



# Anti-corruption Laws and Regulations

A Global Guide

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# Chile

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## 1. Country overview with regard to corruption

The historic perception of Chile with regard to the phenomenon of corruption has generally been positive. That is to say, in a country with a low index of 'corruption', this perception is confirmed by rankings published annually by international organisations such as the non-governmental organisation (NGO) Transparency International (TI) and others. For example, according to TI's *Corruption Perceptions Index 2016*, Chile now ranks 24th out of 76 countries in terms of the perception of corruption.

There was an historic 17-year period, between 1973 and 1990, during which Chile lived under military rule. As is characteristic of such governmental regimes, there was no documented information about corruption until democracy was restored in 1990, after which certain actions and activities became widely known.

At the beginning of the 1990s, the democratic government used a policy of transparency to promote citizen interest in corruption. Beginning in 1994, the people of Chile became increasingly concerned with 'a fungus that grows in the dark' which was evident in a series of in-house irregular operations involving future sales of copper contracts through Codelco (Copper Corporation). This situation had a national resonance, as the company significantly influenced the national budget and, subsequently, government public policies.

A direct result of the Codelco corruption case was the organisation of a commission comprising outstanding political and academic representatives. This integrated commission issued a report with multiple recommendations including draft laws, administrative reforms, self-regulatory codes for ethics and seminars.

Later, in 2003, a number of incidents of corruption occurred that related to the wages of public servants and which once again captured the public interest as well as the attention of social media. These incidents were a direct outcome of a private-public sector partnership for the construction of public facilities, particularly roads, prison facilities and airports under the modality of 'public works concessions'.

During 2014 and 2015, a number of other examples of corruption were revealed in both the public and private sectors. These incidents related to political funding as well as other issues. Once again, these allegations strongly impacted on citizens, leading to the creation of another commission, the Engel Commission, whose report contained multiple proposals for action and recommendations.

Scholars on the subject of corruption have formulated a useful summary classification of the phenomenon against which to understand the Chilean

situation: accidental, systemic and systematic. In other words, these categories describe, respectively, whether corruption is an isolated instance, periodic or frequent.

Historically, Chile has had low levels of corruption. Globalisation and existing transparency in the public, private, national and international arenas have driven the country to systematic corruption. That is to say, sectors of society such as finance, politics and police institutions are affected by the phenomenon of corruption, unlike other countries in which the entire state apparatus is infected by systemic corruption.

The volume of foreign investment in Chile has, to date, been relatively unaffected by the issue of corruption.

The current situation in Chile reveals the need to review standards and regulations with regard to integrity, good practices and the financing of political activity. In addition, the delineation of exclusive areas and reciprocal relations between the public and private sector are recommended. Chilean society is becoming accustomed to transparency and accountability as essential bases for the necessary trust in the operation of public institutions.

Similarly, in private enterprise or entrepreneurial ventures, Chileans expect that those involved, such as entrepreneurs, owners and principals, should be bound by juridical rules and ethical codes. In addition, when these principles are violated, there should be mechanisms and agencies for enforcement as well as effective sanctions.

With regard to political activity, the public expects that politicians, both individually and as members of parties, should serve in accordance with their ideals, let their actions be guided by and for the wellbeing of society in general, be prepared to fulfil their duties, act with honesty and independence and not let their personal interests overshadow their consciences.

## 2. The concept of 'corruption' in Chile

The term 'corruption' has a very unclear definition, both nationally and internationally. It is difficult to encapsulate all of its intended meaning. This results in a misuse of the term and its interchangeability with many other words that may, or may not, truly convey the same overall idea or emphasis. Thus, for not only theoretical but also practical reasons, there is justification for defining the term 'corruption' as it manifests itself in the community.

Two main concepts are generally accepted as being part of corrupt behaviour:

- power and its use (or misuse); together with
- damage to the common good and general wellbeing.

Abuse of power (whether public or private) perpetrated by a third party is extremely prevalent. A popular and very accurate phrase, to quote the 19th century British politician Lord Acton, is that "absolute power corrupts absolutely". The approach to damage to the common good or general wellbeing is revealed in the definition of 'administrative integrity' in article 54 of Law 18.575 of 5 December 1986 on the General Rules of the State Administration:



*to observe impeccable official conduct and honest and loyal performance as a function or position with prevalence of the general interest over the particular.*

The objective is to have people understand the idea of the common good as opposed to their own individualised personal interests. Indeed, working for the general wellbeing in fact ultimately turns out to be in the interest of individuals. This is one of the most challenging antidotes to corruption in which states seek to reduce their rankings in national corruption indices.

The breadth of the concept of 'corruption' in Chile comprises both the public and private sectors and encompasses a wide range of situations, viz "profiting from influential positions with public or private decision making power for one's own benefit" (Law 19.645 of 11 December 1999 on Modifications to the Criminal Code Sanctioning Crimes of Corruption).

In the authors' opinion, Chilean corruption is not only identified with bribery (ie the giving of gifts to public servants in order to act in an illegal sense), but in a broader perspective, it is also seen as 'public corruption'. This means that those who (whether by representation or designation) exercise rights or perform public functions in such a manner that they primarily fulfil the particular interests of an individual, organisation, group or party instead of the general interest on which every public action must focus, are involved in 'public corruption'. In this situation, there is a violation or a postponement of the public interest to favour the private interest. 'Corruption' is, therefore the use of public facilities for private interests where these differ from the general interest which every public action should fulfil.

Corruption is also manifested in the contravention of ethical principles. The ethical-social context of a country and the moral environment or universe of society normally determine the corruption index ranking of a country. It therefore influences the country's moral environment with regard both to so-called 'minor' as well as 'major' corruption, whether public, municipal and private, national and international. Minor acts of corruption are reflected in daily activities and act as the starting point from which major corruption often evolves. Both minor/private and major/public acts of corruption have disloyalty as a common denominator.

All of the above explains the idiosyncrasies of the complex definition of 'corruption' in both international and domestic law. The reality is that Chilean legislation broadly includes the complexities of this definition in its administrative, penal and commercial laws

### **3. The regulatory framework and the authorities responsible for anti-corruption enforcement and sanctions**

In Chile, the majority of the regulations to fight corruption stem from laws enacted by Parliament.

The authorities responsible for enforcement and the imposition of sanctions in corruption cases are as follows.

#### **3.1 The judicial branch**

This is one of the three branches of the state and is in charge of hearing and resolving all civil and criminal lawsuits and executing their outcomes. With regard to criminal



matters, the Judiciary Branch performs its functions through the Examining Court and the Oral Criminal Court, which decide whether or not a crime has been committed in addition to deciding on the application of pertinent sanctions (ie, penalties). The decisions of these courts are subject to review by the appellate courts and the Supreme Court.

### 3.2 The Public Prosecution Office

This body leads the investigation of crimes in collaboration with the *Carabineros de Chile* (uniformed police) and the *Policía de Investigaciones* (PDI, civil police). The Public Prosecution Office may bring criminal actions in respect of the majority of crimes involving corruption without the need for a complaint to be filed by a citizen or organisation. It has a specialised anti-corruption unit that acts in a coordinated and strategic manner with the State Defence Council (see 3.6 below) and with the General Comptroller Office of the Republic (see 3.4 below).

### 3.3 The *Carabineros de Chile* and the *Policía de Investigaciones*

Both of these organisations, which are referred to at 3.2 above, are auxiliary entities of the Public Prosecution Office with regard to carrying out investigations. They perform (among other things) raids, interception of communications and seizures of documents and computers. This is the best way to obtaining proof or evidence leading to convictions for crimes of corruption.

### 3.4 The *Contraloría General de la República* (CGR – General Comptroller Office of the Republic)

The State Treasury supervises and examines the flow of investment funds to the Treasury from the municipalities and other organisations. It also examines the accounts of those who are responsible for the assets of those entities.

Every public servant, citizen or entity receiving or having custody of, managing or paying state funds must report and be accountable to the *Contraloría* (General Comptroller Office). If an investigation conducted by the *Contraloría* reveals that public funds have been misused or used for bribery or other corruption-related crimes, the *Contraloría* must submit this information to the Public Prosecution Office and may act in any subsequent criminal proceedings.

Some 44% of enforcement activities by the *Contraloría* during the last year were generated from the complaints made by citizens on its website.<sup>1</sup>

The most recent *National Survey on the Perception of Corruption* published by *Libertad y Desarrollo* (Liberty and Freedom Institute), has enhanced the reputation of the *Contraloría* as the best qualified public institution in anti-corruption matters.<sup>2</sup>

1 Manuel Aris, (Deputy Director of Incidencia, Director of Proyecto Chile Check), *Corrupción y participación. La ciudadanía tiene un rol central en la prevención y control de la corrupción* (Participation and corruption. The citizenry has a central role in prevention control of corruption), available at [espaciopublico.cl/corrupción-y-participacion/](http://espaciopublico.cl/corrupción-y-participacion/).

2 *El Mercurio*, Editorial, 13 August 2017.



### 3.5 The Financial Analysis Unit (*Unidad de Análisis Financiero* – UAF)

The UAF is responsible for preventing and impeding the use of the financial system and of other economic sector activity for the commission of asset laundering and the financing of terrorism. There have previously been allegations of corruption based on evidence of suspicious operations in particular business sectors. For this reason, the backgrounds of all people involved in a number of sectors (including banks, financial institutions, money exchange houses, stock exchange agencies, insurance companies and notaries public) are scrutinised and examined thoroughly.

The UAF has a broad remit to investigate accusations of asset laundering. In relation to drugs, terrorism, weapons, securities markets, banks, customs officials, intellectual property, the tax code, public servants, the use of illicit or privileged information and the trafficking of women and children. Many of these issues develop into more serious corruption.

Having detected irregularities, the UAF can impose an administrative sanction (a fine) and submit its information to the Public Prosecution Office.

### 3.6 The *Consejo de Defensa del Estado* (CDE, State Defence Council)

The main objective of the CDE is the legal defence of state interests. It takes penal action against crimes that can damage the State Treasury economically as well as in crimes committed by public servants, particularly bribery and negotiating against the interests of the state.

The CDE website ([www.cde.cl](http://www.cde.cl)) reports that 103 criminal cases were completed in 2016, with 86.4% of decisions rendered in favour of the state with regard to crimes committed by public servants.

### 3.7 *Servicio de Impuestos Internos* (SII – Internal Revenue Service)

The SII applies and enforces all internal taxes of the country. The Director decides whether or not to pursue punitive action for infringements, for which the penalties are fines and imprisonment. The SII acts as complainant in criminal cases relating both to taxes and to crimes of corruption.

The power of the Director to decide whether or not to file criminal complaints has been criticised by both the Public Prosecution Office and the General Comptroller Office of the Republic, who believe that it lacks objectivity and therefore take on the task themselves of deciding what action to take.

### 3.8 *Tribunal de Defensa de la Libre Competencia* (TDLC – Chilean Competition Tribunal) and the *Fiscalía Nacional Económica* (FNA – National Economic Prosecution Office)

Both of these entities are regulated by the Decree-Law 211, the objective of which is to promote and defend free market competition.

Decree-Law 211 penalises as a crime any collusion that contemplates incidents of corruption between citizens (such as entering into agreements to fix sale prices, to acquire goods and services in one or more markets, or to limit the production or provision of goods and services).

Criminal investigations for crimes involving collusion can only commence



pursuant to claims filed by the FNA. The result of an investigation is then ruled upon by the TDLC, resulting in a final and executory judgment establishing the existence of a criminal agreement.

### 3.9 *Consejo para la Transparencia* (Council for Transparency)

This entity was created in 2008 by Law 20,285, Access to Public Information. Its aim is to promote transparency, enforcing compliance with norms on transparency and the publication of information in keeping with the guarantee of the right of access to information from the state administration. This law and the work of the Council are seen as one of the final efforts by Chile to ensure the proper application to the International Convention on Corruption.<sup>3</sup>

### 3.10 *Chile Transparente* (Chile Transparent)

This body is the Chilean chapter of the Transparency International NGO. Its mission is to make a substantial contribution to the fight against corruption and bad practices in Chile and to promote the creation of a culture based on probity and transparency. Its overall aim is to position Chile among the 20 countries with the lowest level of corruption in the *Corruption Perception Index of Transparency International*.

## 4. **International anti-corruption treaties applicable to Chile and their concrete effects in fighting corruption**

Chile has ratified the following international anti-corruption instruments:

- the Inter-American Convention Against Corruption (1996);
- the Organisation for Economic Co-Operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in Foreign Business Transactions (1998) (the OECD Convention);<sup>4</sup> and
- the United Nations Convention against Corruption (2004) (the UN Convention).

The provisions and principles of these conventions have been direct sources of applicable Chilean legislation but have varied in their practical application. Such variance has occurred in relation to (among other things):

- statutes governing crimes of bribery;
- the law on penal responsibility of legal persons;
- the disposition of goods that are the subject of corruption;
- investigatory and adjudicatory norms;
- prescription periods;
- asset laundering;
- mutual legal assistance; and
- extradition.

3 Leslie Montoya Rivera, *Análisis de los instrumentos internacionales contra la corrupción* (Analysis of international instruments against corruption).

4 The OECD Convention (1960) became effective in Chile in August, 2010.



As an example, with regard to bribery, the Penal Code was amended in October 2002 and April 2009 to comply with the obligations of the OECD Convention, allowing for the first time the prosecution of offences of bribery involving foreign public servants (the current articles 251 bis and 251 ter of the Penal Code).

Then, in December 2009, in order to comply further with the OECD Convention, but even though it was unnecessary, Law 20.393 was enacted to declare the legal responsibility of citizens and companies. This law imposed penal responsibility on companies for asset laundering, financing terrorism, bribery and offences relating to the receipt of stolen money or assets. As a result, many companies (both public and private) have adopted measures to avoid involvement in such crimes, since applicable penalties range from the dissolution of a company to fines of 936 million Chilean pesos.<sup>5</sup> Many companies have created 'Models of Crime Prevention', accompanied by external certification. They have also designated Prevention Officers, who must create Crime Prevention Models<sup>6</sup> and who must coordinate their activities with organisations such as the UAF (see 3.5 above) and the Public Prosecution Office (see 3.2 above), as well as with the boards of their companies. In reaction to criticism made in 2015 by Transparency International, the law was amended in July 2016 to ensure that all companies respond to allegations of bribery offences against foreign public officials.

In Chile, however, there is still a need to clarify what will be the real consequence for companies that have adopted Crime Prevention Models in criminal investigations to which they are exposed. This is, because it remains unclear whether the models will act to exempt from or extenuate criminal responsibility, even with certificates, or if they will have no effect on prosecutors and judges. For the moment, it has been indicated by criminal judges and prosecutors that the models will not be enough *per se* but that it will be necessary to demonstrate that they are really 'living' and truly functioning documents, not just 'good' documents that 'sleep' in the drawers of company employees and executives.

In Chile today, the issuance of public information and transparency apply pursuant to the norms of article 10 of the UN Convention. This provision essentially proposes the application of procedures that allow the public to obtain information on the organisation, operation and adoption processes applicable to public administrative decisions. Article 10, which was motivated by *Chile Transparente* (see 3.10 above), has allowed both private persons and different groups to request and (where successful) receive information from public organisations and state administration authorities. Furthermore, Law 20.285 of August 2008 on Access to Public Information allows public and private enterprises to make much of their relevant information available on the internet and obliges them to deliver information requested by the authorities or by citizens.<sup>7</sup>

In preventing corruption through improving accounting and auditing standards,

<sup>5</sup> \$1,509,677 as at October 2017.

<sup>6</sup> That is, not merely paper documents but model documents used daily in companies.

<sup>7</sup> Where information is not provided by an entity of the state administration, on grounds of secrecy or otherwise, the applicant can appeal to the Council for Transparency (see 3/9 above) also created by this law. In spite of its strengths, however, this entity also has weaknesses, eg, as to the processes for the appointment and removal of its members.



and thus avoiding penalties, the UN Convention has encouraged more companies to improve their corporate structures and compliance.

In terms of the civic participation envisaged by article 13 of the UN Convention, organisations such as the *Contraloría* (see 3.4 above), which organise seminars and conferences for the private sector, invite the review of subjects such as the prevention of corruption as well as specific topics such as the raising of false invoices or receipts for fees in order to secure the lowering of tax calculation.<sup>8</sup> This is as much a means of fighting corruption as more direct methods, as the existence of corruption has severe consequences and poses a threat to society and the economy.

## 5. Pertinent public cases and how they have been managed and resolved

### 5.1 The *Inverlink* case:

In 2003, the President of the Central Bank detected an anomaly in the bank's computer. It was discovered that his secretary had been leaking confidential information to the stock brokerage Inverlink in exchange for payment.

One month after the investigation, which also disclosed that the Head of Treasury in the State Production Development Corporation (CORFO) had been removing security documents that represented money and had endorsed them to Inverlink in such a manner that Inverlink could submit them as guarantees to the bank and, in this manner, obtain liquidity. He would then return the guarantees before CORFO carried out its monthly balance reconciliations. Inverlink therefore operated in the market utilising privileged information and obtained more than sufficient liquidity, unwittingly thanks to CORFO.

News of the information leak from the Central Bank generated alarm among investors in Inverlink who, in turn, withdrew their funds, significantly affecting the liquidity of their holdings. Inverlink reacted by withdrawing more than Ps 80,000,000,000 (\$125.618.277,460) in instruments from CORFO, which funds were never returned.

All of the above nearly resulted in a financial collapse. These actions generated uncertainty in the mutual fund market, which in turn lost 35% of the value of hedge funds in five days.<sup>9</sup>

Thirteen public servants and private persons were arrested for such crimes as misuse of public funds, fraud and infringement of the General Law of Banks. In addition, a number of civil lawsuits were initiated both by private persons and CORFO, which was unable to recover its losses entirely.

### 5.2 The *MOP-Gate* case

The corporation GATE SA was founded by a former officer of the Ministry of Transportation to provide consultancy services in engineering, environmental and hydro projects, among others.

<sup>8</sup> This practice constitutes a tax crime in Chile, under article 97 No 4 of the Tax Code.

<sup>9</sup> Antonio Recabarren, '*Caso CORFO-Inverlink, el impacto de la confianza en los mercados*' (*The CORFO/Inverlink Case, the impact on market trust*); in *Entrepreneurial Ethics, Approaches from Senior Management* (2005, Business School, Universidad de Los Andes, Santiago), p68.



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As a result of the investigation of the *Coimas* case (the 'Kickback case'), in which eight people were subsequently convicted of bribery, it was revealed that the Ministry of Public Works (MOP) and GATE had concluded contracts for non-existent, repeat or overvalued services in order to obtain payments and had then distributed those funds among MOP officials. The then Minister of Public Works, Carlos Cruz, publicly acknowledged that he had received every month an envelope containing cash, which he understood was part of his salary.

This meant that the State Treasury had been the victim of a fraud to the amount of Ps 1,250 million (\$1,962,785,590), for which another 13 people were convicted (among them Mr Cruz) and received prison sentences ranging from 60 days to 5 years. In addition, the State received a civil court damages award of Ps 799,142,217 (\$1.254.835,860).

### 5.3 The Penta case

This case began with the so-called 'FUT Fraud'<sup>10</sup> in which an officer of the Internal Revenue Service (SII – see 3.7 above), Ivan Alvarez, took advantage of a system failure to increase tax returns from a number of companies in exchange for money, defrauding the Treasury of almost Ps 3,000 million (\$4,710,685,400). In the middle of 2012, the SII detected the irregularities and started an internal investigation, passing its findings later to the Public Prosecution Office.

The case involved relatives and close associates of a number of Chilean politicians who were issued fee receipts (a tax instrument used to provide services without a labour contract) or invoices (a tax instrument for sales and services) by Penta for work and services that were never in fact performed. Penta therefore financed political campaigns in an irregular way. The recipients appeared to have paid fees pursuant to false invoices or receipts, while lowering the calculation of their taxes.<sup>11</sup>

The only involved politician convicted to date is Jovino Novoa, a former Senator, who in December 2015, and after admitting that he had received from Penta the sum of Ps 30,000,000 (\$47,106,850) through the mechanisms discussed above, was sentenced to three years' imprisonment. For his part, Iván Alvarez was sentenced to five years' probation.

### 5.4 The Ceresita case

This was one of the first cases involving a legal entity found guilty of the crime of bribery under Law 20.393.

At the end of 2011, a number of entrepreneurs alleged that the Director of Works for the Municipality of Recoleta, Carlos Reyes, had requested money to authorise extensions to commercial premises. The Public Prosecution Office began an investigation and discovered that Ceresita, a leading paint manufacturer, had

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10 According to the Internal Revenue Service, the FUT or Taxable Profit Fund is a "control book that must be filled by the taxpayer who declares effective incomes in first category, demonstrated by means of a complete accounting system and a consolidated balance, in which the history of taxable and nontaxable profits generated by the Company and perceived from companies that have participation" (sic).  
11 This practice constitutes a tax crime in Chile according to Art 97 No 4 of the Tax Code.

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obtained a permit for a production plant in an area of the municipality in which industrial activities were not allowed. Reyes would have received Ps 20,000,000 (\$31,404,570) for the authorisation through the company Carpediem, which was allegedly hired by Ceresita to expedite the permit process.

Ceresita reached an agreement with the Public Prosecution Office for a conditional suspension of the prosecution. Among the conditions imposed on the company were a donation of land located in Recoleta for the construction of a park, the provision of health services and respiratory disease equipment to the commune and the conduct of a soil study. For his part, Mr Reyes (who had been accused of receiving bribes of approximately Ps 114,000,000, (\$179,006,050)) was convicted of bribery and falsification of a public instrument in 2013.

## **6. The next steps: comments on what should be modified, strengthened or addressed**

### **6.1 Introduction**

One of the central suggestions in a report of March 2015 of the Presidential Advisory Council against conflicts of Interest, Influence Trafficking and Corruption (known as the '*Engel Report*') was the creation of a new financing system for political parties, predicated upon a profound change in current practices with regard to transparency, accountability and internal democracy. A second suggestion was the creation of effective regulations for financing politics and for market operations, with effective penalties for the most severe transgressions.

In the authors' view, there are, in particular, five specific areas in which existing laws in Chile should be improved, each of which is discussed below:

- the prevention of corruption;
- the regulation of conflicts of interest;
- political system financing policy, in order to strengthen democracy;
- generating greater confidence in the operation of markets; and
- strengthening ethics and citizens' rights through civic education.

### **6.2 Prevention of corruption**

Improvements should be made to the regulatory framework, particularly in the following areas:

- *integrity and the strengthening of municipalities* – so that decisions are taken at the local level with maximum transparency, which would mean increasing levels of citizen participation and limit the exercise of sole discretion by authorities, eg, in the generation and processing of territorial planning instruments that determine (among other things) land use, zoning, equipment, density and the use of public and private space;
- *reform of high-level public sector management system* – this must be consolidated as a professional and merit system on the understanding that there are positions of confidence in each new government. There is a question of the existence of an appropriate mechanism for seeking and selecting people for the highest positions in public institutions, starting with the headquarters,



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and working down to the next hierarchical level. In all cases, this system should appoint professionals who meet suitability requirements, who demonstrate an eminently professional trajectory and who value public service;

- *reform of the public procurement system* – because this is a key aspect within the state administration and represents a determining factor in the quality of the services delivered and in the infrastructure that it provides. Good performance of this system promotes the general interest and it is of vital importance that the mechanism and process ensure transparency and efficiency, promoting competition and minimising the risk of corruption;
- *the prosecution of corruption* – among the problems identified are the relatively low penalties for crimes against probity, in comparison both with other countries and with other crimes in Chile. There remain legal gaps in the typology of a number of crimes that are known to other countries and under the UN Convention, eg, abuse of functions, corruption between private and public sectors and influence trafficking. Further, prescription periods are too short for crimes that take a long time to identify, investigate and prosecute;
- *transparency and access to public information* – Law 20.285, Transparency of the Public Function and Access to Information of the State Administration, has meant important progress in matters of transparency for Chile: it has generated incentives so that the exercise of public functions is framed by the principle of probity, facilitating the social control of state power and working as a preventive measure against bad practices and corruption. However, in spite of the progress achieved owing to good performance and to the work of the Council for Transparency, there still remain a number of aspects that can be strengthened and the governing rules improved, in line with international standards and the proposals made by the Presidential Advisory Council;
- *penal responsibility of legal persons* – the model adopted by the law to attach criminal responsibility to legal persons has been internationally criticised. This is because, firstly, the natural person who commits the base crime must have a power of decision or be under the supervision or direction of somebody who has that power; secondly, the crime is of direct benefit to the legal person, and thirdly that the commission of the crime is attributable to non-compliance by the legal person with directors' duties and its non-supervision. In Chile, a number of companies have published a Crime Prevention Model in their websites (where they have them), but it is not known with certainty how many of these are adequate and efficient. To be able to gauge this, it is necessary that the legal system should establish a mandatory system of integrity assurance that incorporates crime prevention models and ethical components and that this is backed up by a verification process;
- *the creation of an evaluation process service for public policies* – under the Budget Law of 2015, the national budget amounts to Ps 33,356 billion (\$52,390,675,842,900). The way in which the budget is submitted, in spite of the effort to improve the information on which it is based, makes it difficult



to control and generates asymmetries of information that translate to a lack of an effective system of analysis and global monitoring.

There are a broad body of laws and measures that actually prevent the best use of public expenditure. However, there are other areas in which an estimate pertinent to increased transparency, in addition to an increase in the capacity for efficacy and efficiency of programmes, could be resourced through and monitored by an independent agency. At the same time, results necessary to facilitate access to information on the various programmes is necessary, so that experts become part of the efforts to evaluate the use of public resources.

### 6.3 Regulation of conflicts of interest

Progress has been achieved in Chile on establishing mechanisms to inhibit interference by the private interests of authorities and public servants with their duties. It is possible to identify gaps and deficiencies that still impede a strict separation between public functions and personal interests. When comparing domestic institutional norms and Chilean legislation with international standards such as those utilised by the OECD, these particular gaps become apparent.

Within the ambit of the aim indicated above, it should be possible to review the causes of incompatibilities or inabilities between public and private sector positions and activities in Chile. Equally, work should be undertaken to:

- strengthen the obligations of the national authorities in terms of a declaration of equity and interest;
- establish a system of blind trust for authorities, such that they do not participate in management of their equity when performing high-level public management functions; and
- improve the regulation of lobbying and the management of private interests in dealing with authorities.

### 6.4 Political system financing policy

With regard to financing the political system, adequate mechanisms to strengthen democracy must be sought out. In Chile, a number of institutional incentives that influence the performance of politics have contributed to weakening political parties as organisations. These include, among others, the binomial electoral system, whereby two positions are elected by districts, Law No 18.603 of 23 March 1987, The Organic Constitutional Law of Political the Parties, lack of public funding and weak rule enforcement.

For political parties to function well, they must strengthen their role in representing interests – that is, mediating between society and the state. This is vital to the global functioning of a democratic regime.

The efficacy of enforcing rules determines the soundness and depth of democratic government. The weakness of the current control system, low penalty level and the inability to impose them, have generated risks for probity, capturing a collective agenda for particular interests, distorting equity in electoral competence and weakening the overall system and collective character of the political parties.



Moreover, they have contributed to denting the confidence of citizens with regard to politics and its institutions.

#### 6.5 Generating greater confidence in market operations

With regard to the need to strengthen public confidence in the markets as an instrument in the fight against corruption, several bills are currently under discussion in Parliament on market competition and consumer protection. In general, efforts are afoot to discover institutional weaknesses in searching for a better system. However, one of the major issues is to contribute to the recovery of public confidence in the markets and to prevent the occurrence of practices that work against probity. Threefold efforts are being made in this regard:

- firstly, to provide a higher degree of efficacy to regulators and supervisors in controlling improper conduct by the private sector;
- secondly, to strengthen corporate governance of the regulators themselves; and
- thirdly, to promote a higher level of commitment by government in the realm of self-regulation, through a process of internal audit and, externally, by preventing the occurrence of illicit conduct.

#### 6.6 Strengthening of ethics and the rights of citizens through civic education

Lastly, in terms of a comprehensive or holistic approach, the strengthening of ethics and the rights of citizens as tools to combat corruption and to prevent and decrease the incidence of corrupt acts and a lack of probity, an educational system is required which instils civic values of respect, co-existence and the promotion of common wellbeing. Education on the challenges that the country faces must set civic education at the forefront, allowing the preparation of children and young people to face ethical dilemmas in their lives.

### 7. Conclusion

Progressing a culture of prevention of corruption requires an effort on the part of all institutions and sectors of society to strengthen systems of integrity: viz, all the branches of the state and its respective institutions; parties and political movements; NGOs and civil society; guilds, unions and professional associations; the media; the educational system, and families and citizens. Establishing codes of conduct, regulations and procedures that effectively define and promote anti-corruption principles and values is the most significant national challenge that Chile faces.

*This chapter was prepared with the collaboration of lawyers Mr Luis Bates Hidalgo and Ms Isidora Espinosa Aravena. Ms Espinosa collaborated in particular with regard to section 5.*