265
- SUBREI Responsible Official's courses certificates
- SUBREI Responsible Official's Joint communications
- GAFILAT booklet.
- Alerts issued by the Commission for the Financial Market.
- SUBREI Exempt Resolution H-150
- Supporting documents of SUBREI Integrity System
- Supporting documents RBC Division especial meetings with SUBREI and PROCHILE
- Mail formalizing the participation of SUBREI in the working group of Anticorruption Alliance.
- RBC Division (NCP) training activity supporting documents (some PPTs are presented as an example)
- Booklet by mailing to SUBREI and PROCHILE officials.

If no action has been taken to implement recommendation 1(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(f):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(f) (i) Analyse why Chilean overseas missions have failed to report specific foreign bribery allegations and take appropriate remedial action that address these failures; and (ii) take steps to ensure that the instructions in the new circular are properly implemented by its overseas missions and; (iii) ensure that its overseas missions actively monitor the local media for allegations of foreign bribery involving Chilean individuals and companies [2009 Recommendation IX.ii and Phase 3 Recommendation 11(b)(i)]

Action taken as of the date of the follow-up report to implement this recommendation:

(ii) & (iii) The MOFA has been active since the Phase 4 evaluation. During 2019-2020, routine training in integrity and administrative responsibility took place focused on diplomatic officials as well as managers, professionals and technical experts, most of them before being posted abroad:

| Training | Year | N° of Participants |
|--|-------------|---------------------------|
| Integrity and Transparency | 2019 | 42 |
| On-line course integrity and administrative responsibility | 2020 | 30 |
| Integrity and Transparency | 2020 | 55 |
| Foreign Bribery and MOFA | 2020 | 36 |
| TOTAL | | 163 |

During 2019, an official decision was made by the Minister of Foreign Affairs, to change the responsibility to coordinate the implementation of the OECD Antibribery Convention from DISIN to SUBREI, under the Responsible Business Conduct Division (created in 2018 and also in charge of the OECD Guidelines National Contact Point), decision that was implemented in September 2019. Since then, SUBREI had made constant efforts to further the work done by DISIN. SUBREI joined the Anticorruption Alliance and has actively worked in standard setting for the Alliance members and supported the development of promotional events.

Internally, SUBREI has coordinated various actions with the Undersecretariat of Foreign Relations (SUBREL), which is in charge of the overseas missions' oversight and PROCHILE, which is in charge of the trade offices nationally and around the world.

First, after evaluating the implementation of the previous reporting instructions (circular 315, 2018), a new circular 84 was issued in April 2020. This new instruction requested more information about the press monitored in the period and presented formats to fill-in the information in other to clarify and structure the reporting. During 2020, 82 periodic reports were received, with information about the local media monitoring and training activities conducted and followed by officials in overseas missions. In addition, during the period different information about potential cases was reported to SUBREI, which was immediately forwarded to the PPO, as agreed. Among these communications, there was the reporting of a case that initiated an investigation by the PPO for the first time.

In addition, in coordination with the Training Department of SUBREL, a cycle of three on-line training and consultation sessions took place, with the support of the PPO. SUBREI proposed to focus in this first period in the main destinations of Chilean investments, which are countries in the Latin-American region. These trainings were organized and conducted by the Responsible Business Conduct Division with the support of the PPO. For the first time, with the idea of being more effective and with the aim of promoting a general responsibility in the detection and reporting of foreign bribery across different MOFA units, integral training was made to officials from different areas within MOFA, namely both undersecretariats (SUBREL & SUBREI) and PROCHILE, together.

| Missions | Date | N° of Participants |
|---|-------------|---------------------------|
| Argentina, Brasil, Uruguay | 28-10-2020 | 20 |
| Bolivia, Paraguay, Perú, Ecuador, Colombia | 05-11-2020 | 36 |
| Costa Rica, Cuba, México, Panamá, Venezuela | 18-11-2020 | 24 |
| TOTAL | | 80 |

After each one of these events, supporting material was sent via email to all registered officials, reaching **129** people altogether (21 in the 1st training, 56 in the 2nd and 52 in the 3rd).

(i) Following 2014 recommendation, reiterated in 2018, this training instances were used as a consultation opportunity in order to continue with the analysis started by DISIN and SUBREI, on why Chilean overseas missions have failed to report specific foreign bribery allegations.

Following the internal analysis of the history of the recommendations given to MOFA by the Working Group on Bribery and the capacity building and consultation sessions, a report was prepared and presented by the Director General on Multilateral Economic Relations (S) (SUBREIMULTI) to the Undersecretariat of SUBREI, with preliminary results and way forward (Memo 1579-2020).

In particular, SUBREIMULTI included in the 2021 Collective Performance Agreement -a public instrument that aims to support the implementation of administrative improvements- a specific goal to continue these trainings and consultations in order to cover other regions and broaden the assessment. In this second cycle, the main destinations of Chilean exports will be prioritised. This decision was made in order to guarantee the continuation of a permanent process of dialogue, evaluation and remedial actions, addressing new areas of improvement that could be detected.

Supporting material:

- MOFA Training activity supporting documents
- Circular 84-2020 translation
- RBC Division/PPO Training activities supporting documents
- Memo 1579, 2020 & OECD Anti-bribery Convention Report: Evaluation of foreign bribery monitoring and reporting by the Ministry of Foreign Affairs
- 2021 Collective Performance Agreement with specific target translated to English

If no action has been taken to implement recommendation 1 (f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(g):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(g) (i) Develop typologies of money laundering that specifically address foreign bribery, drawing on successfully concluded enforcement actions in Chile and material from foreign sources; and (ii) further train UAF staff and reporting entities specifically on detecting foreign bribery [2009 Recommendation III.i and Phase 3 Recommendation 7(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) A Typologies Report that clarifies typologies of money laundering that specifically address foreign bribery was developed during 2020. In October 2020 the document was published and available in the FIU website and for free access for both public officials and all the people. Furthermore, a communication was sent in November 2020 to natural persons and legal persons who are bound by FIU Law about the availability of the Typologies Report.

(ii) Training

- *Training FIU officials:* On May 18, 2020, the National Prosecutor's Office trained 43 officials from FIU on Foreign Bribery of Public Officials.

- *Training of entities obliged to report suspicious operations in the detection of foreign bribery:* FIU has incorporated a module dedicated to foreign bribery of public officials into the *e-Learning* course called "Tools to establish a preventive anti-money laundering system and anti-corruption in public institutions." This *e-learning* course aimed at the public sector.

The details of public officials and public institutions trained in this course are the following:

Year 2019: 723 people were trained and 323 public institutions

Year 2020: 492 people were trained and 100 public institutions

Supporting material:

- 2020 Typologies Report and communique sent
- Training activities supporting material

If no action has been taken to implement recommendation 1 (g), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(h):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(h) (i) Encourage external auditors to take greater account of the risks of foreign bribery in the companies that they audit; (ii) align the reporting obligations that apply to the external audit profession by requiring external audit firms to report crimes to competent authorities; (iii) ensure that auditors who report suspected wrongdoing reasonably and in good faith to competent authorities are protected from legal action; and (iv) improve audit quality standards, including with regard to certification and independence [2009 Recommendation X.B.i, ii and iv, and Phase 3 Recommendation 8(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

Regarding recommendation **1(h)(i)**, it is important to point out that NCG 275 requires External Audit Companies (EACs) to implement in their internal regulations, rules and policies concerning the treatment of irregularities, anomalies, and offenses that auditors may detect during their auditing duties and that could affect the administration and accounting of audited companies. The CMF does not have the legal mandate to require EAC to specifically take into consideration the bribery offence, as it does not fall under the CMF's supervisory perimeter.

Regarding recommendation **1(h)(ii)**, although the reporting obligations are in rules of different hierarchy, the provisions stipulated in NCG 275 dictate that the regulations established by the EAC's must include mechanisms to communicate these situations detected to the partners of the EAC, to the board of directors of the audited entity or its managers if it does not have a board of directors, to the PPO and to the CMF, as established by the same regulation considering the seriousness of the situation detected.

In the case of recommendation **1(h)(iii)**, regarding *Inspectores de Cuentas y Auditores Externos (ICAE)*, in accordance with Article 100 of Decree No. 702, they must report any illicit activity that they discover during the audit. Additionally, the Decree states that the ICAE should not be subject to legal actions, unless there was a lack of good faith in reporting the illicit activity. There is no specific legal protection in that Decree (other than the general legal responsibility regime).

Finally regarding recommendation **1(h)(iv)**, Article 240 of Law No. 18,045 provides that External Audit Companies, when applying for registration with the CMF must attach a copy of their internal regulations, which must set out at least the following matters relating to the company's activities (i) the rules of procedure, control and analysis of the audit; (ii) the rules of confidentiality, handling of privileged or reserved information and the solution of conflicts of interest, and (iii) the rules of independence of judgment and technical suitability of the personnel in charge of the management and execution of the external audit. Moreover, NCG N° 275 issued by the CMF requires the accreditation of the academic title

or degree of the auditing professionals of the external auditing companies, requiring also advanced studies on the standards related to the subject.

The President of the Republic by constitutional mandate has the administration and organization of the State, assigning as an advisory body, the Government General Internal Auditing Council, (CAIGG), to commissioned the internal audit, internal control and risk management, in order to coordinates and leads the internal audit activity in public services.

As indicated by the GAB. PRES. 004-2018 , the President of the Republic instructs four Governmental Objectives, among which the number 2 “Internal Control” and number 3 “Risk Management”, establishes audit work that the internal auditors of each public service must carry out, under the guidelines given by the CAIGG indicated in technical documents N° 103 and 105, respectively .

Supporting material:

<https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2018/05/GAB.-PRES.-N%C2%B0004-2018-OBJ.-GUB.-2018-2022.pdf>

<https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2018/06/DOCUMENTO-TECNICO-N-103-OGA2.pdf>

<https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2018/07/DOCUMENTO-TECNICO-N-105-OGA3.pdf>

In other matter, the Governmental Objective N° 1 “Administrative Probity”, established for the public services the implementation of activities associated with probity, compelling to report the assurance actions in the purchasing processes to the CAIGG in accordance with the guidelines provide by technical document number 102. Nowadays, as consequence of the pandemic and in line with instruction GAB. PRES. 004-2020, the public services also must report all purchases made due to the health crisis.

Furthermore, the Government Objective number 4, is aimed to seek a permanent execution by the public services of insurance actions on financial - accounting operations under the guidelines of the CAIGG defined by technical document N° 106.

Supporting material:

<https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2018/05/GAB.-PRES.-N%C2%B0004-2018-OBJ.-GUB.-2018-2022.pdf>

https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2020/05/2020_04_29-GAB.-PRES-004-2020-Instructivo-control-emergencia.pdf

<https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2018/06/DOCUMENTO-TECNICO-N-102-OGA1.pdf>

<https://www.auditoriainternadegobierno.gob.cl/wp-content/uploads/2018/06/DOCUMENTO-TECNICO-N-106-OGA4.pdf>

If no action has been taken to implement recommendation 1 (h), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(i):

1. With regards to the detection of foreign bribery, the Working Group recommends that Chile:

(i) Establish a policy for companies to self-report foreign bribery, including by considering whether to offer conditional suspensions and abbreviated procedures as an incentive for self-reporting [2009 Recommendation III.i].

Action taken as of the date of the follow-up report to implement this recommendation:

The drafting of new versions of both the *General Prosecutorial Instruction 440/2010* and the *2014 UNAC Practical Guide* is still in preparation by the PPO, with various aspects that will be modified and updated in accordance with the recommendations made to Chile in the Phase 4 Final Report. Certainly, one of them will be the incorporation of incentives for companies to self-report both for foreign bribery and for other offences whose commission triggers criminal liability of legal persons.

If no action has been taken to implement recommendation 1 (i), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2 (a):

2. With regards to investigations and prosecutions, the Working Group recommends that Chile:

(a) Take steps to ensure that prosecutors and judges apply the autonomous definition of a foreign public official under Chilean law [Convention Art. 1 and Commentary 3]

Action taken as of the date of the follow-up report to implement this recommendation:

On July 29th 2020, the PPO issued a new General Prosecutorial Instruction N° 472/2020 which provides performance criteria regarding corruption crimes, replacing Instruction 699/2014 referred to in the Phase 4 report. In its fourth section, concerning investigations for bribery of foreign public officials, the new General Prosecutorial Instruction 472/2020 literally states that “*both the elements of the crime and especially the autonomous definition of a foreign public official must be applied by prosecutors in accordance to Chilean laws, particularly with section 251 ter of the Criminal Code*”.

Supporting material:

- General Prosecutorial Instruction N° 472/2020, Santiago, July 29, 2020. Official translation by the Ministry of Foreign Affairs.

If no action has been taken to implement recommendation 2 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2 (b):

2. With regards to investigations and prosecutions, the Working Group recommends that Chile:

(b) Take steps to ensure that expertise in forensic accounting and information technology is available in foreign bribery investigations [Convention Arts. 2 and 5, 2009 Recommendation III.ii and Annex I.B, and Phase 3 Recommendations 1(a) and 4(h)]

Action taken as of the date of the follow-up report to implement this recommendation:

New General Prosecutorial Instruction N° 472/2020 which provides performance criteria regarding corruption crimes introduced a section on minimum investigative proceedings, which prosecutors are instructed to carry out without prejudice to the singularities of each corruption case investigated. Among these minimum investigative proceedings is the request to UNAC for its financial analysts to perform an assets and liabilities analysis of the defendant, his/her family group and corporate partners.

Also, part of the PPO's permanent policy to train and update the knowledge of its prosecutors and officials, since 2018 UNAC professionals have participated in the following courses in order to strengthen their capacities to deal with foreign bribery cases:

| COURSE | INSTITUTION | DATE | TEACHING HOURS |
|--|---|----------------------------|----------------|
| Excel Work Optimization | Universidad Católica de Chile | March 26 – April 16, 2018 | 27 |
| Foreign Trade Techniques | Universidad Católica de Chile | June 19 – July 24, 2018 | 33 |
| Corporate Compliance | Universidad de Chile | October 23 – 26, 2018 | 16 |
| Diploma in Risk Management and Regulatory Compliance | National Institute for Standardization, INN (member of the International Organization for Standardization, ISO) | May 25 – December 07, 2018 | 152 |
| Management of investigative tools | Specialised Unit on Money Laundering, Economic, Environmental and Organised Crime, ULDDCO, Chilean PPO | May 17, 2018 | 4 |
| Management of RESIT (Registry of Telephone Interceptions Request) and VIGIA (wiretapping software) | Specialised Unit on Illicit Trafficking of Narcotic Drugs and Psychotropic Substances, Chilean PPO | May 23, 2018 | 4 |
| Corporate Fraud | Universidad Adolfo Ibáñez | June 3 – July 8, 2019 | 32 |
| Income Declaration Operation 2020 | Institute for Tax and Financial Studies | April 6, 7 & 9, 2020 | 15 |
| Finances for Non-Financiers | Universidad Adolfo Ibáñez | May 7 – June 4, 2020 | 18 |

If no action has been taken to implement recommendation 2 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2 (c):

2. With regards to investigations and prosecutions, the Working Group recommends that Chile:

(c) Further train prosecutors on foreign bribery investigations and prosecutions, including corporate investigations and corporate offence prevention models [Convention Arts. 2 and 5, 2009 Recommendation III.ii and Annex I.B, and Phase 3 Recommendations 1(a) and 4(h)]

Action taken as of the date of the follow-up report to implement this recommendation:

On August 18-19, 2019, in the context of the Third Senior Officials' Meeting (SOM3) of APEC, and as part of the Anti-Corruption and Transparency Experts Working Group (ACTWG), the PPO together APEC Secretariat organized the "ACT Net Workshop for Law Enforcement Agencies on Effectively Using Corporate Compliance Programs to Combat Domestic & Foreign Bribery".

The first day of the workshop focused on the evolving use of corporate compliance programs by law enforcement and the lessons from international & domestic practices, which included the discussion of interest topics from the following experts:

- **How International Organizations are Setting Standards for Law Enforcement to Evaluate the Use of Corporate Compliance Programs // William Loo**, Deputy Head of Anti-Corruption Division, Organization for Economic Co-operation & Development (OECD).
- **World Bank Anticorruption Guidelines and the United Nations Convention Against Corruption, including Principles on Corporate Compliance // Lisa Bhansali**, Professor, Georgetown University Law Center, Independent Consultant; **Shervin Majlessi**, Deputy Coordinator of the StAR Initiative and UNODC.
- **Prosecuting Bribery and the Application of Corporate Compliance Programs: A Review of Comparative Systems // U.S.: Sally Molloy**, Chief of the Strategy, Policy & Training Unit of the Fraud Section of the U.S Department of Justice; **Chile: Ximena Chong**, Chief Prosecutor at High Profile, Complex Cases, Public Prosecutor's Office; **Malaysia: Premraj Victor**, Section Head-Financial Analysis Division, Malaysian Anti- Corruption Commission; **Peru: Martín Felipe Salas Zegarra**, Senior Anti-Corruption Prosecutor of Lima, Public Prosecutor's Office; **Hui Chen**, Independent Compliance Expert and Founder of HuiChenEthics.com and Distinguished Research Fellow, Rutgers University Law School. Moderator: **Hui Chen**.
- **Criminal investigation of Bribery and Corporate Compliance: Good practices // Chile, Pietro Hernandez**, Head of the Anticorruption Bureau, Investigative Police Force; **Australia: Cameron Watts**, National Team Leader, Anti-Corruption & Organized Crime, Australian Federal Police; **Vietnam: Bui Minh Duc**, Officer, Police Bureau for Investigating Corruption and Economic Crimes, Ministry of Public Security. Moderator: **Shervin Majlessi**.
- **Economies' Law Enforcement Efforts to Provide Incentives for Companies to Adopt Compliance Programs and other Anticorruption Tools // US: Sally Molloy**, Chief of the Strategy, Policy & Training Unit of the Fraud Section of the U.S Department of Justice; **Chile: Hernán Fernández**, Deputy Director, Specialized Anticorruption Unit, Public Prosecutor's Office; **Canada: Stephane Hould**, Senior Counsel at the Public Prosecution Service (PPSC); **Singapore: Neo Siong Leng**, Senior Assistant Director, General Investigation Branch 2, CPIB & **Grace Lim**, Deputy Public Prosecutor, Criminal Division, Attorney-General's Chambers; **Hong Kong: Daphne Lim**,

Principal Investigator of the Independent Commission Against Corruption (ICAC). Moderator: **William Loo.**

Second day of the workshop focused on the challenges for private sector and strengthening public prosecution of corruption in APEC economies, in which the following topics were discussed:

- **Creating & Overseeing a Dynamic Corporate Compliance Program** // **Hui Chen**, *Independent Compliance Expert and Founder of HuiChenEthics.com and Distinguished Research Fellow, Rutgers University Law School*; **Reyna Torrecillas**, *GE's Chief Compliance Officer for Latin America*; **Leigh Anne Leinen**, *BHP's Head of Compliance for the Americas*. Moderator: **Lisa Bhansali.**
- **The Use of Corporate Compliance Programs to Avoid Criminal Liability: Private Sector Experience from Chile** // **Gonzalo Smith**, *Chief Legal and Governance Officer of Falabella*; **Luis Hernán Paul**, *Consultant and board member of several companies*; **Marcela Paiva**, *Chilean National Contact Point for the OECD Guidelines, Responsible Business Conduct Department, Undersecretary of International Economic Relations*. Moderator: **Claudia Ortega.**
- **Public and Private Partnership, working together to build a compliance culture: Australian experience** // **Cameron Watts**, *National Team Leader, Anti-Corruption & Organized Crime, Australian Federal Police*; **Leigh Anne Leinen**, *BHP's Head of Compliance for the Americas.*
- **Corporate Compliance Programs and Challenges to the Private Sector: Seeking to Meet Expectations** // **Susana Sierra**, *Partner and Executive Director, BH Compliance. Member of the board of Correos de Chile. Part-time professor at the Pontificate Catholic University of Chile (PUC) and University of Los Andes, teaching compliance and entrepreneurship*; **Alejandro Ferreriro**, *member of the board of Espacio Público (Think Tank)*; **Fernando Coloma**, *Professor, Institute of Economics at the Pontificate Catholic University of Chile*; **Matt Galvin**, *Vice President of Ethics and Compliance at Anheuser-Busch InBev (AB InBev.)*; **Zhang Zhaogang**, *Chairman of China State Development & International Cooperation (SDIC) International Trade Co., Ltd.* Moderator: **Susana Sierra.**

Along with the international and national experts, in the workshop also participated the National Prosecutor of Chile, 16 Regional Prosecutors, 36 local prosecutors and 11 legal advisors from all over the country. Members of the Metropolitan Anti-Corruption Investigative Brigade (BRIACMET) from the Chilean Investigative Police (PDI) also attended the workshop.

Publications and more information on this workshop are available at:

- Complete information about the Workshop in the APEC Project Database.

<https://aimp2.apec.org/sites/PDB/Lists/Proposals/DispForm.aspx?ID=2323>

- APEC Project Completion Report, *Capacity Building Workshop for Law Enforcement Agents to investigate individual and corporate liability in domestic and foreign bribery*. April 2020

https://aimp2.apec.org/sites/PDB/Supporting%20Docs/3788/Completion%20Report/ACT%2001%2018A%20CR_final_27May2020.docx

- Summary Report, ACT Net Workshop for Law Enforcement Agencies on Effectively Using Corporate Compliance Programs to Combat Domestic & Foreign Bribery, Puerto Varas, Chile, August 18-19, 2019,

Lisa L. Bhansali, International Consultant, Asia-Pacific Economic Cooperation (APEC), submitted on September 15, 2019.

https://aimp2.apec.org/sites/PDB/Supporting%20Docs/3788/Completion%20Report/ACT%2001%2018A%20Workshop%20Summary%20Report_Fnl.docx

- Guidebook on Best Practices in Monitoring and Supervising Effective Corporate Compliance Programs, February 2020, SOM Steering Committee on Economic and Technical Cooperation (SCE), Anti-Corruption and Transparency Working Group (ACTWG).

<https://www.apec.org/-/media/APEC/Publications/2020/2/Guidebook-on-Best-Practices-in-Monitoring-and-Supervising-Effective-Corporate-Compliance-Programs/220ACTGuidebook-on-Best-Practices-in-Monitoring-and-Supervising-Effective-Corporate-Compliance-Progr.pdf>

If no action has been taken to implement recommendation 2 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2 (d):

2. With regards to investigations and prosecutions, the Working Group recommends that Chile:

(d) (i) Ensure that it assesses credible allegations of foreign bribery when they surface, and seriously investigate this offence in Chile and abroad; and (ii) use proactive steps to gather information from diverse sources to increase sources of allegations and enhance investigations [Convention Art. 5, 2009 Recommendation V and Annex I.D]

Action taken as of the date of the follow-up report to implement this recommendation:

As has been its usual policy, the PPO has opened investigations at its own initiative when serious data and information have come to light regarding the possible commission of foreign bribery in which a Chilean natural or legal person could be involved. Since 2018, three investigations have been opened, as will be detailed in the foreign bribery enforcement actions separate document.

Information sent by missions abroad has been used and informal international cooperation mechanisms have been sought in order to confirm the seriousness of the allegations appearing in the international media, with the aim of adequately resolve the opening of an investigation when appropriate.

If no action has been taken to implement recommendation 2 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2 (e):

2. With regards to investigations and prosecutions, the Working Group recommends that Chile:

(e) Align the investigative tools available in investigations of foreign bribery and money laundering, so that basic, special and covert investigative techniques are available and used in foreign bribery investigations [Convention Art. 5, Commentary 27 and Phase 3 Recommendation 4(g)]

Action taken as of the date of the follow-up report to implement this recommendation:

Currently, the provisions that regulate the application of special investigation techniques can be found in various laws, among which are the Criminal Code; the Criminal Procedure Code; Law No. 20,000, which replaces Law No. 19.366, which punishes the illicit traffic of narcotics and psychotropic substances; Law No. 19,974, on the State Intelligence System and creates the National Intelligence Agency; and Law No. 19,913, which creates the Financial Analysis Unit and amends various provisions on money laundering. Among these special investigative techniques are undercover agents, revealing agents, informants, controlled deliveries, the interception of communications and other technical means of investigation.

Each of the techniques indicated has a specific scope of application. In the case of the special techniques of interception of communications and other technical means of investigation (photography, filming or other means of reproducing images) they can be used only for the investigation of facts that are punishable as crimes (Articles 222 and 226 of the Code of Criminal Procedure).

On the other hand, regarding the special techniques of undercover agents, revealing agents, informants and controlled deliveries, the first step to enshrine them in our legal system was taken in 2005, in the fight against drug trafficking, through the publication of Law No. 20,000.

Subsequently, this type of investigative technique was authorized for crimes such as money laundering, child pornography, child prostitution, smuggling of migrants and human trafficking, until finally, through Law No. 20931, a new article 226 bis was added to the Code of Criminal Procedure, which enshrines these tools for certain crimes against property, of the Law Establishing Arms Control, Decree with the Force of Law No. 400, which establishes a consolidated, coordinated and systematized text of Law No. 17,798 on arms control.

Law No. 21,121, amending the Criminal Code and other legal provisions for the prevention, detection, and prosecution of corruption, of November 2018, increased the penalty applicable for the crime of foreign bribery, contained in Article 251 bis of the Criminal Code, from a theoretical framework that extended from 541 days to 5 years of deprivation of liberty, to a theoretical framework that extends from 3 years and one day to 10 years of deprivation of liberty. With this increase in the penalty for the crime, special techniques for the interception of communications and other technical means of investigation were made applicable to investigations of foreign bribery.

In addition to the above, the State of Chile has been working on a draft law through which it proposes to incorporate a new Paragraph 3° bis in Title I of Book II of the Criminal Procedural Code, in order to provide for a comprehensive and systemic regulation of special techniques, extendable to all crimes committed in a context of organized crime, including the crime of foreign bribery. In this way, all investigative techniques, basic and special, will be regulated in a single body of law, of general application, for the investigation of this new type of phenomenon.

If no action has been taken to implement recommendation 2 (e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2 (f):

2. With regards to investigations and prosecutions, the Working Group recommends that Chile:

(f) (i) Align the rules for lifting bank secrecy in foreign bribery cases with the rules applicable in domestic bribery cases, tax offences and money laundering; (ii) ensure that the information subject to banking restraints are readily available to prosecutors and not subject to bank secrecy rules; and (iii) take measures to reduce delay and improve the co-operation of financial institutions when providing the required financial information [Convention Arts. 5 and 9(3), and Phase 3 Recommendation 4(f)].

Action taken as of the date of the follow-up report to implement this recommendation:

(i) The rules on banking secrecy are contained in article 154 of the General Banking Law and have been established for the protection of deposits and collections of any nature received by the banks. With regards to its application, the Law does not distinguish between the different types of cases that may eventually require the lifting of bank secrecy laws. Likewise, concerning tax crimes or information exchange agreements, the Tax Code considers a procedure to access the bank information through a request to the Tax and Customs Courts.

(ii) & (iii) The Prosecutors of the PPO may access the information subject to secrecy, pursuant to the procedure established in the same article 154 of the General Banking Law (paragraph 6) and which allows the lifting of the banking secrecy.

Additionally, after two years of work, an important legislative improvement was made. Law No. 21.130, published on January 12th, 2019, that Modernizes Banking Legislation, incorporated a new paragraph to Article 154 of the General Banking Law. This reform establishes that the background information subject to secrecy or reserve must be delivered by the requested bank within 10 banking business days, from the reception of the request of its holder or from the moment the requirements, in the case of the reserve, are met. The term may be extended by the CMF at the request of the respective bank, in the event that it is justified by the age, nature or volume of the required information. Last paragraph of article 154 establishes that the CMF may sanction "the total or partial omission in the delivery of such information".

The CMF, in accordance with the provisions of paragraphs 9 and 10 of article 154, has taken cognizance of 5 complaints filed by the Regional Prosecutor's Offices of Arica and Parinacota, and Bio Bio, for the violations by certain banks of their obligation to deliver information to the PPO, as stipulated in those provisions of the law. This sanctioning processes currently underway shows advances in enforcement and oversight by the CMF.

On January 3, 2014, the CMF (former SBIF) and the PPO signed a cooperation agreement that establishes an electronic communication channel between both institutions that allows them to access information related to the payroll of financial entities in which people have debts and credits. Said agreement is in force as of today and CMF keeps the platform available for consultations via the web that allows continual access to information and in the terms that have been mentioned.

The PPO notes the implementation of the improvements to the registration of banking products as required by Law N° 20.818 of 2015, in accordance to the final paragraph of article 14 of the General Banking Law, which now states: "*The Commission shall permanently maintain a list of the depositors of the institutions audited under this law, indicating their unique tax number (RUT), identification of the type of account or product and their internal registration number*" are still pending. Since 2015, the registries that can be

accessed by the PPO still do not indicate the type of product that the consulted person has nor its identification number.

It is important to consider that CMF is still in the process of integrating the oversight functions that were delegated from the Superintendence of Banks and Financial Institutions. The CMF is the legal successor of SBIF since June 1st, 2019. The integration process will be completed by January 1st, 2021. Therefore, the CMF will need to meet with the PPO to address the outstanding issues that have been mentioned.

According to the PPO, prosecutors continue to have serious difficulties in obtaining information subject either to banking secrecy or reserve in criminal investigations in general, although this has a greater impact on investigations of public corruption or white-collar crimes.

Seeking to overcome these difficulties, the PPO and Banco Estado, only state-owned financial institution and public bank in Chile, have been coordinating the development of a pilot plan to improve the quality and response times of financial information requirements. This protocol will be in effect from December 1st 2020 and includes the creation of a unique e-mail address by Banco Estado to which all requests must be sent, as well as a specific request form to be completed by the prosecutors in charge of the investigation in which the banking information is being requested. Finally, the PPO has also created a special e-mail address, which must be copied in all the information requests submitted by prosecutors to Banco Estado, in order to track the responses and verify the proper functioning of the protocol.

Finally, the PPO has benefited from a technical assistance project to improve financial investigations granted by the Program El Pacto of the European Union. On July 2019, we received the visit of 3 experts from the Procuraduria General of Brazil to evaluate the possibility of implementing in Chile the software SIMBA, a banking movement research system, which has allowed the Procuraduria General to receive bank statements electronically in pre-defined models, which make it easier to analyze great bulks of data. SIMBA was a key element in the success of one of the biggest corruption investigations in Brazil. The experts met with the specialized units of the PPO, the IT Division and representatives of financial institutions. The subsequent phase of the project had to be suspended due to the COVID pandemic, but it is hoped that it can be resumed in the 2021 agenda.

The CMF and the PPO will further their collaboration in order to improve the practical implementation of the enhanced legal framework, to ensure that the information subject to banking restraints is readily available to prosecutors; and to evaluate the measures taken to reduce delay and improve the co-operation of financial institutions when providing the required financial information.

If no action has been taken to implement recommendation 2 (f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (a):

3. With regards to conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs), the Working Group recommends that Chile, as a matter of priority:

(a) Ensure that SCPs and ABPs remain available for natural persons in all foreign bribery cases [Convention Arts. 3 and 5, 2009 Recommendation Annex I.D];

Action taken as of the date of the follow-up report to implement this recommendation:

New General Prosecutorial Instruction N° 472/2020 has not prohibited the use of SCPs and ABPs, both of which remain available for natural persons in all foreign bribery cases, and only has regulated in a more restricted manner the requirements for the use of SCPs and ABPs in corruption offences.

Please refer to **recommendation 2(a)** supporting material.

If no action has been taken to implement recommendation 3 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**Text of recommendation 3 (b):**

3. With regards to conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs), the Working Group recommends that Chile, as a matter of priority:

(b) Improve transparency and accountability by (i) establishing more detailed criteria that prosecutors must consider when deciding whether to use an SCP/ABP; (ii) making public, as necessary and in compliance with the relevant rules, the essential elements of resolutions, in particular the reasons for using an SCP/ABP, the main facts of the case, the party(s) to the agreement, and the sanctions; and (iii) increasing judicial oversight of SCPs/ABPs, including the decision to use these measures and the terms of a resolution [Convention Arts. 3 and 5, 2009 Recommendation III.i and Annex I.D]

Action taken as of the date of the follow-up report to implement this recommendation:

Following the recommendations made to Chile in the Phase 4 Final Report, the New General Prosecutorial Instruction N° 472/2020 has improved transparency and accountability when using SCPs and ABPs, as will be explained below.

In its chapter I.1 the Prosecutorial Instruction N° 472/2020 contains a catalogue of offences to which it applies, among which is bribery of a foreign public official or foreign bribery (num. 19 of section 1.1). Then, in relation to the criminal responsibility of legal persons, Prosecutorial Instruction N° 472/2020 states that it also applies to infringements of Law N° 20.393 in connection with active bribery of national and foreign public officials (num. 1 of section 1.2).

Later on, Prosecutorial Instruction N° 472/2020 reiterates that it applies to foreign bribery when in section I.4. explicitly states: *“Moreover, considering that the legally protected interest in this transnational crime is the “normal development of international economic relationships”, we are dealing with highly complex investigations, of special importance for this National Prosecutor. Therefore, in such cases, all the criteria established in these general instructions are applicable.”*

Regarding SCPs, and in order to make it applicable only on an exceptional, restricted and prudent basis, Prosecutorial Instruction N° 472/2020 instructs that, in addition to complying with the relevant legal requirements, prosecutors must verify in each case that at least four (4) of the nine (9) circumstances described therein are met or fulfilled.

These conditions are as follows:

1. That the public official defendant for whom a SCP could be adopted would not be one of those listed in article 251 quinquies of the Criminal Code at the time of the perpetration of the crime; or that the defendant be a private individual.

Among other aspects, article 251 quinquies of the Criminal Code mentions certain "high level" public authorities or officials, which are:

- Public officials holding a position of popular election (President of the Republic, Parliamentarians, Mayors, Regional Governors, among others).
- Officials who are of exclusive confidence of those serving a popularly elected public position (Cabinet Ministers, Undersecretaries, Regional and Provincial Governors, Regional Presidential Delegates, Ministerial Regional Secretaries, Heads of Public Agencies of exclusive confidence, Municipal authorities, Regional Government Heads of Division, among others).
- Officials appointed by the Senior Public Management System (ADP, Alta Dirección Pública) of the First Hierarchical Level (normally, Heads of Public Agencies).
- Public prosecutors, including local prosecutors, regional prosecutors and the National Prosecutor, and also assistant prosecutors acting as deputy prosecutors.
- Anyone who, belonging or not to the judicial order, exercises jurisdiction (includes members of the Ordinary Courts of Justice and Special Courts, in their role of Judges and Court Magistrates).
- Commanders in Chief of the Armed Forces (Army, Navy and Air Force), the Director General of Carabineros and the Director General of the Investigative Police.

2. That the foreseeable penalty to be imposed upon the defendant be lower than 818 days of short-term imprisonment in its medium degree.
3. In crimes that cause pecuniary damage, the defendant must prove that he/she has significantly repaired the pecuniary damage caused. His/her willingness to fully repair the pecuniary damage caused would be more favourable.
4. Favourable opinion of the State Defense Council, as representative of the rights of the victim in cases where it has filed a criminal complaint.
5. That the investigation had been initiated by a crime report from the defendant for whom a SCP could be adopted.
6. That the defendant for whom a SCP could be adopted had actively collaborated with the investigation, materialized in voluntary authorizations to conduct investigative proceedings; or contributing with background information and/or documents to the investigative folder; or voluntarily allowing the access and reviewing of his/her emails or electronic devices; or that he/she had provided effectively collaboration, under the terms of article 260 quater of the Criminal Code.
7. That the defendant for whom a SCP could be adopted had been dismissed, removed, or dismissed from the position or public function in which he/she participated in the punishable act, and that at the time of the SCP he/she is not exercising any public position or function.
8. That the criminal action against the defendant for whom a SCP could be adopted may be subject to *media prescripción* of article 100 of the Criminal Code.

9. When strategic and criminal policy reasons make it necessary to suspend the criminal persecution against a defendant for the sole purpose of criminally persecuting another defendant with a clearer and notorious greater degree of participation, involvement and responsibility in the facts under investigation.

When any four of these conditions are met, prosecutors may be able to adopt an SCP in a specific case.

Most of the above conditions are applicable to foreign bribery. For example, in number 1, given that the defendant would normally be a Chilean businessman who does not have the status of a public official, but is a private individual, it might be possible to meet this first condition. In number 2, depending on the mitigating and aggravating factors of the defendant, it seems possible in a specific case of foreign bribery to comply with the aforementioned penalty requirement. Number 3 could be applicable if by committing foreign bribery some pecuniary damage was caused and the defendants are willing to significantly or fully repair it. Number 5 would also apply if the investigation is initiated by a crime report from the defendant or the company to which he belongs. The conditions of numbers 6, 8 and 9 also apply to foreign bribery.

With respect to ABPs, Prosecutorial Instruction N° 472/2020 tightens up the requirements for its application in cases involving high-level public authorities (those mentioned in article 251 quinquies of the Criminal Code) who commit some of the main corruption offences, including foreign bribery.

In this type of cases, in order to apply an ABP it is necessary not only to comply with the penalty requirement established in article 406 of the Code of Criminal Procedure, but also to prove that the following four (4) circumstances are jointly fulfilled:

- 1) That the defendant has a qualified irreproachable prior behaviour.
- 2) That the defendant has effectively and substantially collaborated with the investigation, granting voluntary authorizations to conduct investigative proceedings; or providing background information and/or documents to the investigative folder; or voluntarily allowing the access and reviewing of his/her emails or electronic devices.
- 3) That the defendant effectively demonstrates significant reparation of the damage caused.
- 4) That at the time of the respective judicial hearing the defendant is not serving or holding any public office or function.

All of these circumstances could be applicable in a foreign bribery case.

Prosecutorial Instruction N° 472/2020 also establishes certain publicity obligations for prosecutors, since they shall indicate the reasons that motivate the application of ABPs, at either of the opportunities set forth at article 407 of the Criminal Procedure Code (once the investigation has been formalised, at any stage of the procedure, until the oral trial preparation hearing).

Please refer to **recommendation 2(a)** supporting material.

If no action has been taken to implement recommendation 3 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (c):

3. With regards to conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs), the Working Group recommends that Chile, as a matter of priority:

(c) Amend its legislation to ensure that all appropriate measures (especially the requirement that a legal person implement an OPM) and confiscation are equally available under an SCP and a conviction [Convention Arts. 3 and 5, 2009 Recommendation Annex I.D]

Action taken as of the date of the follow-up report to implement this recommendation:

Regarding the implementation of an offence prevention model (OPM) by a legal person:

- Law N° 20.393 does consider it as a mitigating factor, if the OPM is adopted before the beginning of the trial (article 6, number 3).

- For an SCP, Law N° 20.393 also contemplates the implementation of a program to give effect to an organization, administration and supervisory model as one of the possible conditions to be imposed (article 25, number 4).

With respect to confiscation (*comiso*):

- In case of conviction of a legal person, confiscation is contemplated as one of the accessory penalties in article 13, number 2 of Law N° 20.393. Value confiscation is also admitted.

- For an SCP, Law N° 20.393 provides for certain conditions that, while not constituting a confiscation as such, would produce similar effects (article 25, numbers 1 and 5):

“(1) To pay a certain amount for fiscal benefit”.

“(5) Any other condition that is considered appropriate in view of the circumstances of the particular case and proposed on reasoned grounds by the Public Prosecutors’ Office”.

In the case of a conviction or SCP of a natural person, confiscation applies according to the general rules.

If no action has been taken to implement recommendation 3 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (d):

3. With regards to conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs), the Working Group recommends that Chile, as a matter of priority:

(d) Provide guidance on the choice of terms for an SCP, including on the use of charitable donations [Convention Arts. 3 and 5, 2009 Recommendation Annex I.D]

Action taken as of the date of the follow-up report to implement this recommendation:

Prosecutorial Instruction N° 472/2020 establishes that in such cases where one of the conditions to be imposed in an SCP is the payment of a sum of money, pursuant to letters (e) or (h) of article 238 of the Criminal Procedure Code (either a payment of a sum of money as compensation or a monetary donation to an NGO), prosecutors are instructed to verify in advance the suitability, prestige, and transparency of the NGOs that will receive such sums of money.

Also, Regional Prosecutor's Offices are suggested to prepare a list or register of NGOs located within the territory under their jurisdiction, which satisfy the foregoing conditions.

Please refer to **recommendation 2(a)** supporting material.

If no action has been taken to implement recommendation 3 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (e):

3. With regards to conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs), the Working Group recommends that Chile, as a matter of priority:

(e) Take greater steps to verify that OPMs implemented by companies pursuant to an SCP are adequate [Convention Arts. 3 and 5, 2009 Recommendation Annex I.D]

Action taken as of the date of the follow-up report to implement this recommendation:

General Prosecutorial Instruction N° 440/2010 which provides performance criteria for the investigation and criminal prosecution of legal persons is in the process of being updated and will certainly include measures to ensure that offence prevention models implemented by legal persons to comply with SCPs are adequate.

If no action has been taken to implement recommendation 3 (e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (f):

3. With regards to conditional suspension of proceedings (SCPs) and abbreviated procedures (ABPs), the Working Group recommends that Chile, as a matter of priority:

(f) Where conditions for foreign bribery under an SCP include donations, (i) ensure that such conditions are effective, proportionate and dissuasive, (ii) include as a term of the SCP that the offender shall not seek a tax deduction with the donation, and (iii) verify in all cases the appropriateness of charities that receive donations [Convention Art. 3].

Action taken as of the date of the follow-up report to implement this recommendation:

Regarding tax deduction, Prosecutorial Instruction N° 472/2020 instructs prosecutors that in these cases they shall always include as a condition that the defendant, either an individual or legal entity, may not request from the Internal Revenue Service a reduction of taxes for the payment made in this respect.

After a meeting between the PPO and the SII, the PPO shared with the SII the first version of the *Coordination Plan* regarding corruption offences. These documents indicate, among others:

- Office FN472/2020: PPO establishes the prosecutor obligation of including the accused declaration in commitment to not deduct expenses from the taxes for this concept.
- The establishment of a communication channel between both institutions, to communicate the existence of the SCP and a condition consisting on the payment, to re-examine the taxpayer (November 2020).
- To achieve the objectives each institution will nominate a person in charge.
- The PPO will propose a formal communication template and will send the list of companies that have accepted SCP (history of 11 cases), regarding the Tax Administration performs an audit.

Likewise, the PPO committed to send the list of individuals who have adhere to SCP since 2018 and fulfil the conditions established in letters e) and h) of article 238 of the Criminal Procedure Code, in order for the SII to evaluate the treatment actions applicable to these taxpayers (December 2020).

See also response to **Recommendation 1(c)**.

If no action has been taken to implement recommendation 3 (f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4 (a):

4. With regards to sanctions and confiscation, the Working Group recommends that Chile:

(a) Take steps to ensure that sanctions against natural persons are effective, proportionate and dissuasive in all foreign bribery cases in practice [Convention Art. 3(1) and Phase 3 Recommendations 3(c) and 6(i)]

Action taken as of the date of the follow-up report to implement this recommendation:

The *Anticorruption Act* (N° 21.121), of November 2018 increase the penalty for the offense of Bribery of a Foreign Public Official, from a theoretical penalty of 541 days to 5 year to a theoretical penalty of 3 to 10 years, added to it, it is imposed criminal fine and deprivation of rights (to be hire as a public official). The imposition of the penalty is subject to the substitution system by law N° 18,216.

The preliminary project for a new Criminal Code in which the Ministry of Justice and Human Rights is currently working, has the following treatment regarding recommendation 4 (a):

It contains the offence of Bribery of a Foreign Public Official which punishes whoever with the purpose of obtaining or maintaining for himself or a third person any business or advantage in the context of an international economic relation or an economic activity performed abroad, offers, gives or consents to give to a foreign public official an undue benefit to him or a third persons as a profit for him to omit or execute or for having omitted or executed an action in exercise or with occasion of their functions, with a penalty of imprisonment from 1 to 3 years or of reclusion. This reclusion shall be served in a public institution under daytime, nighttime or weekend modality with a duration of 18 to 30 months.

Both penalties, reclusion and prison, are not subject to a substitution system, so their imposition necessarily matters for effective enforcement in jail or other specialized public center.

In addition to the corporal punishment, a criminal fine may also be imposed which will be determined by a day-fine system, which will determine a higher amount in the criminal fine if compared to the current system that contains a global fixed amount.

If no action has been taken to implement recommendation 4 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4 (b):

4. With regards to sanctions and confiscation, the Working Group recommends that Chile:

(b) Maintain detailed statistics on sanctions imposed in domestic and foreign bribery cases [Convention Art. 3(1) and Phase 3 Recommendations 3(c) and 6(i)]

Action taken as of the date of the follow-up report to implement this recommendation:

Until now there is only one conviction for foreign bribery (Fragatas/Serlog Case) and one SCP (Asfaltos Chilenos Case).

If no action has been taken to implement recommendation 4 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4 (c):

4. With regards to sanctions and confiscation, the Working Group recommends that Chile:

(c) For natural persons, amend its legislation to provide for the confiscation of property, the value of which corresponds to that of the proceeds of a foreign bribery offence, or provide for monetary sanctions of comparable effect, in cases where the bribe and the proceeds of foreign bribery cannot be confiscated in [Convention Art. 3(3) and Phase 3 Recommendation 3(e)]

Action taken as of the date of the follow-up report to implement this recommendation:

Law No. 21,121, amending the Criminal Code and other legal regulations for the prevention, detection and prosecution of corruption, published in November 2018, amended Article 13 of Law No. 20.393, establishes the criminal liability of legal persons for the crimes it indicates, in order to enshrine, within the hypothesis of accessory penalties applicable against them, the confiscation by equivalence, which allows that, when for any circumstance it is not possible to confiscate the proceeds of crime, the confiscation can be applied to a sum of money equivalent to its value; and the confiscation of earnings, through which the confiscation of the patrimonial assets whose value corresponds to the amount of the earnings obtained through the perpetration of the crime will proceed.

For this part, the preliminary project for a new Criminal Code in which the Ministry of Justice and Human Rights is currently working on, has the following treatment regarding recommendation 4 (c):

This project includes both confiscation of instruments and effects of the crime and the confiscation of the profits connected to the crime as additional consequences to the sanction. Regarding this last-mentioned kind of confiscation, its explicit and general recognition would be a novelty in our legislation. Through this, a person is deprived from their patrimonial assets for an amount equivalent to that of the profits obtained through the perpetration of the crime or for perpetrating or to perpetrate it and its transferred to the State. These profits include the products and utilities that the crime would have originated and the equivalent to the costs avoided by the perpetration of the crime.

In addition, having been proved that the profits derive from the perpetration of a crime, it will be possible to confiscate those profits even if the person being prosecuted were to be acquitted or the charges against him dropped.

If no action has been taken to implement recommendation 4 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4 (d):

4. With regards to sanctions and confiscation, the Working Group recommends that Chile:

(d) Take further steps to ensure that confiscation is routinely sought and imposed in corruption cases against natural and legal persons, where appropriate [Convention Art. 3(3)]

Action taken as of the date of the follow-up report to implement this recommendation:

The PPO has adopted some measures to improve its assets or patrimonial investigation skills, in order to improve the detection of assets, their timely seizure and confiscation. In these sense Prosecutorial Instruction N° 472/2020 introduced a section on minimum investigative proceedings among which is the request to UNAC for its financial analysts to perform an assets analysis of the defendant, his/her family group and corporate partners, which every prosecutor is instructed to carry out when investigating a corruption case.

Please refer to **recommendation 2(a)** supporting material.

If no action has been taken to implement recommendation 4 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5 (a):

5. With regards to international co-operation, the Working Group recommends that Chile:

(a) Continue to be proactive when following up outstanding MLA requests, including by routinely contacting foreign authorities through informal channels and the Working Group [Convention Art. 9(3)]

Action taken as of the date of the follow-up report to implement this recommendation:

The PPO is the Central Authority for all MLA treaties in criminal matters. Since October 2019 it has implemented a system to follow up the execution of active and passive MLAs. After three months since the active MLA was sent to the requested State, or the passive MLA was assigned to a local prosecutor, the International Cooperation and Extraditions Unit (UCIEX) formally requests an update to the pertinent authority. If the MLA hasn't been executed a month after that, another update is requested.

UCIEX used to consult about the execution of the MLAs within the Red de Cooperación Penal REDCOP of AIAMP. REDCOP is a network of international cooperation units of the Public Prosecutor's Offices of Iberoamerica. Additionally, at the Iberoamerican level there is a Network of Prosecutors against corruption, which is also used to facilitate the execution of MLAs.

If no action has been taken to implement recommendation 5 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5 (b):

5. With regards to international co-operation, the Working Group recommends that Chile:

(b) Provide training to prosecutors on seeking MLA in foreign bribery cases [Convention Art. 9(3)]

Action taken as of the date of the follow-up report to implement this recommendation:

During the second semester of 2019 UCIEX developed a basic training on international cooperation that was delivered to all the Regional Prosecutor's Offices in the country. Also, once a year UCIEX delivers an advanced training to representatives from all the Regional Prosecutor's Offices.

Members of the PPO have also participated in workshops and webinars sponsored by international organization, especially those organized by the Red de Cooperación Penal REDCOP of AIAMP. REDCOP is a network of international cooperation units of the Public Prosecutor's Offices of Iberoamerica.

If no action has been taken to implement recommendation 5 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5 (c):

5. With regards to international co-operation, the Working Group recommends that Chile:

(c) Take all necessary measures to ensure that it will not deny MLA in foreign bribery cases on grounds of bank secrecy [Convention Art. 9(3) and Phase 3 Recommendation 10(a)]

Action taken as of the date of the follow-up report to implement this recommendation:

The provisions regulating banking secrecy and its lifting are contained in article 154 of the General Banking Law and the request for the lifting of banking secrecy must be granted by the Judge of Guarantee.

Chile does not deny MLAs on grounds of bank secrecy. Since December 2018 the PPO have received 21 MLA requests seeking the lifting of bank secrecy, none of them for foreign bribery. Five of them were fully executed, and for the thirteen which are still pending, more information is needed in order to obtain the lifting of bank secrecy.

If no action has been taken to implement recommendation 5 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5 (d):

5. With regards to international co-operation, the Working Group recommends that Chile:

(d) Ensure that it can provide MLA for confiscation of property the value of which corresponds to the bribe and the proceeds of foreign bribery [Convention Arts. 3(3) and 9, and Phase 3 Recommendation 10(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

Chile only has a special provision for value confiscation of assets requested by other States regarding money laundering, but that circumstance has not prevented the PPO from searching, confiscating, liquidating and returning those values to the requesting States in other type of cases.

If no action has been taken to implement recommendation 5 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5 (e):

5. With regards to international co-operation, the Working Group recommends that Chile:

(e) Take steps to reduce the time that the PPO takes to execute incoming MLA requests, especially when financial information is sought [Convention Art. 9].

Action taken as of the date of the follow-up report to implement this recommendation:

The International Cooperation and Extraditions Unit (UCIEX) implemented a follow up system in order to detect the delays in the executions of pending MLA. The local prosecutors in charge of executing the MLA are requested to provide an update of its status after 3 months from its assignment, and then every 1 month.

If no action has been taken to implement recommendation 5 (e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (a):

6. With regards to the liability of legal persons, the Working Group recommends that Chile:

(a) Bring Law 20 393 in line with Annex I of the 2009 Anti-Bribery Recommendation by eliminating the OPM defence where bribery is committed by an individual with the highest-level managerial authority in a legal person [Convention Art. 2, 2009 Recommendation Annex I.B]

Action taken as of the date of the follow-up report to implement this recommendation:

An effective crime prevention system (Compliance Program/OPM), as a legal defense that leads to the responsibility exception of the legal entity, is nothing more than a simple declaration of atypical conduct (not real crime), that is, the elements for the crime have not been gathered.

Our legislation (Law No. 20,393) attributes criminal liability to the legal entity when the commission of certain crimes, perpetrated by certain persons in the interest or benefit of the legal entity, is a consequence of the contravention of their management and supervision duties. This is what constitutes the description of typical conduct (*supuesto de hecho* or facts that constitute the crime). The required monitoring and supervision takes the form of a system of self-regulation based on the establishment of controls. This is intended to compensate for the risks of the Company's ordinary processes, by preventing and detecting certain illegal conducts, imposing on the Companies the obligation to organize themselves to avoid the use of their processes in the commission of crimes. In effect, the responsibility for the act of the Company consists of not having done everything necessary to prevent the commission of the crime by a natural person within its organization.

A correct compliance program system (where the "risk" corresponds to the possibility of a natural person in the organization committing a crime) is built taking into account the specific operation of the Company (certain processes, certain risks, certain controls), and must be differentiated according to the profile and incidence of the person performing the process. Likewise, the level of development of the compliance program (the complexity of the system) must be proportional to the size and complexity of the operations of the legal entity (a fundamental principle in the International Organization for Standardization (ISO) standards No. 19,600 and 37,001). All of the above indicates that an efficient compliance system program will determine that only certain persons within the company will be able to have contact with public officials and that their controls related to the highest level of management authority will be more important than in the case of top management employees, and that the other ordinary preventive controls for the rest of the employees.

It should also be noted that the Political Constitution of the Republic of Chile prohibits the presumption by law of criminal responsibility (Article 19 No. 3), considering that, in this case, there is no "fact" (legal description of a criminal conduct) to which a certain result can be causally attributed. Moreover, in such circumstances, even a diligent legal person (whose behavior would be atypical) would be held liable for the actions of a third party who has culpably committed a crime, simply because he committed the crime within the framework of the organization.

If no action has been taken to implement recommendation 6 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (b):

6. With regards to the liability of legal persons, the Working Group recommends that Chile:

(b) (i) Develop guidance on the elements of an effective OPM for preventing foreign bribery, including by referring to Annex II of the 2009 Anti-Bribery Recommendation; (ii) disseminate the guidance to the private sector (especially SMEs), investigators, prosecutors, and the judiciary; (iii) encourage Chilean companies, especially SMEs, to adopt models that conform to the guidance [Convention Art. 2, 2009 Recommendation Annexes I.B and II, and Phase 3 Recommendation 1(a)(ii)]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) & (ii) Regarding the recommendation on the development of a guidance on the elements of an effective OPM for preventing foreign bribery, it is important to stress the fact that in Chile the adoption of an OPM is voluntary. Therefore, an OPM shall at least comply for the minimum requirements established in article 4° of Law N° 20.393, which be considered as the standard for that purpose.

It is important to highlight that the development of a guidance on an effective OPM, should be performed by different Ministries and will require a broader coordination, based on the GNECC Ministerial members.

In order to count with the support of the Ministry of Economy, SME Division, as a non-GNECC entity, an official communication was sent from SUBREI in order to give more structure to the dialogue that took place during the Phase 4 evaluation. Under the work plan in conversation, they would be willing to promote guides or information prepared by the relevant governmental experts, including voluntary guidance on the elements of an effective OPM for preventing foreign bribery, according to our domestic law (please refer to **recommendation 7**).

(iii) Even though the guidance is still to be issued, different actions have been taken in order to encourage Chilean companies, especially SMEs, to consider foreign bribery as a risk in their internal control mechanisms. Please refer to **recommendation 7**.

If no action has been taken to implement recommendation 6 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (c):

6. With regards to the liability of legal persons, the Working Group recommends that Chile:

(c) Amend Law 20 393 to ensure that the requisite independence of prevention officers is determined based on all relevant factors, and not only the size of the company's revenues [Convention Art. 2, 2009 Recommendation Annexes I.B and II, and Phase 3 Recommendation 1(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

The correct reading with regard to the relationship between the offense prevention model, the offense prevention responsible and the large-, medium- and small-sized companies, must be guided from a quantitative rather than a qualitative view. In this sense, small-sized companies have the same obligation of effectiveness and quality in their offense prevention models, the difference is –in this sense it is relevant to determine the small company’s revenues– that the law does not expect the same level of investment and formality of the offense prevention model for these organizations; which, in any case, must be analyzed and filtered in each particular case –from the perspective of an effectively implemented model– with regard to the particular risks the company may have, despite its size. In this perspective small organizations, in order to comply with the legal mandate, must show the same degree of commitment in relation to the compliance model –if they decide to implement it– like large organizations. In spite of that, the small-sized company may comply with the legal requirements less formally and less resources than it is expected of a large company.

In this sense, Chilean legislation considers that the company’s size and revenues may be a relevant factor when determining the organizational procedures legally imposed on legal persons in order to prevent offenses, it is understood, therefore, that imposing the same requirements on small- and medium-size companies as upon larger companies would be disproportionate in relation to the low complexity of their organization structure, their size and resources volume¹². Thus, it is sustained that forcing small- and medium-sized companies have a prevention officer irrespective of its owner, it should mean to impose them an additional cost and burden that would not allow entrepreneurship and development proper to this type of companies¹³.

This criterion has been shared by comparative law, understanding that “the entity’s size or organizational complexity (...) are factors to be taken into account when determining the precise organizational and control measures to maintain criminal risks at levels legally accepted, [consequently] it is normal that regulation establishes attenuated requirements or less strict supervision measures for small-sized companies or whose activity volume is small. In this sense, Spanish, Chilean and Italian regulations consider small-sized companies distinctiveness, pointing out that in such companies, supervision duties, that normally must be assumed by an autonomous control body, can be directly assumed by the administration or management body (articles 31 bis 3 Penal Code [Spanish], 6.4 Legislative Decree 231 [Italian], and 4 (N°1, b), 2) Law N°20.393)¹⁴”.

¹²Ver NEIRA PENA, Ana María, “La efectividad de los criminal compliance programs como objeto de prueba en el proceso criminal”, en *Revista Política Criminal*, vol.11, n.22, 2016, pp.467-520,pp. 475 – 477.. Disponible en: <http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-33992016000200005&lng=es&nrm=iso>. ISSN 0718-3399. <http://dx.doi.org/10.4067/S0718-33992016000200005>.

¹³Reconociendo los efectos perjudiciales para las pequeñas empresas, por el alto costo de la implementación de los modelos de prevención, entre otros, Bowmann, Frank, *Drifting Down the Dnieper with Prince Potemkin: Some Skeptical Reflections About the Place of Compliance Programs in Federal Criminal Sentencing*, en *Wake Forest Law Review*, p. 680, 2004; Wellner, Philip, *Effective Compliance Programs and Corporate Criminal Prosecutions*, en *Cardozo LAw Review*, p. 509, 2005; Reconociendo la preocupación del legislador italiano respecto, en este mismo sentido, véase Mongillo, Vincenzo, *The Supervisory Body (“Organismo di vigilanza”) under Legislative Decree n° 231/2001*.

¹⁴ Así, NEIRA PENA, Ana María, “La efectividad de los criminal compliance programs como objeto de prueba en el proceso criminal”, en *Revista Política Criminal*, vol.11, n.22, 2016, pp. 467-520,p. 477.

On the other hand, considering that the adoption of prevention models is not compulsory for legal persons, but a measure that allows to understand they have complied with their management and supervision duties (though not the only one), that the supervision responsible, in small-sized and medium-sized companies, be someone other than the owner, effectively, would just create incentives for these companies not to take prevention models because, due to their structure, these would exceed their possibilities.

Notwithstanding the foregoing, the court may, by all means, consider other factors, beside the company's size and revenues, when determining whether it has adopted and implemented prevention models in accordance with the law, that because article 4 N°4 letter d) of Law N° 20.393 compels the prevention responsible to establish methods for the model effective implementation and supervision in order to identify and correct its flaws, as well as, updating it in agreement to the entity's changing circumstances. Thus, in those cases where the owner, partner or controller shareholder is allowed to be the prevention responsible, should this position prevent him from effectively applying the model, for lacking autonomy, then, he would be violating the requirement. This criterion has been followed by our national jurisprudence, which having known about legal persons criminal liability and the adoption and implementation of offense prevention models, has sustained that article 4 of Law N° 20.393 embodies this models basic elements, requiring, at the least, the compliance of them all for supervision and monitoring duties to be considered fulfilled¹⁵.

In this sense it is important to remember that “[f]or assessing when an organization has an effective prevention and detection model, it is necessary to do it from an informal perspective, this is, without considering only and exclusively the model proposed by the legal regulation and trying to determine whether, effectively, the entity acted with due diligence to prevent the offense committed”¹⁶. Along the same lines, by means of Official Letter of the National Prosecutor N°440/2010, stating that the fact that the company formally complies with every legal requirement of article 4 of Law N°20.393 does not imply that this had implemented the real model, effectively or suitably, which shall always be object of investigation and proof. The same is indicated in the Guidelines for Best Practices on the Investigation of Criminal Liability of Legal Persons.

Likewise, the preliminary project for a new Criminal Code in which the Ministry of Justice and Human Rights is currently working, has the following treatment regarding recommendation 6 (c):

The project includes a better and complete regulation of the elements that the compliance program (OPM) should have to prevent crimes in the organization. This regulation indicates that an OPM program is effectively implemented by the legal person when, to the extent required by its size, complexity, resources and the activities it develops, it seriously and reasonably considers the following aspects:

a) identification of the legal entity's activities that involve risk of criminal conduct; b) establishment of protocols and procedures to prevent and detect criminal conduct in the context of the activities referred to in the previous letter, which must necessarily consider safe reporting channels; c) designation of persons responsible for the application of said protocols, endowed with effective powers of direction and supervision, and; d) establishment of periodic evaluations and mechanisms for improvement or updating based on such evaluations.

¹⁵Ver. Frías Esquivel y otros vs. MP. Sentencia del Tribunal Oral en lo Penal de Arica (2015). Causa RUC N° 1100770074-3, RIT N° 33-2014. Párrs. 303 y 304.

¹⁶NEIRA PENA, Ana María, “La efectividad de los criminal compliance programs como objeto de prueba en el proceso criminal”, en *Revista Política Criminal*, vol.11, n.22, 2016, pp. 467-520, p. 476.

This regulation allows each Company to establish the independence of the compliance officer in accordance with its own characteristics. In any case, the company must ensure the highest standard of independence and the provision of human and technical resources to perform the functions of a compliance officer. Otherwise, the company would not be complying with the requirements that are demanded of it, so the commission of a crime within the company would be attributable to the legal person itself.

Although it is true that Act N° 20.393 establishes a “size” criterion to determine whether the compliance function can be performed by a person from the company's high-ranking level managerial authority, in no case does the compliance officer lose the functional autonomy necessary to perform his duties. The aim of the standard is to indicate that, in smaller companies, therefore, in principle, with a lower level of complexity than large companies, there most probably be an identity between one of the members of the high-ranking level managerial authority and the compliance officer. This is only an effect of an objective scale of “complexity” of the company and, consequently, also of the operational costs that an independent figure would mean. However, the compliance officer must always have the necessary competencies to carry out the controls designed to reasonably prevent the risk from occurring.

If no action has been taken to implement recommendation 6 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (d):

6. With regards to the liability of legal persons, the Working Group recommends that Chile:

(d) (i) stipulate qualification requirements that ensure certifiers have sufficient expertise in anti-corruption corporate compliance; (ii) provide guidance to certifiers on the elements of an effective OPM for preventing foreign bribery; (iii) stipulate the methodology, procedure and criteria for the certification of OPMs; and (iv) ensure that the CMF enforces the rules concerning certifier qualifications, methodology and standards [Convention Art. 2, 2009 Recommendation Annexes I.B and II, and Phase 3 Recommendation 2(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

Regarding qualifications requirements of OPM’s certifiers (recommendation 6(d)(i)), it is relevant to stress the fact that NCG 302 requires partners of certifying companies and persons carrying out the certification to each provide an affidavit. This affidavit must state that they have at least 5 years of work experience in activities or positions that require knowledge related to risk management, process evaluation or controls associated with them, or with the legal framework and regulation applicable to the crimes referred to in Law No. 20,393. This is one of the requirements for the inclusion of certifying companies in the registry held by the CMF as mandated by Law N° 20,393.

Concerning recommendation 6(d)(ii), we must reiterate that the adoption and the subsequent potential certification of an OPM are made on a voluntary basis. Therefore, companies planning to adopt an OPM shall establish it pursuant to article 4° of Law N° 20,393. The same rationale applies for the certification of said OPM.

Regarding recommendation 6(d)(iii), it is relevant to point out that the certification of an OPM, according to the provided by the NCG N° 302, must contain an express reference to the fact that the legal entity has

an OPM. Moreover, it must state that this model is implemented and that it contemplates all the requirements established in numerals 1),2) and 3) of article 4 of Law 20,393, considering the situation, size, line of business, level of income and complexity of the legal entity, in accordance with letter b) of number 4) of that article. Therefore, the certifying company must establish a methodology, procedure and criteria for the assessment of said OPM according to the factors mentioned above. In this regard, the CMF has not legal powers to supervise those methodologies, procedures and criteria, as the law has only entitled the CMF to maintain the registry of certifying companies.

Finally, with regards recommendation 6(d)(iv), the CMF is only entitled to supervise compliance of certifying entities with the provisions of NCG N° 302, which states that the CMF will maintain a registry of certifying entities, as required by article 4 of Law N° 20,393. Nonetheless, the CMF carries out periodic supervision of certifying companies to ensure that they comply with Section III of NCG 302 which prohibits the provision of certain services.

If no action has been taken to implement recommendation 6 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (e):

6. With regards to the liability of legal persons, the Working Group recommends that Chile:

(e) Ensure that prosecutors do not consider that certification creates a presumption that the legal person has successfully discharged its direction and supervisory functions, and that the court and the prosecutor have the sole responsibility of determining this issue when considering liability under Law 20 393, including through the amendment of Prosecutor Instruction 440/2010 and the 2014 UNAC Practical Guide [Convention Art. 2, 2009 Recommendation Annexes I.B and II]

Action taken as of the date of the follow-up report to implement this recommendation:

The drafting of a new and updated version of the General Prosecutorial Instruction N° 440/2010 is still in preparation, but will certainly include measures to reinforce to prosecutors that certification does not create at all a presumption that the legal person has successfully discharged its direction and supervisory functions.

The 2014 UNAC Practical Guide, which is also in the process of being modified and updated, in this regard will indicate: *"The certification of an offence prevention model should not fundamentally change the situation because it does not imply that the company has satisfactorily fulfilled its supervisory and managerial duties, a determination that is ultimately up to the court. In these cases, the investigation should be in a position to distort the indication of compliance of the certificate or to challenge the professionalism and seriousness of the certification or of its process, if it has been carried out with low standards"*.

If no action has been taken to implement recommendation 6 (e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (f):

6. With regards to the liability of legal persons, the Working Group recommends that Chile:

(f) Amend its legislation to clearly provide territorial and nationality jurisdiction to prosecute legal persons for foreign bribery [Convention Art. 4 and Phase 3 Recommendation 5].

Action taken as of the date of the follow-up report to implement this recommendation:

Complying with the provisions of art. 4 of the Convention, through Law No. 20.371 of 2009, the article 6° of the Judicial Code was amended in order to grant jurisdiction to national courts regarding the offense of bribery of foreign public officials committed outside our country by Chileans or by foreigners with habitual residence in Chile. This legislative amendment is considered to be sufficient to comply with the Convention provisions.

In defense of the mentioned above, our country has consistently considered the Chilean legislation to be clear on the rules of jurisdiction and competence in criminal matters. The basic rules on the territorial validity of the criminal law can be found in Art. 5 and 6 of the Criminal Code. According to the Article 5 of the Criminal Code, which establish the principle of territoriality of criminal law, "Chilean criminal law applies to anyone who commits a crime in our territory, without the nationality of the offender, the victim or the property or rights affected by the crime being an obstacle. It is an application of the principle of sovereignty." (Politoff, Matus and Ramírez, 2003: pp. 115 and 166). That way, if any bribery crime is committed within the national territory, our courts will have jurisdiction to deal with these offenses, regardless of the perpetrator's nationality. Given this general rule, knowledge of any crime of bribery of a foreign public official whose execution is initiated or carried out entirely in the national territory, is subject to the jurisdiction of the Chilean courts.

Besides the general rule described, there are cases on which the Chilean tribunals can know about crimes committed outside national territory, which according to Art. 6° from the Penal Code, must be determined by law. According to Art. 6 N°2 from the Tribunals Organic Code, when the crime of bribery of Foreign Public Officials its done by a Chilean or a person with habitual residence in Chile, they are subjected to Chilean jurisdiction, even when perpetrated outside the Republic's territory, which allows to fulfill the Convention.

In other words, the previously referred rule allows the extraterritorial jurisdiction of Chilean tribunals around the crime of bribery of Foreign Public Officials in attention to the nationality or habitual residence of its participants. That way, in the case that the crime starts or it is fully executed outside national territory, the tribunals will have jurisdiction to know about the crime, always if committed by a national or a foreigner with habitual residence in Chile. This norm is applicable to natural and juridical persons, Chileans or resident foreigners, given Art.54 of the Civil Code, which states these two kinds of person in the law.

If no action has been taken to implement recommendation 6 (f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7:

7. With regards to engagement with the private sector, the Working Group recommends that Chile continue to raise awareness in a more co-ordinated manner by involving all relevant government bodies that interact with Chilean companies that are active in foreign markets, including SMEs [2009 Recommendation III.i and Phase 3 Recommendation 11(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

Various actions have taken place in relation to engagement with the private sector:

- Anticorruption Alliance activities: Integrity promotion activities for the private sector carried out by the Anticorruption Alliance 2019-2020:
 - (2019) 2nd version of the [Integrity Program for State-owned Enterprises](#), which worked in conjunction with the Alliance for Integrity, to support the compliance officers of these organizations
 - (2019) [Best practices contest](#) against corruption, in which an [initiative by BNP Paribas S.A. was awarded](#) a prize. (Project to strengthen the prevention of the risk of Corruption and Bribery) (2019)
 - (2019) Workshop "Citizenship, Citizen Control and Corruption Prevention" aimed at citizens
 - (2020) Cycle of 7 webinars In [Times of Pandemic Integrity is not left unattended](#), which covered general topics on the fight against corruption, but also sessions of interest to the civil sector ([situation of people who report corruption in Chile](#); [challenges and limitations for citizen control](#); [integrity from the perspective of the private sector](#))
 - (2020) [Integrity and Compliance Talks for the Private Sector](#)
 - (2020) [Monthly dissemination of activities](#) of free access to the public (public servants and private sector)
- National Contact Point capacity building activities (2019-2020): Following past practices, and more so since the same Division now is in charge of the National Contact Point and the OECD Antibribery Convention, training activities with public representatives and private sector always include a reference to foreign bribery and the OECD Convention as a source of risks to be covered in business internal control mechanisms.

Events reported in the NCP 2019 Questionnaire with private sector that included the anti-bribery theme, organized by the NCP:

| Title | Date (dd/mm/yyyy) | Location | Size of audience | Targeted audience e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc. | Theme e.g. the OECD Guidelines, the NCP activities on sector due diligence guidance documents etc. |
|---|-----------------------------|-----------------------------|-------------------------|---|--|
| Worshop Taller Comercio Sostenible y su aplicabilidad en la empresa | 25 July | PROCHILE Talca | 10-50 | Business representatives, NGOs, Trade unions, Academia, General public. | OECD Guidelines and FAO OECD due diligence guidance |
| Seminario Internacional Conducta Empresarial Responsable y Debida Diligencia: | August 20 | Ministry of Foreign Affairs | 50-100 | General public | RBC, due diligence and compliance, with the participation of Hui Chen |

[Buenas Prácticas para Mejorar la Eficiencia](#)

Events reported in the NCP 2019 Questionnaire with private sector that included the anti-bribery theme, organized by other entities:

| Title | Date (dd/mm/yyyy) | Location | Size of audience | Targeted audience e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc | Organiser(s) | Theme of the intervention |
|---|-------------------|--|------------------|---|---|---|
| Roundtable RBC | 17 april | Prohumana | 10-50 | Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc. | Prohumana | OECD Guidelines, including Antibribery Convention and RBC due diligence |
| Presentation | 3 July | Comité de Asuntos Comunitarios | 10-50 | Business representatives | Generadoras de Chile | OECD Guidelines, including Antibribery Convention and RBC due diligence |
| Presentation | 4 July | Programa de Derechos Humanos y Empresa | 10-50 | Business representatives | Acción Empresas | OECD Guidelines including Antibribery Convention and NCP experience |
| ACT Net Workshop for Law Enforcement Agencies on Effectively Using Corporate Compliance Programs to Combat Domestic & Foreign Bribery | 18 and 19 August | ACTWG-APEC Frutillar | 50-100 | Enforcement agencies representatives, business representatives | ACTWG – Public Prosecutor Office of Chile | Compliance and RBC |
| Presentation - Diplomado Política Comercial IEI U. Chile | 9 September | University of Chile | 10-50 | General public - students | University of Chile (IEI) | OECD Guidelines, including Antibribery Convention and RBC as an element of trade policy |

| | | | | | | |
|---|--------------|---|--------------|-----------------------------|-------------------|--|
| Presentation ENEXPRO | 10 September | PROCHILE | 10-50 | Agrifood Exporters | PROCHILE | OECD Guidelines, including Antibribery Convention and FAO- OECD due diligence guidance |
| Presentation | 13 December | Consejo Minero – Comisión de Entorno Social y Comunicaciones | 10-50 | Business representatives | Consejo Minero | OECD Guidelines including Antibribery Convention and NCP: relevant topics for the mining industry |
| <ul style="list-style-type: none"> - - - 2020 NCP Events with private sector that included anti-bribery theme: | | | | | | |

| Title | Date (dd/mm/yyyy) | Organised or co-organised? | Targeted audience <i>e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc.</i> | Theme <i>e.g. the OECD Guidelines, the NCP activities on sector due diligence guidance documents, etc.</i> |
|---|-----------------------------|---|--|---|
| Actividades e hitos 2020 Punto Nacional de Contacto de Chile | 11/03/2020 | Acción Empresas (NGO) | Advisory Council for Human Rights and Business Program | Promotional activities; RBC: CERLAC Project, Plan of business and HR, Follow-up OECD Anti-bribery Convention's; Dialogue Mechanism. |
| La Debida Diligencia como herramienta para el Desarrollo Sostenible | 13/05/20 | Sustainability and climate change agency | Dairy sector and companies. Public officials. | Due Diligence, RBC and Follow-up OECD Anti-Bribery Convention's Recommendations |
| Primera Reunión 2020 Comité Consultivo | 30/06/2020 | NCP | Advisory Council (public officials) | Covid-CER; Specific instances; Public cooperation initiatives (e.g. Anticorruption Alliance); Activities 2020 |
| La Debida Diligencia como herramienta para el Desarrollo Sostenible | 15/04/2020 | Pontifical Catholic University | MBA students | OECD Guidelines, National Contact Point, due diligence and OECD Anti-bribery Convention. |
| Aportes de conducta empresarial responsable | 21/07/2020 | SUBREI | Chilean Ethical Consensus Framework Members at APEC | OECD Guidelines, due diligence and anti-bribery |
| Empresas proveedoras de minería: La debida diligencia en la cadena de valor | 03/09/2020 | Ministry of Mining – APRIMIN (gremio) | Enterprises | Due diligence, included combating bribery, bribe solicitation and extortion |
| Competencia y conducta empresarial responsable | 8/10/2020 | Instituto de Estudios Internacionales, Universidad de Chile | Students | OECD Guidelines, Due diligence (scopes) |
| Construyendo un comercio sostenible y ético: oportunidades y desafíos para empresas de menor tamaño | 20/11/2020 | Ministry of Economy | National Consultative Council of Small-Sized Enterprises Members | OECD Guidelines, UNCAC, OECD Anti-Bribery Convention, Anticorruption Alliance |
| Una mirada desde la OCDE: la debida diligencia en la cadena de valor | 24/11/2020 | Acción empresas | Enterprises | OECD Guidelines; OECD Anti-Bribery Convention; Binding due diligence on the world. |

- PROCHILE capacity building activities: Following 2018 actions, in 2020 4 capacity building activities took place:

| Activity | Presentation | Date | N° of Participants | Speakers |
|--|--|------------|--------------------|---------------|
| eBusiness Course: Strengthening Cross-Border eCommerce - Session 9 | - The Importance of Actions Against Corruption: Building Sustainable and Ethical Trade - Foreign Bribery: investigations and sanctions in Chile | 08-10-2020 | 77 | PPO SUBREI |
| Export Logistics Cycle Center North Macrozone - Session II | Building a Sustainable and Ethical Trade: The Risks of Foreign Bribery | 13-11-2020 | 10 | SUBREI |
| Export Logistics Cycle Center South Macrozone - Session II | Building a Sustainable and Ethical Trade: The Risks of Foreign Bribery | 20-11-2020 | 8 | SUBREI |
| Export Logistics Cycle South Macrozone - Session I | Building a Sustainable and Ethical Trade: The Risks of Foreign Bribery | 23-11-2020 | 20 | SUBREI |

Information was sent to all the **313** companies registered for the events. The idea is to continue with the inclusion of anticorruption and foreign bribery topics in future training programs by PROCHILE.

- Brochure on sustainable and ethical trade: In order to provide a more unified message to the private sector in matters of improving business practices and strengthen their risk management, SUBREI with PROCHILE, with the assistance of the PPO, a Brochure for companies was issued entitled “Guidelines for a sustainable governance”, that includes general concepts on sustainability, due diligence on responsible business conduct and antibribery measures, including foreign bribery. This brochure has been published both in PROCHILE [website](#) and linked in Subrei [website](#).

- Mailing to PROCHILE companies: The “Guidelines for a sustainable governance” brochure was sent to PROCHILE’s database of 8.154 companies in 30 November 2020. The email included highlights from the 2018 data on enforcement of the Anti-Bribery Convention, in order to strengthen the message.

- Sustainability Test: In an effort to increase companies’ awareness, especially SMEs, of the importance of conducting responsible business conduct and their role as key players in contributing to the sustainable and ethical development of countries, PROCHILE, for the first time, made available to the companies with which it is related, a self-diagnosis tool in these matters, which included questions regarding the existence of a Code of Business Ethics, a Crime Prevention Model or anti-corruption practices and anti-bribery, complaints channel and risk-based due diligence processes, among others. By applying the Test, the companies received information on their level of sustainability (an expanded concept that includes anti-corruption) and recommendations to improve their management capabilities. At the same time, it allowed PROCHILE to know the characterization of the companies to which it provides support in their internationalization process. **713** companies responded to the Test and more than 50% of them indicated that they had some kind of responsible business conduct practice, the most common practice being the Code of Business Ethics (38%). Meanwhile, only 15% indicated having anti-corruption and anti-bribery practices.

- Sustainability Criteria in Contests and Programs: These sustainability criteria broaden their conceptual definition to incorporate elements related to responsible business conduct, due diligence, and anti-

corruption. For the first time, as of this year 2020, PROCHILE incorporates in Contests and in the "PROCHILE Tailor-Made Program" ("Prochile a tu Medida"- in Spanish) a set of 19 criteria, which represent 5% and 15% respectively, of the total score to select the companies that will receive the support of the export agency, and in this sense, motivate the companies' commitment to these matters. The criteria considers having the following elements: Code of ethics or conduct, crime prevention model and/or complaints channel and Policy, plan or program on business & human rights and/or responsible business conduct.

- National Procurement Criteria: PROCHILE has recently created a sustainability criterion, which is included in its national procurement form in order to encourage its suppliers to have a code of ethics or conduct and/or complaints channel. Its implementation is planned for 2021.

- Action plan with SME Division: An official communication was sent from SUBREI to the SME Division of the Ministry of Economy, Development and Tourism, in order to give more structure to the dialogue that took place during the Phase 4 evaluation. After some meetings were held, three areas of collaboration were identified:

* Direct engagement with the SMEs Consulting Body: With the objective of receiving suggestions and comments on how to better support SMEs, a presentation was made by the RBC Division on the challenges of responsible business conduct and anticorruption measures to the body that brings together the business SMEs organizations. The meeting took place in 20-11-20. The main outcomes of that session were that most of the organizations are currently representing the urgency of supporting measures to better face the health and economic crisis. Nevertheless, a couple of representatives did express interest in knowing more about the OECD RBC recommendations. Therefore, further work will be developed by SUBREI and the SME Division with interested organizations, with a risk-based approach, including foreign bribery. In addition, the SME Consulting Body could also be a permanent dissemination platform of relevant information.

* With the input provided, and work done by relevant bodies, such as ChileCompra and the Anticorruption Alliance, SUBREI proposed to create a working group with GNECC ministries that will develop voluntary guidance on the elements of an effective OPM for preventing foreign bribery, according to our domestic law. Once guidelines are agreed, the SME Division will help with the dissemination of the instrument(s).

* Consider a potential collaboration with Corfo, in order to foster the implementation of OPMs and other responsible business conduct practices, harnessing their funding lines aimed at increasing competitiveness for groups of companies, such as exporting companies.

Supporting material:

- NCP Capacity buildings activities supporting documents (some PPTs are presented as an example)
- PROCHILE Capacity buildings activities supporting documents
- Brochure mailing sustainable governance and foreign bribery to PROCHILE companies – SMEs
- Screenprint of PROCHILE sustainability test and criteria
- Formal communication from SUBREI to MINECON SME Division
- Supporting material participation in SMEs Consulting Body

If no action has been taken to implement recommendation 7 please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8 (a):

8. With regards to anti-money laundering measures, the Working Group recommends that Chile:

(a) Urgently require appropriate non-financial entities including lawyers, accountants and auditors to report suspected money laundering transactions related to foreign bribery [Convention Art. 7, 2009 Recommendation III.i, and Phase 3 Recommendation 7(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

Technically, the Financial Action Task Force (FATF) standard does not require from natural and legal persons, and financial institutions, to identify associated predicate offences but rather unusual operations of their business which must be informed to FIU by Reporting of Suspicious Transactions.

The Interpretative Note of Recommendations 22 and 23 indicates that, to comply with these recommendations, countries do not need to issue laws or coercive means that have to do exclusively with lawyers, accountants and other designated non-financial activities and professions, to the extent that these activities or professions are included in the laws or other enforceable means that cover the underlying activities.

The intervention of lawyers, accountants and auditors in corporate, real estate and representation matters is of a secondary nature, since according to our legal system, the participation of public bodies and others agents are bound to report to the Chilean FIU (Ministries, Public Services, notaries, real estate register) and are also part of the National AML / CFT System, so the control of those activities is given in a cross way, carried out by the gatekeepers, in accordance with the criteria established by FATF in its Guidelines.

For example, under the Chilean legal system any company created under the advice of a lawyer or an accountant, must necessarily do by public deed which goes through the review of a notary public. Subsequently, the public deed must be presented into the Real Estate Registry (led by an attorney). This step allows incorporate the company at the Commercial Registry (public nature). Therefore, according to the Chilean law, preventive control in this matter is necessarily executed by actors who are bound by FIU Law 19.913.

Regarding the sale of a real estate, it can only happen through the registration of public deed of sale at the Real Estate Registry which must necessarily have been granted by a notary public. All the records kept by the Real Estate Registry are public. Therefore, according to the Chilean law, preventive control in this matter is necessarily executed by actors who are bound by FIU Law 19.913.

If no action has been taken to implement recommendation 8 (a) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8 (b) :

8. With regards to anti-money laundering measures, the Working Group recommends that Chile:

(b) Take measures to enforce the money laundering offence more effectively in connection with foreign bribery cases, and ensure that in practice an individual is simultaneously convicted of money laundering and foreign bribery, where appropriate [Convention Art. 7 and Phase 3 Recommendation 7(a)].

Action taken as of the date of the follow-up report to implement this recommendation:

Several measures have been taken to address money laundering predicated on foreign bribery. A working process was established between ULDDECO and UNAC whereby the first submits monthly to UNAC the reports forwarded by UAF that relates to predicate corruption offences. In addition, specialized prosecutors have been trained in the investigation of money laundering predicated on corruption offences.

Moreover, in February 2020 Law N° 19.913 was amended, now allowing UAF to send information to the General Comptroller's Office for certain purposes (Law N° 21.211 of February 4th, 2020). Specifically, it is established that UAF shall: "*g) Provide the Comptroller General Office with the information it requires to control the opportunity, integrity and veracity of the content of the declaration of interests and assets, both with respect to the heads of operating units and their spouses or civil partners, relatives established in article 4 of Law N° 19.863, and persons under guardianship or curatorship, for the fulfillment of the purposes of the aforementioned law.*

For such purpose, the Comptroller's General Office shall send to the Financial Analysis Unit a list of the heads of the operating units that require the use of reserved expenses for their operation".

Special coordinations have been generated for complex cases involving money laundering and corruption offences, assembling working teams of prosecutors, legal advisors from both ULDDECO and UNAC, as well as officials from the General Comptroller's Office who have been appointed to work exclusively on these cases.

That an individual could be simultaneously convicted of money laundering and foreign bribery is clearly admitted in paragraph 7 of article 27 of Law N° 19.913, which states: "*If the person who participated as author or accomplice to the act that originated such assets also commits the offence contemplated in this article, he shall also be sanctioned as such*".

If no action has been taken to implement recommendation 8 (b) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9 (a) :

9. With regards to false accounting, the Working Group recommends that Chile:

(a) Amend its legislation to prohibit both natural and legal persons from engaging in the full range of conduct described in Art. 8(1) of the Convention, and subject such conduct to effective, proportionate and dissuasive sanctions [Convention Art. 8, 2009 Recommendation X.A.i, and Phase 3 Recommendation 8(a)]

Action taken as of the date of the follow-up report to implement this recommendation:

Within the framework of effectively combating and preventing bribery of foreign public servants, SII issued instructions (Circular No. 38, of July 2018) mandatory to taxpayers, reaffirming:

- The prohibition of unregistered accounts and the maintenance of double accounting or improperly identified transactions, the registration of non-existent expenses, the registration of charges with incorrect identification of their the nature of such charges, the use of false documents by taxpayers with the purpose of bribing foreign public servants or concealing said bribery. In this regard, it should be noted that such conduct could constitute some of the infringements or tax crimes contemplated in article 97 of the Tax Code. In this case, SII will initiate the corresponding procedure to obtain the sanction of those offenders.
- The inadmissibility of considering expenses necessary to produce the income, bribery or gift used for bribery that may be given to a national or foreign public official.

The preliminary project for a New Criminal Code in which the Ministry of Justice and Human Rights is currently working on to be soon presented to Congress, has the following treatment regarding recommendation 9 (a):

The system of attribution of responsibility to an artificial entity proposed by the New Criminal Code establishes that, in principle, companies will be responsible for any crimes committed by a member of their organization if this could reasonably be anticipated in accordance with the development of their ordinary processes. In this sense, the legal person will be responsible for any type of falsification or alteration of its documents and accounting and non-accounting controls committed by a member of its organization within the framework of the economic activities that the company develops.

Unlike what is stated in Act N° 20.393, the New Criminal Code does not establish an exhaustive catalog of "base crimes". In its replacement, in addition to a catalog to ensure the prevention of certain crimes regardless of the activity that the company carries out (including bribery of foreign public officials), the responsibility of the company may also derive from the perpetration of any crime related to its ordinary processes. Among those crimes, the new Criminal Code include crimes of falsification of public and private documents, also penalizes the submission of false information to the authority, and, in the case of Companies subject to the supervision of a State Agency, the falsification or adulteration of any document that may affect their assets or responsibility, the non-preservation of documents required for inspection by the Agency and the non-submission of relevant information required by the Authorities.

All of the above, notwithstanding the regulatory obligations between the company and the State Agency.

If no action has been taken to implement recommendation 9 (a) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9 (b) :

9. With regards to false accounting, the Working Group recommends that Chile:

(b) Vigorously pursue false accounting cases and take all steps to ensure such cases are investigated and prosecuted where appropriate [Convention Art. 8, 2009 Recommendation X.A.i, and Phase 3 Recommendation 8(a)]

Action taken as of the date of the follow-up report to implement this recommendation:

The PPO initiates criminal investigations for false accounting offences and vigorously pursue them. If the false accounting offense derives in a tax crime, the PPO initiates the corresponding criminal investigation once the SII has filed the corresponding crime report (*denuncia*) or criminal complaint (*querella*), as set forth in article 162 of the Tax Code. If the SII detects any tax crime, including the detection of false accounting that derives in a tax crime, the SII will follow the procedures set forth in the law in order to obtain the corresponding sanction, which includes a formal procedure for gathering information, the initiation of the criminal investigation and the application of any relevant sanction.

The Chilean Tax Code establishes that “false accounting” derives in a tax crime, if such offense is contemplated in Article 97 No. 4 subsections 1, 2 or 3 or article 100 of the Tax Code. Some of the tax crimes set forth in such articles are: i) Article 97 No 4, subparagraph 1° of the Tax Code, consecrates conducts related to accounting falsehoods such as malicious omission in the accounting books of the entries related to merchandise acquired, sold or exchanged, or to other taxable operations, falsification of balances or inventories, the use of receipts, debit notes, credit notes or invoices already used in previous operations; ii) Article 100 of the Tax Code sanctions accountants who prepare or endorse false financial statements.

Within the framework of combating and effectively preventing bribery of foreign public servants, the SII, through Circular Letter N°38, of July 2018, established diverse mechanisms for identifying and duly sanction the falsification of financial statements, if such falsification is made in order to bribe foreign public servants or to hide such bribery. Some examples of these mechanisms include: (i) keeping unregistered balance accounts, (ii) maintaining double accounting records or registering improperly identified transactions, (iii) deducting false expenses and (iv) producing false documentation. If any of such conducts derives in an infringement or constitutes a tax crime, the SII will initiate all procedures and pursue the application of all relevant sanctions.

If no action has been taken to implement recommendation 9 (b) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9 (c) :

9. With regards to false accounting, the Working Group recommends that Chile:

(c) Maintain enforcement statistics [Convention Art. 8, 2009 Recommendation X.A.i, and Phase 3 Recommendation 6(ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

In terms of tax compliance statistics, the SII provides data on cases in attached document.

In relation with this, instructions will be issued (currently pending approval, and will be mandatory for taxpayers) that will regulate which behavioural characteristics and patterns allow SII to reasonably presume that a taxpayer declares operations that later could not be carried out, or operations that have not been totally or partially carried out. These taxpayers will be labelled as "Taxpayers with tax records and / or documents to be justified", referring to any individual or legal entity who -having declared activities

before the SII and being authorized to issue tax documents (related to VAT)-: is presumed to have intentions of violating the tax system through commercial operations supported by false antecedents; or, presents differences related to those included in the document.

It should be noted that, within the actions considered to be applied in the detection of these cases, is the criminal complaint or the prosecution of the pecuniary sanction, established in article 162 of the Tax Code, considering the criteria the Tax Administration has established for this purpose (for example: quantity and quality of the evidence gathered, amount of the eventual damage to the tax interest, nature and seriousness of the sanctioned irregularity, possible propagation, the exemplary effect that could be achieved, if offender had accounting or professional advice to avoid tax, the relationship of the challenged credit versus the total credit declared by the taxpayer who registers the documents and the reiteration of the fraudulent act).

Supporting material:

- SII statistics

If no action has been taken to implement recommendation 9 (c) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10 (a) :

10. With regards to tax-related matters, the Working Group recommends that Chile:

(a) Ensure that SII is routinely informed of foreign bribery convictions and systematically re-examines the relevant tax returns of convicted taxpayers to determine whether bribes have been deducted [2009 Recommendation III.iii and VIII.i, Tax Recommendation II, and Phase 3 Recommendation 9(b)]

Action taken as of the date of the follow-up report to implement this recommendation:

As mentioned in **Recommendation 1(c)**, one of the purposes of the communication and coordination channel established between UNAC and the Legal Subdirectorato of the SII is to periodically inform convictions for foreign bribery, as well as those SCPs in which any of the conditions imply a disbursement of money, in order to avoid that those amounts may be deducted from taxes and the SII can systematically re-examine the relevant tax returns.

If no action has been taken to implement recommendation 10 (a) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10 (b) :

10. With regards to tax-related matters, the Working Group recommends that Chile:

(b) (i) Incorporate the essential elements of the 2013 OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors into the SII's Standard Plan for Tax Audits; (ii) train tax examiners on how to detect bribery during tax examinations; and (iii) examine why SII has failed to detect proven

cases of bribery [2009 Recommendation III.i, III.iii and VIII.i, Tax Recommendation II, and Phase 3 Recommendation 9(c)]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) The OECD manual was published on the SII website, and its publicly known by the employees. The training on the subject was incorporated into the 2019 SII workshop on the preventive system in terms of Money Laundering (ML), Terrorism Financing (FT) and Official Crime (DF). This year, in the 2020 version, the workshop has been updated and incorporates, among other matters, the new base crimes related to public officials, such as Embezzlement of public funds, Fraud, Bribery, Bribery of foreign public officials, Illicit association, tax fraud, among others. Officials trained at the national level, as of 11/30/2020, reached 1.246 employees. That is, 26% of the total SII officials in the country. (In 2020 no workshops have been held due to social contingency and then COVID19).

(ii) As a tax administration, through our Training Center (CFIT), we are working on the design and characteristics of the course "OECD Manual for tax inspectors on the detection of Bribery", whose objective is to learn and recognize the concept of bribery and the main tools for its detection within a tax audit.

To this end, the following contents are considered to be developed: 1. Concept and indicators of bribery. 2. Planning and testing methods. 3. Evaluation of internal controls of the taxpayer and identification of irregular payments. The methodology of the course will be through e-learning (self-study) and will be freely available to participants on the CFIT Virtual platform, with self-enrolment mode. The course has been structured in three modules, which includes interactive learning activities with automatic feedback. In addition, it contains a learning assessment on the main contents of the course. The course takes approximately 8 hours, distributed over five days.

iii) Within the SII's scope of competence, it is important to note that, prior to the reception of the information on these cases from the PPO, the SII did not control or subject any companies or individuals involved in these cases to an audit, as there was no precedent that would justify said review. Taxpayers exhibited tax behaviour formally in accordance with the law.

If no action has been taken to implement recommendation 10 (b) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10 (c) :

10. With regards to tax-related matters, the Working Group recommends that Chile:

(c) Make the multiple obligations on SII officials to report foreign bribery more consistent [2009 Recommendation III.i, III.iv and IX.ii].

Action taken as of the date of the follow-up report to implement this recommendation:

This is being addressed in the training described above. In addition, as a government agency at the service of the country, the SII has strengthened the investigation of those taxpayers with aggressive tax behaviour. Among those taxpayers, are those who try to use our Institution and its officials, as a tool for the commission of illegal acts, safeguarding in this way the probity, transparency and equity in Public

Administration. In accordance with this, it has become necessary to update the SII Manual on tax matters related to the prevention of Money Laundering, Civil Servant Crimes and Terrorism Financing, instructions issued in Oficio Circular No. 12 of 2020. In that document, it was updated, among others:

- Public institutions are obliged to report suspicious operations that they notice in the exercise of their functions; so is an obligation for all officials to report in case of detection of anomalous situations in the exercise of its functions.
- New base crimes that can be committed by public officials are added, explained and exemplified: Letter c. “Embezzlement of public funds, Fraud, Bribery, Bribery of foreign public officials, Illegal Association, Tax Fraud, Unfair Administration and Fraudulent Returns” (Art 97. N ° 4, subsection 3, on Tax Code).
- In case of becoming aware of facts having the character of a crime different from base crimes, in addition to delivering a report to the UAF, a criminal complaint must be made through official channels, to the PPO and/or police officers. Also, it sets a 24-hour period to communicate those facts.
- A paragraph was added to clarify suspicious operations protocol, related to Politically Exposed Persons (PEP).
- Defines internal communication channel for Suspicious Operations, via email consulta_ros@sii.cl

If no action has been taken to implement recommendation 10 (c) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11 (a) :

11. With regards to public advantages, the Working Group recommends that Chile:

(a) Encourage public contracting authorities to (i) routinely check the debarment lists of multilateral financial institutions in relation to public procurement contracting, and (ii) consider, as appropriate, the internal controls, ethics and compliance programmes of companies seeking procurement contracts [Convention Art. 3(4), 2009 Recommendation IX.i and Phase 3 Recommendation 12(a)]

Action taken as of the date of the follow-up report to implement this recommendation:

In the relationship with suppliers and stakeholders, ChileCompra is working in various fronts that encourage the establishment of internal controls, ethics and compliance programmes by companies seeking procurement contracts:

- **Public Procurement Directive N°31. Code of Ethics for Government Suppliers in Public Procurement:** In February 2018, ChileCompra published Directive No. 31, which complemented the one previously published as No. 28, on probity for contracting agencies officers. Thus, the supplier-business-private sector was included as a relevant actor in integrity and anti-corruption measures in procurement contracts. This directive focused on recommendations that cut across the procurement process, as well as specific recommendations for each of its stages, to ensure high ethical standards and a special commitment to anti-corruption, human rights, sustainability and non-discrimination.

More information:

<https://www.chilecompra.cl/wp-content/uploads/2018/02/CodigodeEticaParaProveedoresdelEstado.pdf> .

- **Activities organized to disseminate Directive N°31 - more information here:**

<https://www.t13.cl/noticia/negocios/chilecompra-lanza-consulta-publica-codigo-etica-proveedores-del-estado>

<https://www.chilecompra.cl/2017/05/chilecompra-lanza-codigo-de-etica-en-compras-publicas/>

<https://revistaemprende.cl/chilecompra-publica-decalogo-probidad-proveedores-del-estado/>

<https://www.alianzaanticorruccion.cl/AnticorruccionUNCAC/nueva-directiva-de-compras-entrega-codigo-de-etica-a-proveedores-del-estado-2/>

- **Integrity online course for suppliers:** In this same line, in 2018 work began with ChileTransparente to make available a training course on integrity, aimed at suppliers: *And what can I do? - Integrity as an added value in Public Procurement*, with the aim of promoting integrity and transparency among the government's suppliers from the regulatory framework and guidelines of ChileCompra. The contents are based on the Code of Ethics for Suppliers, so the course has also been constituted as a means of adopting it. The course is 8 hours long and reviews topics such as fundamental concepts associated with integrity and corruption; integrity and probity as a legal basis in the public procurement process; examples of good practices that strengthen integrity in the organization; and integrity practices to identify ethical behaviors. This course is available on the institutional training website, with monthly editions, at the following link: <https://capacitacion.chilecompra.cl/course/info.php?id=3968>. As of August 2020, 64 providers have successfully completed the three editions of the course.

- **Compliance course for Framework Agreement suppliers:** with the participation of 17 providers, it was held in conjunction with the General Comptroller's Office and Alliance for integrity.

- **ChileCompra & the Anticorruption Alliance:** Since May 2012, ChileCompra has been part of the Anti-Corruption Working Group of the United Nations Convention against Corruption (UNCAC), being an active member supporting various activities. In particular, ChileCompra helped **coordinating and presenting in the cycle of talks** on integrity, also aimed at suppliers, whose focus was how to install integrity as a cornerstone in the activities of suppliers and how to implement a compliance program in a simple way.

- **Open Government Plan 2018-2020:**

o ChileCompra participates in the *"Commitment 11: Collaboratively construct a policy proposal on the creation of a registry of beneficial owners (final beneficiaries - BF) of companies"*; in charge of the UAF (Financial Analysis Unit) ChileCompra is part of the working group that prepared the report with the proposed policy for the creation of a registry of beneficial owners, which is in the process of preparing its final version, following the public consultation process.

o ChileCompra is in charge of *"Commitment 12: Implementation of the International Open Contracting Data Standard - OCDS"*: 100% compliance with the Open Contracting Data Standard (OCDS) of the Open Contracting Partnership¹⁷, developed in ChileCompra since 2018, was achieved: data under the OCDS are available and published in the platform www.mercadopublico.cl.

- **Open Contracting Data Standard (OCDS):** OCDS is an open data standard for the publication of structured information on all stages of a public procurement process: from planning to implementation. Currently, we publish our information under an international standard for open contracting. With this, we are facing one of the main challenges we have as a public institution,

¹⁷ <https://www.open-contracting.org/es/>

which is enhancing transparency by making information available in formats that increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users. . As a first step, we implemented the OCDS standard in more than 3.7 million bidding forms in www.mercadopublico.cl, followed by 2.2 million Direct Contract and Framework Agreement processes. The database allows to directly download public procurement information in Open Data Standard (CSV, JSON and OCDS formats). This means that all citizens can access the information on what, how much and from whom public agencies procure. This allows for obtaining the greatest possible value from public procurement information, enabling simpler monitoring and analysis processes, as well as allowing for the development of new solutions to integrating this data, thus seeking to generate greater citizen empowerment, enhance social oversight and bring public policies closer to the citizens.

- **Public interest acquisitions panels:** In addition, with the information available through the electronic platform www.mercadopublico.cl, panels have been created to allow public monitoring of purchases related to issues of public interest, this year, acquisitions s related to the pandemic, and related to the October 25 national plebiscite¹⁸. Thanks to this, we have fulfilled our commitment in the 2018-2020 Open Government Plan, which is detailed below.

- **Networking with auditing bodies:** ChileCompra makes information available to different auditing agencies and public institutions, such as the Comptroller General's Office (CGR), the General Internal Auditing Council of the Government (CAIGG), the PPO and the National Economic Prosecutor's Office, and the antitrust agency (FNE). This availability is achieved through the opening of data, and also through the construction of specific monitoring panels to generate greater integrity and efficiency in public procurement, which allows these agencies to better enhance their oversight role.

- **Integrity pact of suppliers that bid in the public market:** Through the integrity pact, suppliers commit, among other things, to act with transparency, probity and truthfulness in the information and background presented in the proposal. This pact is included in all the Framework Agreement's terms of reference and its use is encouraged in the public bid's terms of reference – developed by purchasing organisms. In 2017 this pact was modified to include a clause in which the bidder agrees to respect the fundamental rights of workers, and human rights as established in the Labor Code and the United Nations Guiding Principles on Human Rights and Business.

¹⁸ National plebiscite Purchases:

<https://www.chilecompra.cl/2020/09/chilecompra-dispone-nuevo-panel-de-compras-publicas-asociadas-a-plebiscito-que-ya-suman-11-093-millones-de-pesos/>

<https://app.powerbi.com/view?r=eyJrIjojZGJZjk1MGUtMDgyMy00MDk0LWE5NGQtMjA0N2I0MzEwNTI0IiwidCI6ImIwMGQ1ZjQ5LTk4YWVtNGJjNS1hMmM5LWNhZmRmNzEyMTZmMCIsImMiOjR9&pageName=ReportSectiona4f73c61a3ebe8cb7f99>

COVID Purchases:

<https://www.chilecompra.cl/2020/08/hacienda-y-chilecompra-disponen-informacion-consolidada-de-compras-publicas-asociadas-a-pandemia-covid-19/>

<https://app.powerbi.com/view?r=eyJrIjojNmU2NzBkNzUtYmM1Mi00NGVmlTljYWQ0NTI0MTQ4ZjQ5IiwidCI6ImIwMGQ1ZjQ5LTk4YWVtNGJjNS1hMmM5LWNhZmRmNzEyMTZmMCIsImMiOjR9>

If no action has been taken to implement recommendation 11 (a) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11 (b) :

11. With regards to public advantages, the Working Group recommends that Chile:

(b) Further implement key aspects of the 2016 OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption. In particular, AGCID should (i) analyse and consider the risk of corruption in an ODA recipient country before awarding ODA contracts; (ii) evaluate the anti-corruption risk management systems of ODA contract applicants; (iii) verify whether applicants have been convicted of corruption or foreign bribery under the Penal Code or Law 20 393 (on corporate liability), or are on the debarment lists of ChileCompra or multilateral financial institutions; (iv) make more consistent the reporting channels for the different reporting obligations; (v) remind AGCID officials and relevant stakeholders of their obligations (especially under the CPC and Law 19 913) to report corruption in ODA projects, and communicate to them the channels for reporting; and (vii) ensure that its standard ODA contract refers to the 2016 ODA Recommendation [2016 Recommendation for Development Co-operation Actors on Managing the Risk of Corruption 6.i, iii, iv, 7.i-ii, 10.ii]

Action taken as of the date of the follow-up report to implement this recommendation:

Chile ODA delivery to third countries is not carried out through contracts or transfer of resources to entities of the host country, but through the delivery of technical assistance by Chilean entities of the public and private sector.

In any procurement process managed by the Chilean Agency for International Development Cooperation (AGCID), related to a ODA project financed by a multilateral financial institution and carried out under the procurements rules of those institutions, before the award of contracts, procurement analysts must review the debarment lists of those organizations. This step is established in the procurement procedures of the multilateral entities that currently finance ODA projects in Chile, which are the following:

-World Bank, 11.1 of Annex II, and 2.2. of Annex IV of the 2016 “Procurement Regulations for Borrowers in Investment Projects - Goods, Works, Non-Consulting Services and Consulting Services”.

-*European Union*, 2.6.10 of Chapter II of the 2019 practical guide for "Contracts and Subsidies for External Actions of the European Union"

On procurement processes carried out under Chilean regulations (-*ChileCompra system*- Law 19.886; Decree Law N°250 / 2004 of the Ministry of Finance of Chile), providers who have been convicted of corruption or foreign bribery under the Penal Code or Law 20.393, cannot contract with the government, not being able to be part of the registry of providers authorized to contract with the state (www.chileprovedores.cl). This applies as well to AGCID procurement processes.

Constant training is carried out for AGCID officials on the Civil Servants Crime Prevention System, Money Laundering and Terrorism Financing (UAF System), especially on the reporting channels. The last training was held in December 2019 and conducted by the Agency’s internal audit unit, for a total of 20 professionals from different departments. On March 15, 2021 a new training day will be held.

All the inter-institutional cooperation agreements and procurements contracts of the Agency consider an "anti-corruption clause", as presented during the Phase 4 evaluation, which makes applicable the 2016 Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption.

Supporting material:

- World Bank and EU Manuals
- Training activity supporting documents

If no action has been taken to implement recommendation 11 (b) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11 (c) :

11. With regards to public advantages, the Working Group recommends that Chile:

(c) Regarding export credits, adhere to the 2006 Recommendation on Bribery and Officially Supported Export Credits (or its successor instrument), and adopt and implement anti-corruption measures planned by CORFO in the context of the COBEX programme [2009 Recommendation III.i, IX.i and XII, 2006 Export Credit Recommendation, and Phase 3 Recommendation 12(b)].

Action taken as of the date of the follow-up report to implement this recommendation:

Following Chile's request, a meeting was held with OECD Legal, Export Credit and Antibribery Secretariats, in order to clarify the situation of Chile's adherence to the 2006 Recommendation on Bribery and Officially Supported Export Credits (or its successor instrument).

According to the information provided by the OECD Legal Team, Chile adhered to the 2006 OECD Recommendation on Bribery and Officially Supported Export Credits (2006 Recommendation) [OECD/LEGAL/0348] as of the date of its membership of the OECD. In this regard, the [Accession Agreement of Chile to the OECD Convention](#) sets out Chile's acceptance of "all legal instruments of the Organisation in force at the time of the decision of the OECD Council to invite the Republic of Chile to accede to the Convention with the remarks specified in Annexes 1 to 5 to the present Statement of which they form an integral part" [C(2009)183]. In Annexes 1 to 5, Chile made no remarks with respect to the 2006 Recommendation. Accordingly, as the OECD legal experts mentioned, at the moment of the deposit of its instrument of accession to the OECD Convention on 7 May 2010, Chile became an Adherent to the 2006 Recommendation.

The OECD Legal experts also mentioned that in 2019, the OECD Council adopted the Recommendation on Bribery and Officially Supported Export Credits (2019 Recommendation) [OECD/LEGAL/0447], which abrogated and replaced the 2006 Recommendation [C(2019)27; C/M(2019)7, Item 54]. As a Member of the OECD, Chile took part in the decision of the Council and thereby became an Adherent to the 2019 Recommendation as of the date of its adoption on 3 April 2019.

It should be noted that, through the "Coverage for the Promotion of Foreign Trade" Program (COBEX), Corfo does not provide loans, but rather provides coverage for financing granted by financial intermediaries to export and import companies.

Notwithstanding the above, starting in 2015, Corfo began an evaluation of the COBEX program regulations, also analyzing the content of the anti-corruption measures adopted in relation to the OECD recommendation. In this way, during 2019 the new regulations governing the COBEX Program were formalized, taking into account the above.

That said, it should be noted that the Program's regulations, contained in its Rules, sanctioned by Resolution No. 103 of 2018, of Corfo, published in the Official Gazette on April 23, 2019, and in its Operating Manual, approved by Corfo's Exempt Resolution No. 968 of 2019; it establishes the requirement that financial intermediaries must have policies and processes in place to prevent money laundering, bribery and the financing of terrorism.

Likewise, it should be noted that all financial intermediaries operating the COBEX program are banks and, therefore, are under the supervision of the Financial Market Commission (CMF), which requires them to comply with the requirement indicated in the previous paragraph (Chapter 1-14 Prevention of Money Laundering and Financing of Terrorism, Updated Compilation of Regulations, of the CMF, available at http://www.cmfchile.cl/portal/principal/605/articles-28899_doc_pdf.pdf).

On the other hand, each time a financial intermediary grants financing to a beneficiary company, which will later be incorporated into the COBEX program to receive coverage by Corfo, both the financial intermediary and the beneficiary company must sign a sworn statement regarding knowledge of the scope of the regulations related to the prevention of money laundering, bribery and financing of terrorism. Such statements must be signed at the time the financing is approved.

Specifically, these affidavits contain the following statements:

a) Beneficiary Company: *"The company declares to know the scope, regulations and sanctions of Law No. 20,393, which establishes the criminal liability of legal entities in the crimes of money laundering, financing of terrorism and bribery crimes and the origin of the funds used by the company and Law No. 20. 341, which introduces amendments to the criminal code, in the regulation of certain crimes against the public administration, including the crime of bribery of foreign public officials, (we state) that the resources come from lawful sources and that their use is for lawful purposes".*

b) Financial Intermediary: *"The intermediary declares to be aware of the scope, regulations and sanctions of Law No. 20,393, which establishes the criminal liability of legal persons in the crimes of money laundering, financing of terrorism and bribery crimes, and of Law No. 20. 341, which introduces amendments to the criminal code, in the regulation of certain crimes against the public administration, including the crime of bribery of foreign public officials, and that the funds provided to the company have been managed by the financial intermediary in accordance with best practices and transparency, as provided in such laws, in the internal regulations or rules of the intermediary and in the Program Regulations".*

As an example, the text of the affidavit is attached, corresponding to an operation incorporated to the COBEX program. Since the entry into force of the regulations, all operations must have such declaration. If the financial intermediary submits a request for coverage collection, in case of a loss of the operation, and does not have such statement, Corfo may reject the coverage payment.

In addition, each time a financial intermediary requests COBEX coverage for a loan granted to a company, through Corfo's IT System, it must declare that the beneficiary company complies with all the procedures

of Chapter 1-14 Prevention of Money Laundering and Financing of Terrorism, the CMF's Updated Compilation of Standards.

Finally, it should be noted that, during the year 2020, financial intermediaries have granted 1,853 operations that have been included in the COBEX program, benefiting 803 companies. Likewise, and according to the requirements of the program, each operation must have its respective affidavit.

Supporting material:

- Resolution N°103, from 2018, that approves the Regulation of the Guarantee Program for the Promotion of Foreign Trade – COBEX
- Resolution N°968, from 2019, that approves the Operating Manual of the Guarantee Program for the Promotion of Foreign Trade – COBEX
- Affidavit model: Annex N ° 2 - Compliance with Conditions established in the Guarantee Regulations

If no action has been taken to implement recommendation 11 (c) please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

16. The Working Group will follow up as case law and practice develop with regard to the following issues:

Text of issue for follow-up 12 (a):

(a) Law 20 393, particularly (i) the interpretation of the term “directly and immediately” in the interest or for the benefit of the legal person and (ii) the application of the offence prevention model defence by Chilean courts, including the burden of proof [Convention Art. 2, 2009 Recommendation Annexes I.B-C and II, and Phase 3 Follow-up Issues 13(b) and 13(b)(ii)]

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 12 (b):

(b) Whether the limitation period for formalised investigations is sufficient for proper investigation and prosecution [Convention Arts. 5 and 6, and Phase 3 Recommendation 4(a)]

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 12 (c):

(c) Whether sanctions imposed against natural persons are effective, proportionate and dissuasive in all foreign bribery cases [Convention Art. 3]

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 12 (d):

(d) The Convention as a treaty basis to provide confiscation as MLA in foreign bribery cases [Convention Arts. 3(3) and 9, and Phase 3 Follow-up Issue 13(e)].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Chile has not received any MLA requests for confiscation in foreign bribery cases. Nevertheless, in the past Chile have had confiscated the proceeds of the crime based on our national legislation and international treaties applicable.

PART III: ADDITIONAL ISSUES FOR INFORMATION

Foreign bribery and related enforcement actions since Phase 4:

See separate document.

Efforts made to publicise and disseminate the Chile Phase 4 report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit [*Phase 4 Evaluation Procedures, para. 50*]

Action taken as of the date of the follow-up report:

Various efforts have been made to publicise and disseminate the Chile Phase 4 report:

- *Media coverage*: The Undersecretariat of Justice, that along with Undersecretariat of SUBREI lead the delegation that presented Chile's advancements during the Phase 4 report, made efforts to publicise the review and results. Examples of media coverage that resulted from these efforts include the following [press note](#) in El Mercurio newspaper.

- *Informative event 20-12-2018*: Immediately after the Phase 4 evaluation, a public-private informative event took place organised by DISIN. An invitation was submitted to all the participants of the on-site visit. During the event, representatives of Ministry of Justice, PPO, UAF DISIN & SUBREI shared views about the evaluation and the report. A presentation was made and later distributed to all registered participants.

- *Publication on the internet*: Immediately after the Phase 4 evaluation, DISIN-SUBREL [published](#) the report and the Spanish translation of the recommendations, press release and executive summary. Since 2020, SUBREI [published](#) as well detailed information about the Convention, Chile's evaluations and direct access to the Phase 4 report. SUBREI is currently working in the English version of its webpage, which will include the OECD Antibribery Convention section.

- *Brochure for public officials*: In the [new booklet](#) for public officials, a hyperlink was added in order to access directly the Phase 4 report (please refer to question number 9 in the brochure).

Supporting material:

- Communication sent after the 2018 informative event (includes PPT, pictures and link to Phase 4 report)

LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|---|--|
| ABP abbreviated procedure (<i>procedimiento abreviado</i>) | PROCHILE (Export promotion general directorate) |
| AGCID <i>Agencia Chilena de Cooperación Internacional para el Desarrollo</i> | RBC Division (Responsible Business Conduct Division, SUBREIMULTI) |
| AML anti-money laundering | SBIF <i>Superintendencia de Bancos e Instituciones Financieras Chile</i> (Superintendent of Banks and Financial Institutions) |
| AS Administrative Statute Law (18 834) | SUBDERE <i>Subsecretaría de Desarrollo Regional y Administrativo de Chile</i> |
| CAIGG <i>Consejo de Auditoría Interna General de Gobierno</i> | SCP conditional suspension of proceedings (<i>suspensión condicional del procedimiento</i>) |
| CGR <i>Contraloría General de la República</i> | SII <i>Servicio de Impuestos Internos</i> (Internal Taxation Service) |
| CMF <i>Comisión para el Mercado Financiero</i> | SME small- and medium-sized enterprise |
| CORFO <i>Corporación de Fomento de la Producción de Chile</i> | SUBREI <i>Subsecretaría de Relaciones Económicas Internacionales</i> |
| CPC Criminal Procedure Code | SUBREIMULTI General Directorate of Multilateral Economic Relations |
| DIPRES <i>Dirección de Presupuestos</i> | SUBREL <i>Subsecretaría de Relaciones Exteriores</i> |
| GNECC <i>Grupo Nacional de Expertos contra la Corrupción</i> (National Group of Experts against Corruption) | UAF <i>Unidad de Análisis Financiero</i> (Financial Analysis Unit) |
| MOFA Ministry of Foreign Affairs | ULDDECO <i>Unidad Especializada en Lavado de Dinero, Delitos Económicos y Crimen Organizado</i> (Specialised Unit in Money Laundering, Economic Offences and Organised Crime, PPO) |
| MLA mutual legal assistance | UNAC <i>Unidad Especializada Anticorrupción</i> (Specialised Anti-Corruption Unit, PPO) |
| MOJ Ministry of Justice | USD United States dollar |
| NGO non-governmental organisation | UTM <i>unidades tributarias mensuales</i> (monthly tax units) |
| ODA official development assistance | |
| OPM offence prevention model (<i>i.e.</i> compliance programme) | |
| OIRS <i>Oficina de informaciones, reclamos y sugerencias</i> | |
| PC Penal Code | |
| PDI <i>Policía de Investigaciones de Chile</i> (investigative police) | |
| PEP politically exposed person | |
| MINSAL <i>Ministerio de Salud</i> | |
| NCP OECD Guidelines National Contact Point | |
| PPO Public Prosecutor's Office (<i>Ministerio Público</i>) | |

www.oecd.org/corruption

