Directorate for Financial and Enterprise Affairs

CHILE: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS ON THE APPLICATIONS OF THE CONVENTION AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions in October 2009.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. In October 2009, Chile presented its Written Follow-up Report and additional information, outlining its response to the recommendations and follow-up issues identified by the Working Group at the time of Chile's Phase 2 examination in October 2007. Since Phase 2, Chile has not prosecuted nor adjudicated any case of bribery of a foreign public official, and the follow-up issues are still open.

2. The Working Group welcomed the adoption of Law 20,341 amending the offence and sanctions, and Law 20,371 introducing nationality jurisdiction. These laws, together with a recent instruction to prosecutors, are reviewed in a separate Phase 1bis report and answer a number of concerns expressed in Phase 1 and Phase 2. Chile maintained the National Group of Experts against Corruption (GNECC) as an oversight and coordinating body for effective implementation of the foreign bribery offence. The GNECC notably drafted Law 20,341 and 20,731 (Recommendation 1(e)).

3. The definition of the offence has been amended with regard to the elements defining the bribe, the foreign public official and the advantage expected by the briber. The implementation in practice and interpretation by courts of the undue nature of the bribe and expected advantage will be followed up in Phase 3 (Recommendations 4(a) and 4(b)). Although the law has not eliminated two possibilities of reduction of sanctions that raised concerns in Phase 2, it substantially increased the level of confinement sanctions, including in cases where the briber has been solicited, as well as the method to calculate fines (Recommendations 6(a), 6(b) and 6(c)). The increase of confinement sanctions, together with a recent interpretation of the Supreme Court on conditions for extradition, should allow extradition in all cases (this will be followed up in Phase 3). Chile introduced several administrative sanctions in the field of export credit activities and public procurement. A Bill is also pending on debarment from public procurements (Recommendation 6(f)).

4. Law 20,371 introduces nationality jurisdiction for the foreign bribery offence. In addition, parliamentary discussions on territorial jurisdiction concluded that offences committed partly in Chile fall under the jurisdiction of Chilean courts. The implementation of territorial jurisdiction rules will be followed up in Phase 3 (Recommendation 3(e)).

5. The Working Group acknowledged the efforts made by Chile and the GNECC to raise the level of awareness of public officials on the Convention, and noted GNECC plans to raise awareness of Laws 20,341 and 20,371 and the future law on liability of legal persons (Recommendation 1(e)). Given that Chile was amending its implementing legislation, most of the awareness raising activities targeted the Convention as a whole, rather than the Chilean laws. The Ministry for Foreign Affairs has been particularly active, and revised the instruction document sent to its staff regarding foreign bribery to better reflect the nature of the foreign bribery offence and applicable reporting obligations, and issued it to all staff including those at PROCHILE (Recommendations 1(a) and 2(a)). Notably, the Chilean Government took action to adhere to the OECD Council Recommendation on Bribery and Officially Supported Export Credits of 18 December 2006 and the export credit agency (CORFO) adopted an anti-bribery policy. The Working Group will follow up in Phase 3 the actual adhesion to the Recommendation and the enforcement

of measures for deterring foreign bribery in respect of international business transactions benefiting from CORFO support (Recommendation 1(d)).

6. The Working Group welcomed the announcement by Chile that the Chamber of Deputies has approved in its first stage a Bill on Liability of Legal Persons, which is expected to be likewise approved by the Senate in October 2009 and enter into force before the end of 2009. Assuming that this occurs in good time, the Group will undertake a full review of the law by way of a Phase 1ter evaluation during its meeting in December 2009. The liability of legal persons is based on the acts of managers or employees having committed the offence as well as on the deficiency of the organisational model put in place by the legal person to prevent the commission of offences (Recommendations 5 and 6(d)). Once the Bill will have been passed, further awareness-raising measures will be undertaken, notably towards the private sector. The protection of whistleblowers should also be discussed, in the framework of the adoption by legal persons of offence -prevention models (Recommendations 1(a), 1(b), 2(a) and 2(b)). Mutual legal assistance related to legal persons should also be facilitated once the law will be in force (Recommendation 3(c)).

7. The investigation and prosecution of the foreign bribery offence should also be facilitated in the future, thanks to a new instruction to all prosecutors concerning crimes related to corruption, including foreign bribery. Instruction 59/2009 clarifies the rules governing the investigation and prosecution of foreign bribery and excludes the application of the opportunity principle to corruption-related offences. It also warns prosecutors against the running of the statute of limitations and urges them to take appropriate measures to interrupt or suspend its running, including *media prescripcion*. However, it has no impact on the two year period for formalised investigations and its possible extension. The instruction aligns the rules for lifting bank secrecy in foreign bribery cases with the rules applicable in domestic bribery. The Working Group will follow up on the application of the rule in Phase 3 and whether measures have been taken to ensure that financial institutions provide the required financial information promptly. The instruction finally highlights the availability of specific investigative tools. Recent case law explained in the instruction now allows the use of seizure at the stage of the preliminary investigation, without the prior knowledge of the suspected person (Recommendations 2(a), 3(c), 3(d), 3(f), 6(b) and 6(e)).

8. An important issue identified in the Phase 2 evaluation was the need to facilitate the reporting of suspicions of foreign bribery offences to law enforcement authorities. The Ministry of Foreign Affairs clarified the reporting channels to public officials, notably the obligation to directly inform the law enforcement authorities of offences they become aware of (Recommendation 2(b)).

9. Chile's Internal Revenue Service adopted a circular to confirm that bribes are not tax-deductible. The circular has a general, public and binding nature. It clearly rules that bribes to Chilean or foreign public officials or to any other persons are not tax deductible. The private sector has been consulted and informed; and tax inspectors are well trained (Recommendation 8).

10. The Chilean authorities and the accounting and auditing professions took important initiatives to raise awareness of the foreign bribery offence and its status as a predicate offence for money laundering purposes (Recommendation 1(c)). Requirements to report suspicions of bribery acts have been strengthened (Recommendation 2(d). Some initiatives have been taken to adopt international financial reporting standards in the coming year (Recommendation 7). The Government of Chile tried to strengthen its anti-money laundering reporting system, but the Bill introducing reporting requirements for lawyers, accountants and auditors was rejected by Parliament (Recommendation 2(c)).

11. Due to the absence of prosecution of bribery of foreign public officials in international business transactions, Chile was not able to address the follow-up issues contained in the Phase 2 Report. The only

preliminary investigation opened so far has been closed due to a lack of mutual legal assistance and the absence of nationality jurisdiction at the date of the alleged offence.

b) Conclusions

12. Based on its findings with respect to Chile's implementation of the Phase 2 recommendations, the Working Group reached the overall conclusion that Recommendations 1(c), 1(d), 1(e), 2(a), 2(d), 3(a), 3(d), 3(e), 4(a), 4(b), 6(a), 6(c), 6(e) and 8 have been satisfactorily implemented; Recommendations 1(a), 2(b), 3(b), 3(c), 3(f), 6(b), 6(f) and 7 have been partially implemented; and Recommendations 1(b), 2(c), 5 and 6(d) have not been implemented. Follow-up issues remain outstanding and will continue to be monitored, together with recommendations 1(d), 3(b), 3(e), 4(a) and 6(a), once case law will have developed.

13. The Working Group invites the Chilean authorities to report orally within one year (*i.e.* by October 2010) to the Working Group on the implementation of Recommendations 1(a) and 1(b) on awareness raising activities centred on Chilean implementing laws, Recommendation 5 on liability of legal persons and particularly the adoption of prevention models by companies, in conjunction with recommendation 1(b) and Recommendation 2(b) with regard to the protection of whistleblowers, and Recommendation 7 on accounting and auditing standards.

WRITTEN FOLLOW UP TO PHASE 2 REPORT - CHILE

a) Introduction : Steps taken by Chile to implement the Working Group's priority Recommendations of Phase II (August 2009)

The Chilean Government desires to express once again its strong commitment with the Convention and the work of the WGB, and its genuine will to fulfill the obligations assumed at the moment of its ratification. Among others, important efforts are being developed aimed at improving the integration of its provisions and standards within the national juridical system.

The present report underlines the steps taken by our country in the period from October 2007 up to this date, concerning the recommendations made by the Working Group in the Phase 2 evaluation process. The report also includes an explanation about the efforts done by Chile specifically related to the Phase 1 bis recommendations.

As regards the Recommendation related to the definition of the offence, it is a satisfaction to declare to this Working Group that the Bill aimed to modify the offence of foreign bribery in order to include all the conducts required by the Convention, namely "to offer, to promise or to give" was enacted as Act Nº 20.341 on April 22th 2009.

As it has been informed to the Working Group in previous sessions, Act Nº 20.341 increases the sanctions for the offence, in order that they shall be effective, proportionate and dissuasive, which additionally allows Chile to grant the extradition in entire agreement with the Convention. It also introduces other amendments to the offence related to the concept of the undue advantage and the public enterprise. Those reforms are developed with more detail in the present report.

The work illustrated above confirms the political will of the Chilean Government in order to make progress to be completely aligned with the provisions of the Convention.

Other efforts developed are related to the dissemination of the Convention. Several actions aimed at this purpose have been implemented since December 2007. The National Group of Experts GNECC/OCDE has continued to develop its advisory function to the Ministry of Foreign Affairs. Training workshops on the Convention have been given to public officials.

Besides, an important part of the national academic sector has been asked to include the analysis of the Convention in its regular study programs. A similar request has been done to the Diplomatic Academy of Chile and to the Judicial Academy.

Considerable efforts have been carried out by the Ministry of Finance by way of constantly disseminating the Convention and its standards to accountants and auditors, obtaining their collaboration for multiplying the dissemination among its associates.

The actions above mentioned and several other initiatives aimed at the implementation of the Recommendations of Phase II, are explained with more detail in the present report.

b) Recommendations and Actions

Name of country: Chile

Date of approval of Phase 2 Report: 11 October 2007

Date of information: 30 September 2009

Note: For ease of reference, the recommendations from the original Phase 2 report have been re-numbered. Recommendation 1 of this report corresponds to paragraph 225 (page 53), Recommendation 2 corresponds to paragraph 226 (page 53) of the Phase 2 report, and so on.

Part I: Recommendations for Action

Text of recommendation 1 (a):

With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Chile:

take additional measures, including further training, to raise the level of awareness of the foreign bribery offence within the public administration and among those agencies that interact with Chilean companies active in foreign markets, including trade promotion, export credit and development aid agencies (Revised Recommendation, Paragraph I);

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

i) Workshops

- **Workshops on the Convention held by the National Group of Experts against Corruption (GNECC/OCDE)**

- On December 13th, 2007, a training workshop for officials of the General Directorate of Economic International Relations (DIRECON) and the Directorate for Promoting Exports (PROCHILE) was held.

- Two training workshops on the Convention (September 3rd and 4th, 2008, and September 10th, and 11th, 2008) were held for officials of the Ministry of Foreign Affairs, who were part of the *2009 Assignment Plan Abroad*. Assistance to both workshops was established as mandatory by the Directorate of Human Resources of the Ministry of Foreign Affairs.

- On September 29th, 2008, a training workshop was held for officials of the Chilean Corporation for Promoting Production (CORFO) and of the International Cooperation Agency (AGCI).

- A second workshop for officials of DIRECON and PROCHILE was held on October 30th, 2008.

- **Workshops held by DIRECON**

- On January 16th, 2009 DIRECON held a training workshop on the Convention to all the lawyers of its Legal Department. In the opportunity, areas such as the analysis of the offense, jurisdiction, the obligation to denounce, some aspects of the investigation, mutual legal assistance and extradition, were reviewed.

- On March 31st, 2009 a workshop was held for all the Regional Directors of ProChile. Institutional issues and matters related to the access of Chile to the OECD were addressed in the opportunity.

ii) Dissemination requests to institutions of the public and private sector

1) On July 22nd, 2008, representatives of the Directorate of Special Policies (DIPESP) and of the Ministry Secretary General of the Presidency (MINSEGPRES) participated in a meeting with the Chief of the Judicial Division of the Ministry of Justice. In the opportunity, the representative of the Ministry of Justice was informed on the need to require the Judicial Academy to schedule on a permanent basis, training courses in the topics of the Convention. Later, by Official Letter N º 10.791, dated August 6th, 2008, the Minister of Foreign Affairs requested the Minister of Justice to raise the matter to the competent authorities of the Judiciary, particularly asking for the incorporation of the analysis of the Convention in the study programs of the new members of the Judicial Power, and in the Further Training Program.

In reference to its Induction Program, the Judicial Academy has informed that, with the previous issuance of a report and resolution on the matter by the Academy's Honourable Board of Directors, a module on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions will be included in a Workshop on "Current problems of criminal law". This is an initiative they expect to implement during 2009.

Regarding the Further Training Program as a result of the Study on Detection of Training Needs for members of the Judiciary, the Judicial Academy should implement in the Regular Further Training Program for the year 2010, a training plan in accordance with the above mentioned study. It will include a course on the Convention addressed to the members of the Judiciary.

2) By Official Letter N º 13.056 dated September 25th, 2008, the Minister of Foreign Affairs requested the Minister of Finance, to raise the need to include in the Five-year Training Plan for the personnel of the state administration, the study of the Convention - especially in training courses given to high-level public officials - to the authorities of the National Directorate of Civil Service. The collaboration of the GNECC was offered for planning the contents of the courses.

In reference to the Five-year Training Plan for the personnel of the state administration, the National Directorate of Civil Service has informed that this program will be effective between the years 2009 and 2012, during which it is envisaged the training of 160,000 officials of the central administration of the State.

The "*Chile Probity*" Training Program is a pioneer initiative in Latin America without precedent in the history of Chile, which includes induction and training courses, is intended to train and educate public officials in matters of probity, transparency and access to information, providing technical and methodological tools in order to strengthen these areas in the management of public services.

This training program will be implemented through two modalities:

a) Basic Training

The basic training is addressed to all public officials, providing the core elements which constitute the institutional and legal instruments available on probity, transparency and access to information. It will be

implemented through the e-learning methodology and it will provide an effective training of 24 hours (24, 60-minute class hours)

b) Specific Training

The specific training is addressed to officials who require a more specialized knowledge in the matter, because of their specific roles or positions. It will involve a total of five thousand employees.

The following are the target groups:

a) Officials in charge of the Integral System of Citizens Service
b) Coordinators of the Public Procurement System.
c) Officials who carry out monitoring functions.
d) Heads of administrative or financial units or those who have the primary responsibility in the area.
e) Heads and officials from the areas of personnel development.
f) Heads of auditing units or those who have the primary responsibility in the area.
g) Heads of the legal units or those who have primary responsibility in the area.

During the first half of 2009 a total of 384 officials in charge of the Integral System of Citizens Service and Coordinators of the Public Procurement System were trained.

During the second half of 2009, Heads and officials from the areas of personnel development and officials who carry out monitoring functions will be trained with an estimated 2000 participants.

Heads of administrative/financial units; auditing and legal units, will be trained during the year 2010.

The specific training program includes a general content for all these groups of officers, which is adapted according to the specificity of each group of officers, addressing each subject in particular. The topics addressed by the specific training program are:

A. State and public service
B. Probity
C. Transparency
D. Public officers' responsibility

Training courses for officers, to be implemented in the year 2010, will include a special reference to the recent changes to the Penal Code on offences related to domestic and foreign bribery. This chapter has been added considering the knowledge that particularly prosecutors, auditors and heads of the areas of administration and finance of each Service, should have.

3) By Memorandum N º 1.662 dated September 3rd, 2008, the Undersecretary of Foreign Affairs requested the Director of the Diplomatic Academy of Chile to include the analysis of the Convention in the study programs for national and foreign students, as well as in the training courses for promotion.

4) On September 16th, 2008, the Minister of Foreign Affairs sent a letter to Public and Private national Universities, requesting to include the analysis of the Convention in the study programs of careers related to Law, Political Science and Public Administration, among others.

As a result, several Universities have informed on their commitment to include the subject in their programs during the current academic year.

4.1) The Law School of the University of Chile informed that as a part of the Undergraduate Program, a course on "Transparency and Public Probity. Catedra OECD" was offered in the first academic semester

2009. The course was intended for students in their fifth semester or above and it was be taught by Professor Ms. Gladys Camacho, Doctor of Law and a Specialist in Administrative Law. A detailed breakdown of the course is available at the web page of the Faculty of Law:

http://www.derecho.uchile.cl/noticias/2009/enero/catedra_ocde.htm

4.2) The Human Rights Center of the Law Faculty of the University of Chile offered this year, for the second time, the Course on International Diploma on Transparency, Accountability and Combating Corruption.

The program, designed to train Latin American professionals responds to the need to form a critical mass to strengthen democracy in Latin America, from both the public and the private sector. Along with reviewing various strategies for transparency and participation, the initiative offers a theoretical basis and the study of key areas and issues of corruption.

Among the subjects addressed by the program it can be mentioned the analysis of international legislation, which includes:

- United Nations Convention against Corruption
- Inter-American Convention against Corruption
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

http://www.transparenciacdh.uchile.cl/docencia/default.tpl

http://www.transparenciacdh.uchile.cl/docencia/metodologia.tpl

4.3) The Center for International Studies of the Catholic University of Chile is conducting for a second year the Course Diploma on Probity and Good Governance. The program is aimed to analyze Probity, Good Governance and Corruption in Latin America and Chile. The program includes Chile's international commitments related to the OECD Convention on Combating Bribery of Foreign Public Officials and the challenges derived of our future accession to OECD

http://www.puc.cl/derecho/html/extension/dip_probidad.html

4.4 On 2006, the University *Alberto Hurtado* implemented the System for Ethic Management and Corporate Integrity which seeks to improve the ethical standards of public and private institutions thus preventing corruption or any kind of unethical behavior within organizations.

This mechanism is developed jointly by the Program for Economic and Business Ethics of the University *Alberto Hurtado; Chile Transparent* and the Consultant *Social Management*.

The implementation process of the system includes 3 stages: Diagnosis of Organizational Ethics; Design of a Management System and Training to all members of the company.

The first of the referred stages ends with the elaboration of a **Code of Ethics** for the institution. The diagnosis is made by analyzing data from the organization that has been collected through interviews, surveys, group meetings, review of internal documents and best industry practices in the area. The result is a written Code specifically made for the company which includes elements that make it unique, comprehensive and easy to understand by the workers of the same.

During the second stage the Management System is designed and implemented. Besides, the human and physical resources that will allow the channeling of questions and/or complaints on ethics are established. For this purpose, those who will exercise the roles of Coordinator of Integrity; General Coordinator of Integrity and those who will be part of the Ethics Committee, are selected and trained.

To end the process all members of the organization are trained in the contents of the Code of Ethics and on the Management System in order that they do not only understand the principles and values, but also know how and whom to contact when facing an ethical dilemma.

So far the system has been implemented in companies as DERCO; *Depósito Central de Valores* and currently it is being implemented in ESSBIO and SODIMAC.

http://www.economiaynegocios.uahurtado.cl/peee/html/integridad_empresas.html

http://www.economiaynegocios.uahurtado.cl/peee/english/html/noticias_ci.html

5) By Official Letter Nº 1.330 dated September 30th, 2008, the Minister of Foreign Affairs asked the Minister of Labour to raise the need to disseminate the Convention to the authorities of the National Service for Training and Employment – SENCE - (*Servicio Nacional de Capacitación y Empleo*), body related to the Ministry of Labour, whose mission is to increase the competitiveness of companies and the labour skills of their workers, through the application of public policies and instruments for the market of training activities, employment and labour intermediation.

6) In the process of dissemination of the Convention within its sector, the Ministry of Finance has reported that the entities identified below, keep in the front page of their web sites, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and its Complementary Documents; the explanatory brochure and the decree approving the same:

Chilean Accountants Association A.G.	http://www.chilecont.cl/describe_activ.php?not=4 http://www.chilecont.cl/
Ministry of Finance of Chile	http://www.minhda.cl/
General Government Internal Auditing Council - CAIGG	http://www.auditoriainternadegobierno.gob.cl/index.php/menu/show/id/1
National Customs Service	http://www.aduana.cl/prontus_aduana/site/edic/base/port/inicio.html
General Treasury Service	http://www.tesoreria.cl/web/index.jsp
Banking and Financial Institutions Superintendence	http://www.sbif.cl/sbifweb/servlet/Portada?indice=0.0
Securities and Insurance Superintendence	http://www.svs.cl/sitio/index.php
Gambling Casinos Superintendence	http://www.scj.cl/

Directorate for Public Procurement	http://www.chilecompra.cl
Financial Analysis Unit	http://www.uaf.cl/
State Defense Council	http://www.cde.cl/portal
Colegio de Contadores Auditores Públicos y Generales de Chile A.G	http://www.colegioauditores.cl/bajar.htm
Institute of Internal Audit and Corporate Governance of Chile A.G	http://www.iaigc.cl/

7) From April 13th through April 18th 2009 a delegation with representatives of the OECD, headed by the Legal Director of the Organization, Mr. Nicola Bonucci, visited Chile. Among others OECD specialists, two Italian penalists were part of the delegation, the Magistrate, Mr. Fabricio Gandini, Head of the Italian Delegation to the WGB and the Prosecutor of the Penal Court of Milan, Mr. Eugenio Fusco

During the visit the OECD representatives participated in several meetings with Chilean authorities, addressing some aspects of the accession of Chile to the Organization. In reference to matters concerning to the implementation of the Convention against international bribery, the following activities were developed:

• On April 15th, the OECD delegation participated in a meeting with parliamentarians of the Constitution, Legislation and Justice Committee of the Chamber of Deputies, in order to explain the model of the Italian law on liability of legal persons, in which the Chilean Bill is based.

• On Thursday 16 April, the delegation held a meeting with the National Group of Experts against Corruption GNECC/OECD.

• On Friday 17, they participated as speakers at a seminar organized by the Faculty of Law of the Universidad Mayor, which was sponsored by the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice, Ministry General Secretariat of the Presidency and Chilean American Chamber of Commerce, entitled "Criminal Responsibility of Legal Persons, a challenge in today's world".

Text of recommendation 1 (b):

With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Chile:

provide support for private sector initiatives such as seminars, conferences and technical assistance targeted at the business sector on foreign bribery issues, and, in cooperation with business and other relevant organisations, assist companies in engaging in preventive efforts (Revised Recommendation,

Paragraph I);

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

On October 8th, 2008, representatives of trade associations were invited to participate in a meeting chaired by the Acting Undersecretary of Foreign Affairs. In the opportunity the trade associations' representatives were asked to collaborate with the Ministry of Foreign Affairs in the dissemination of the Convention and the Guidelines for Multinational Enterprises: Section VI. On December 19th 2008, a second meeting took place in order to continue advancing in the dissemination of the Convention and the WGB recommendations related to the private sector.

Future work to be developed:

In order to approve a schedule of workshops aimed at improving awareness of entrepreneurs on the Convention, the Director of Multilateral Economic Affairs, together with the Head of the OECD Department of DIRECON will invite representatives of major organizations of the private sector, after the end of summer in the southern hemisphere.

Text of recommendation 1 (c):

With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Chile:

work with the accounting, auditing and legal professions to raise awareness of the foreign bribery offence and its status as a predicate offence for money laundering, and encourage those professions to develop specific training on foreign bribery in the framework of their professional education and training systems (Revised Recommendation, Paragraph I);

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

Accountants and Auditors

The Ministry of Finance has been constantly disseminating the Convention and its standards to accountants and auditors, thus obtaining their collaboration in Phases I and II of evaluation.

After the Phase 2 evaluating process, by Official Letter N ° 366, of April 23rd 2008, the Minister of Finance sent the Spanish version of the Phase II Report of Evaluation of Chile to the Chilean Accountants Association A.G., - main trade association for accountants and auditors of our country -, requesting them the fulfillment of the pertinent recommendations. Afterwards, the Minister of Finance informed the Chilean Accountants Association A.G. on the process of evaluation of Chile by the WGB, including a CD with the Convention, Revised Recommendation and associated texts for their dissemination among the professionals of the Association.

By Circular Letter Nº 35 of June 2008, the Minister of Finance reasserted the significance to continue working in the implementation of the WGB recommendations specifically in the sphere of Accountants

and Auditors.

It must be highlighted that the Chilean Accountants Association A.G. (*Colegio de Contadores de Chile* or CCCh) is the officially recognized body to provide rules and principles of accounting and auditing in Chile.

Recently, the National President of the Chilean Accountants Association has reported numerous activities undertaken by the institution within the scope of its duties, in response to the request made by the Minister of Finance aimed at the implementation of the Convention, including the dissemination, training, certification of its members, and other related topics.

The President of the Chilean Accountants Association issued a statement to its members about the Convention, its analysis and dissemination, and he also informed the students of the School of Accountants of Santiago (*Escuela de Contadores Auditores de Santiago*) on the adherence of the trade association to the work of dissemination of the Convention developed by the Ministry of Finance, which has been posted on the Web page of the mentioned School. [**annex 1]**

The Ministry of Finance has also disseminated the Convention, and the need to implement its provisions to the Institute of Internal Audit and Corporate Governance of Chile A.G., Chilean subsidiary of the Institute of Internal Auditors (IIA), among whose activities, the preparation courses for the examination conducive to the Certification of the Internal Auditor - an activity recently initiated – is emphasized. By Official Letter N° 916, of September 11th 2008, the Minister of Finance requested the President of the Institute to spread and to attend to the recommendations of the WGB. By letter dated September 24th 2008, the President of the referred Institute expressed the support and commitment of the organization to the dissemination and fulfillment of the Convention. He informed that the text of the Convention will be added to the web page of the Organization and on the prompt coordination of future activities on the matter with officials of the Ministry of Finance. [**annex 2]**

The same applies to other important association of accountants and auditors of our country: the Chilean Auditors Association which has also joined the efforts to disseminate the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. [**annex 3]**

The Chilean Accountants Association, the Institute of Internal Audit and Corporate Governance of Chile and the Chilean Auditors Association have developed a comprehensive work on further training for their members, disseminating best practices and also the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD. This work has been done in collaboration with the Ministry of Finance, as it can be noticed by visiting their websites (www.chilecont.cl ; www.iaigc.cl ; and www.colegioauditores.cl).

The Ministry of Finance has also disseminated the Convention through the government auditing system, which is coordinated by the General Government Internal Auditing Council (CAIGG), adviser body to the President of the Republic in matters of internal audit, including more than 500 professionals in the area. The CAIGG has posted on its website www.auditoriainternadegobierno.cl the Convention and its supplementary documents, the promulgating decree thereof and the Explanatory Brochure http://www.auditoriainternadegobierno.cl/index .php/menu/show/id/82

Accountants, Auditors and Lawyers

The Financial Analysis Unit (UAF), public service related to the Ministry of Finance, aimed at preventing

the utilization of the financial system and other sectors of the economic activity for operations of money laundering, has informed by Official Letter N° 155, dated September 16th, 2008, and Official Letter N° 014, dated January 12th 2009, on the dissemination of the Convention among the trade associations of accountants, auditors and attorneys, particularly considering that the bribery of foreign public officials is one of the predicate offences of money laundering. For this purpose the UAF sent to the above mentioned associations the *"Report on national regulations against money laundering and on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions"***.**

Lawyers

On January 23rd 2009, representatives of the GNECC/OCDE participated in a meeting with Mr. Enrique Barros Bourie, President of the Chilean Bar Association *(Colegio de Abogados de Chile A.G),* in order to request the collaboration of the Bar in the dissemination of the Convention and the recommendations of the WGB addressed to lawyers. During the opportunity Mr. Barros undertook to incorporate the subject in the Code of Ethics of the Association which is currently being updated and to cooperate in the dissemination activities developed by the Ministry of Foreign Affairs. Afterwards, a letter of the Minister of Foreign Affairs formalized the request of collaboration.

The Chilean Bar Association has recently reinforced this commitment appointing several attorneys divided into different working groups. One of these groups is addressing matters referred to the duty of confidentiality. Other group is addressing the subject on procedural conduct of the lawyer, comprising not only judicial but also administrative procedures.

Text of recommendation 1 (d):

With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Chile:

require CORFO to adopt anti-bribery policies with regard to export credit operations, and consider adhering to the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (Revised Recommendation, Paragraph I);

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

- On July 29th, 2008, representatives of the GNECC/OCDE (Ministry of Finance, DIPESP and DIRECON) participated in a meeting with the Manager of Financial Intermediation of CORFO, to coordinate some aspects of the measures adopted by CORFO with respect to the WGB recommendations.

- On August 7th, 2008, the Executive Vice President of CORFO sent the Official Letter Nº 8.646 to the Minister of Foreign Affairs, compromising the inclusion of a clause on the sense and scope of the Convention in the contracts signed with the Financial Intermediary. This clause would include a sanction that the financial intermediary could be able to exercise on the importer who contracts the provision of goods or Chilean services. Besides CORFO would include a declaration of its commitment with the principles and regulations of the Convention as an annex to the transaction documentation

- By Official Letter 11011 of November 2nd 2008, [**annex 1(d)1]**, the Executive Vice President of CORFO informed that as of November 1st 2008, all contracts for opening lines of credit to support exports include an anti-corruption clause with a sanction associated to its breach, which reads as follows:

*"**The person who gets the credit will prevent that those involved in the implementation of this credit line do not offer, promise or give illegal payments or other advantages in relation to the operations of this instrument***

In case of contravention, CORFO reserves the right to accelerate the compliance of the credit line, suspend or cancel money orders under the respective credit lines"

Besides, CORFO has informed on the implementation "*in actum"* of a declaration by the intermediary, of full commitment to the principles and rules of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in all the applications for money orders presented in relation to contracts for opening credit lines currently in force.

- Currently, internal procedures are being developed by the Ministry of Foreign Affairs to adhere to the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits.

- CORFO has attended to the ECG Meeting on June 16th 2009 at OECD and committed in this regard the follow:

Fund drafts will be interrupted if the formalities in the terms of use of OECD Convention are not met. Besides, repeated violations will result in the termination of the credit line. In case of severe breach of the terms of the OECD Convention, the mandate is penalized with the acceleration of the credits granted and CORFO keeps the right to request refunds.

On the other hand, and related to the OECD´s Export Credits and Sustainable Lending, Principles and Guidelines, CORFO ensured that its funds are used for productive and social development purposes, since the goal of the credit is to fund capital goods. In this sense, CORFO enhanced the fact that credit is focused on individual operations with charge to a credit line and the integrity of the project is assessed before approving the draft.

CORFO ratified its availability to issue annual reports to the ECG about the credit operations

Text of recommendation 1 (e):

With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Chile:

consider maintaining and/or formalising the GNECC as an oversight and coordinating body for effective implementation of the foreign bribery offence in Chile, including awareness raising activities for the public and private sector (Revised Recommendation, Paragraph I).

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

In order to comply with the recommendations of the Phase II evaluation process, the GNECC/OCDE has continued to develop its advisory function to the Ministry of Foreign Affairs. Currently the institutions represented in the GNECC/OECD are: the Ministry of Foreign Affairs; Ministry of Finance; Ministry of Justice; Public Prosecutor's Office; Financial Analysis Unit and the General Directorate of International Economic Relations (DIRECON)

By Official Letter Nº 253 dated August 1st, 2008, the Minister of Foreign Affairs requested, as a complement to the technical work developed by the GNECC/OCDE, political support for the GNECC Bill at the Congress. The document was sent to the National Public Prosecutor; the Minister of Finance; the Minister Secretary General of the Presidency; the Minister of Economy; the Minister of Justice; the Executive Vice-president of the Chilean Corporation for Promoting Production (CORFO); the Director of the Financial Analysis Unit (UAF); the Special Envoy of the Government in the negotiations of access of Chile to the OECD, and to the President of the Council of Defence of the State. An explanatory document informing on the work developed by the GNECC/OECD was included.

Additionally, the Ministry of Foreign Affairs is currently in the process of formalizing the GNECC/OCDE.

Text of recommendation 2 (a):

With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Chile:

revise the instruction document sent to Ministry of Foreign Affairs (MFA) staff regarding foreign bribery to better reflect the nature of the foreign bribery offence and applicable reporting obligations, and issue it to all MFA staff including those at PROCHILE (Revised Recommendation, Paragraph I);

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

1. On September 22nd, 2008, the Under Secretary of Foreign Affairs sent an Official Message to all Diplomatic and Consular Missions and to Chilean Commercial Offices abroad, with Instructions for the dissemination of the Convention and of the Explanatory Brochure. The Explanatory Brochure on the Convention and the Instructions, both documents amended by the GNECC/OCDE in the terms indicated by the WGB in the Phase II Report, were published in the web page of the Ministry of Foreign Affairs http://www.minrel.gov.cl/prontus_minrel/site/artic/20080930/pags/20080930172817.php from where these documents must be downloaded for their dissemination, according to the Instructions above mentioned. At the same time this authority requested the General Director of International Economic Relations to reiterate the Instructions to the Commercial Offices abroad and to send them to PROCHILE Commercial Offices in Chile.

2. On January 21st 2009, the Director for Multilateral Economic Affairs reiterated - through the Intranet - to Heads of the Economic Departments and Commercial Offices of PROCHILE abroad, the instructions given by the Under Secretary of Foreign Affairs on September 2008. On January 22nd 2009, the same authority sent an Official Message with the same instructions to the Heads of DIRECON-ProChile Regional Offices (in Chile) and Departments and Offices Abroad. Besides, DIRECON authorized the printing of 2,000 copies of the Explanatory Brochure in order to be forwarded to the Offices of DIRECON-ProChile in the country and abroad with the purpose to fulfil the aforementioned instruction.

In the institutional website, www.direcon.cl a banner was included which contains the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Explanatory Brochure. Besides, a journalist staff member was instructed, to report, on a permanent basis, to DIRECON-PROCHILE on any news related to the accession of Chile to the OECD.

On March 31st 2009, the Regional Directors of PROCHILE participated in a meeting to address institutional issues and the access of Chile to the OECD.

In April 2009, Regional PROCHILE's Offices began to distribute the Explanatory Brochure among the business sector informing on the importance of implementing the Convention, urging entrepreneurs to be aware of the Convention and on the role they should play in the prevention of the offense of bribery of foreign public officials.

Since January 2008, the following Anti-Corruption Clause has been included in the contracts of the Fund for Agricultural and Livestock Exports Promotion:

TENTH: PROCHILE may conclude in advance this Agreement if:
a)
b)
c)
d) If any kind of corruption acts are proved in the execution of this contract. For the purposes of this provision, the term "corruption" is understood as the offer, to give or the act of giving to a public official, domestic or foreign, an economic benefit, gift, gratuity or commission, as a reward or inducement, to act or refrain from taking actions which in the exercise of his/her function are related to the implementation of activities contained in the present agreement.

Text of recommendation 2 (b):

With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Chile:

take steps to facilitate the reporting of suspicions of foreign bribery to prosecutors, including by improving the enforcement of the general duty for public officials to report suspicions of crimes directly to law enforcement authorities under art. 175 CPC and art. 55 of Law N° 18,834; and enhance and promote the protection of private and public sector employees who report in good faith suspicions of foreign bribery, in order to encourage them to report such suspicions without fear of retaliation (Revised Recommendation, Paragraph I);

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

Law N ° 20.205, published on September 24th, 2007, regulates the protection of the civil servants who report in good faith to the regular authorities, that an act has been committed by a public official, which constitutes misconduct to probity. It also establishes sanctions for those who do frivolous or of bad faith reports.

A double scope of protection is established by this Law in favour of the civil servants who report:

1) Labour protection established in article 1, N° 2 of the Law N ° 20.205, which adds a new article 90 A to paragraph 1 of Title IV of the Administrative Statute (Law N° 18.834). Such protection prevents the application of disciplinary measures of suspension of employment or dismissal, since the report is received until it must be considered as not submitted (because of the lack of foundation of the report) or, 90 days after the administrative investigation has finished. Likewise it prevents the transfer of the public official during equal period of time and the right not to be an object of annual evaluation if the denounced is the

direct chief of the public official, except if the latter expressly requests it.

2) Procedural protection foreseen in article 1, N° 3 of Law N ° 20.205, which adds the article 90 B to paragraph 1 of Title IV of the Administrative Statute (Law N° 18.834). It establishes the requirements that the report must contain. This protection, which operates upon request of the interested party, is requested in the writing report. In this report it can also be requested the secrecy for the identity of the reporting party or for the information that allows to determine it, as well as the information and documents that the reporting party provides or indicates when making the report.

In the event that the denouncing party formulates the above-mentioned request, the disclosure of the information in any form will remain prohibited and the infraction of this obligation shall give grounds for administrative responsibilities.

Scope of this field of protection in penal procedural matters: The legislator seeks to promote or to stimulate the good faith reporting that the public officials formulate respect of acts that constitute misconduct to probity, establishing rights, guarantees or securities for the reporting parties. One of those guarantees is the secrecy of the reporting party identity, in order to avoid possible threats or acts of reprisal, protecting them in a similar manner to that of the denouncer of a crime of drugs' traffic.

Text of recommendation 2 (c):

With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Chile:

introduce money laundering reporting requirements for appropriate non-financial entities including lawyers, accountants and auditors (Convention, Article 7; Revised Recommendation, Paragraph I);

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

By Official Letter N 155 dated September 16th, 2008, the Financial Analysis Unit (UAF), public service related to the Ministry of Finance, aimed at preventing money laundering, reported activities of dissemination of the Convention among the trade associations of accountants, auditors and attorneys, particularly considering that the bribing of foreign public officials is one of the predicate offences of money laundering. **[Annex 2(c)1]**. For this purpose, the UAF sent the *"Report on national regulations against money laundering and on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions"* to the above mentioned trade associations.

In compliance with the WGB recommendation on this matter, on January 14th, 2009 it was submitted into Congress for the respective legislative process, a new indication (N 1373-356) to the Bill authorizing the lifting of bank secrecy in relation to money laundering (Bulletin 4426-07). The new indication introduced a rule amending Article 3 of Law No. 19,913, in order to include lawyers, accountants and auditors among subjects who report to the UAF suspicious transactions detected in the course of their professional activities. [**annex 4]**

This indication was not approved by the Constitution Commission of the Deputies Chamber, particularly as parliamentarians felt that due protection of the duty of professional secrecy was an implicit obligation of professional practice which did not required an express provision to that effect. For this purpose it was also considered that the recommendations of the FATF regarding *Designated Non-Financial Businesses and*

Professions (DNFBP), establish the safeguard which must be given to the information obtained under professional secrecy, *"Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.*" (R. 16 final paragraph)

The Executive decided not to insist with the proposed rule in that legislative stage, given that the Bill included other areas of special relevance for combating money laundering which should be promptly examined by the Committee. Eventually the Commission approved the following matters:

1. An increase of the obliged subjects required to report suspected transactions of money laundering and of terrorism financing.
2. Amendment to the offense of money laundering and of the penal sanction associated with it.
3. Amendment through the enlargement of the list of predicate offences and modification of the negligent description of the offence of money laundering.
4. An increase of the powers of the Financial Analysis Unit (UAF) to prevent and impede the offence of financing terrorism.
5. It is made possible, by operation of law, that the UAF and the Public Ministry have access to information subject to bank confidentiality without using the regular procedure established for the information subject to secrecy.

Text of recommendation 2 (d) :

With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Chile:

require auditors to report all suspicions of bribery by any employee or agent of the company to management and, as appropriate, to corporate monitoring bodies, and take steps to improve the effectiveness of auditors' reporting obligations to competent law enforcement authorities as established in art. 59 of the Company Regulations (RSA) (Revised Recommendation, Paragraph V.B).

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

- By Official Letter 17.781, dated June 30th 2008, addressed to the Minister of Finance, the Securities and Insurance Superintendence (SVS) has informed on the adoption of a work program aimed at the prompt and complete fulfillment of the Convention's provisions, specially regarding the obligations of the external auditors as for the reporting of irregularities detected in the exercise of their duties. The SVS has initiated the analysis of the matter with the authorities of the Auditors' Institute of Chile to improve the efficiency of the obligation of external auditors to report the facts that could be constitutive of infringements or offences to the competent authorities.

The above has been ratified by SVS Official Letter. No. 481, [**annex 5]** of January 13th 2009, addressed to the Minister of Finance - which also informs on the obligation of external auditors to report offences to the competent administrative and judicial authorities - that, as of January 12th 2009, the SVS issued Official Letter 496, [**annex 2(d)2]** addressed to all registered External Auditors, through which the regulator entity provides guidelines for improving the effectiveness of mandatory reporting to the competent authorities by the external auditors, of acts that may constitute breaches or crimes, and requests information on compliance with those guidelines at the latest by March 31st 2009.

In response to that request, external auditors informed about the rules and policies on the matter in force up to that date, sending as an annex, among other documents, Auditing Manuals; programs for staff training and induction; information related to the implementation of best practices and to the adoption of international standards; policies on assessment of the risk of fraud, etc.

- By Official Letter Nº 127 dated July 28th 2008 [**annex 6]**, the Chilean Accountants Association A.G informed to the Minister of Finance that the SVS issued a document addressed to all the external auditors requesting the implementation of, among others, induction and training programs for all the associated professionals; the fulfillment of the duty to report offences by external auditors, and also the need to implement best practices and manuals and/or procedures to report offences to the management of the companies and to the competent authorities.

The Chilean Accountants Association also reported about a Circular Letter dated July 27th 2007, issued for immediate application, calling accountants and auditors to inform the competent authorities in all situations they could detect related to the bribing of public foreign officials. [**annex 8]**

Text of recommendation 3 (a):

With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Chile:

clarify, in an instruction or other appropriate measure, the rules governing the investigation and prosecution of foreign bribery and in particular any possible exceptions to the general rule of mandatory prosecution (Convention, Article 5; Revised Recommendation, Paragraph 1);

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

On January 30th 2009, the National Prosecutor issued official letter FN 059/2009 which gives a General Instruction to prosecutors providing criteria for acting in cases of corruption offences. This instruction must be harmonized with Official Letter FN N° 1356/2007 issued on October 9th 2007, related to the most relevant aspects of the Convention, giving criteria for its application. The referred document focuses on relevant aspects of the Convention, the implementing legislation and the modifications to the Penal Code, analyzing the offence of bribery of foreign public officials. It is analyzed the protected juridical good by the foreign bribery offence, the incriminated conduct and its punishment. It contains also a brief reference to other aspects of the Convention as the criminal liability of the legal persons, the mutual legal assistance and extradition, and the jurisdiction.

Eventually, the FN Official Letter refers to the criteria of action that must be followed by the prosecutors for these offences, making applicable to the possible investigations for the offence of bribery of foreign public officials the same criteria of action that have been given for the crimes of corruption, which in summary are the following:

- In relation to the principle of opportunity: not applicability of the principle of opportunity in these cases because there is a serious commitment of the public interest because of the international significance of those investigations.
- On provisional closure of the file: to its application, all reasonable means of inquiry must have been exhausted. It must also have been approved by the Regional Public Prosecutor, having in

consideration that the penalty of disqualification covered by the offence has the nature of afflictive.

- For the faculty of not to start the investigation: it may be applied, but the study of the backgrounds should be especially careful and in regard to the decision of not investigating due to the limitation period of the penal action, it must be discarded any act of interruption
- For the conditional suspension of the procedure: it can be applied, but the analysis should be adopted with special caution, taking into consideration the background of the case and finally,
- For the Compensation Agreement: It is usual that in these cases there is no specific victim (natural person), given the characteristics of the crime of abstract danger, so that the implementation of this Additional Alternative is not of ordinary occurrence. If there is a victim, the prosecutor should object its adoption because is in the presence of a legally protected interest which is not available for compensation agreements.

Text of recommendation 3 (b):

With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Chile:

align the rules for lifting bank secrecy in foreign bribery cases with the rules applicable in domestic bribery cases and in money laundering investigations by the Financial Intelligence Unit (UAF); and take measures to ensure that financial institutions provide the required financial information promptly in appropriate cases (Convention, Articles 5 and 9(3); Revised Recommendation, Paragraph 1);

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

The rules for lifting bank secrecy for bribery of national officials as well as for bribery of foreign public officials are the same; therefore there is no difference to be "aligned".

The regulation of the banking secrecy is established in Article 154 of the General Banking Law which states that *"The deposit and collecting of funds of any nature received by banks are subject to banking secrecy and information regarding such operations cannot be disclosed other than to the holders of the same or somebody expressly authorized by them or their legal representatives…"*.

This institution is understood in our law as a manifestation of the constitutional guarantee recognized in Article 19 paragraph 5 of the Constitution of the Republic, referring to the inviolability of residence and private life. Therefore the lifting of bank secrecy in the case of a criminal investigation requires the prior authorization of the Guarantee Judge, as established in Article 9 of the Criminal Procedure Code and Article 154 of the General Banking Law.

Given the above, the rules for bank secrecy are the same for investigating a domestic offence of bribery or in the case of the offence of international bribery.

For the investigation of offenses of money laundering, whose setting up is found in Article 27 of Law 19,913 - which creates the Financial Analysis Unit and modifies various provisions relating to money laundering - these rules are also applicable and therefore when requiring the lifting of bank secrecy in an investigation for this offence, a prior judicial authorization will be necessary as well.

Act Nº 20,341 of April 22nd 2009, created the new paragraph 9 bis, in which it is included the offense of bribery of foreign public officials. The Bill, which is close to its promulgation, (Bulletin 6476-07)

incorporates into Article 27 of Law No. 19,913 the paragraph 9 bis to the predicate offenses of money laundering.

The reference made to the Financial Analysis Unit, in the sense that it conducts investigations for the offence of money laundering is not accurate. It is important to make clear that in our anti-money laundering system, the Financial Analysis Unit does not investigate, being expressly mentioned in the law which created this new body, that it cannot perform functions corresponding to the Public Ministry or to the Courts. The legislative history reflects that the Financial Analysis Unit conducts only a sort of gathering background or administrative investigation.

There is a confusion in the question related to the work carried out by the UAF about the possibility of requesting information subject to bank secrecy when it is necessary to complement a report on a suspicious transaction - which also requires the authorization of a Minister of Court of Appeals of Santiago - with the investigation carried out by the Public Ministry for an offence of money laundering. Both investigations are developed in different fields. The Financial Analysis Unit performs an administrative investigation while the Public Ministry exerts the penal action and develops criminal investigations.

It is the case also to indicate that though the Financial Analysis Unit (UAF) is an administrative organ which lacks of jurisdictional or judicial competence in the processes for this type of crimes, one of its functions is the information exchange with its foreign counterparts. In this sphere of competence and powers the UAF can deliver information, originally protected by bank secrecy, that it already possesses, or to request the lifting of bank secrecy by means of an expeditious procedure established in its Organic Law.

The UAF is associated to the Egmont Group, which establishes standards for information exchange and facilitates secure communications. The UAF has signed 34 Memorandum of Understanding (MOU) with other Units of Intelligence, compromising to a spontaneous and reciprocal - or by request - information exchange to support the prevention, detection and investigation of the crimes related to money laundering and to the criminal activities indicated in the Law 19.913.

Additionally there is a Bill, on money laundering (Bulletin 4426-07), which modifies the UAF, currently in process in the National Congress, that allows the Public Prosecutor's Office to require in a fast and flexible way, with authorization of the Judge of Guarantee, the delivery of all the information related to current accounts and deposits or other placements or credit operations in the investigation of the crimes of money laundering.

In relation to the lifting of bank secrecy with regard to offences of domestic bribery or of bribery of foreign public officials, according to our law it is possible to obtain the lifting of bank secrecy in relation to the complete movement of current accounts and the corresponding balances, as authorized by Article 1 of DFL-707 which sets the merged, coordinated and systematized text of the law on current accounts and cheques.

Additionally, a new provision in this matter, article 20 bis of the Criminal Procedure Code stipulates that foreign requests of MLA must be processed by the Public Prosecutor's Office, which must request the intervention of a Judge of Guarantee when necessary, as it is in domestic investigations.

Besides, on 2004 the Public Prosecutor's Office created a new unit of MLA in order to fulfill in a better manner this function. Prosecutors have informed that proceedings to lift bank secrecy in MLA requests are simple and have been successful.

The case law restrictions on MLA referred to in Phase 1 report (N 108) have been superseded by article 20 bis of the Criminal Procedure Code, and are no longer applicable. Nowadays Jurisprudence allows

affirming that there is no inconvenient to lift bank secrecy for providing mutual legal assistance.

It is worthy to note that Chile has celebrated other MLA agreements in penal matters with countries as Italy, Bolivia and Switzerland and also with MERCOSUR. Chile is a Part of the Inter-American Convention of Mutual Assistance in Criminal Matters. Besides, our country has been officially invited to adhere to the European Convention of Mutual Assistance in Criminal Matters. Currently the Ministry of Foreign Affairs is in the process of sending a Message to parliamentary approval of the Convention and its Protocols. This will allow an additional tool for providing mutual assistance to the signatory Parts of the Convention.

Text of recommendation 3 (c):

With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Chile:

take all necessary measures to ensure that Chile will not decline to render mutual legal assistance (MLA) in foreign bribery cases on grounds of bank secrecy; and that MLA can be provided in criminal and non-criminal cases of foreign bribery involving legal persons (Convention Articles 2 and 9);

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

According to the previously informed, it is feasible to provide mutual legal assistance to the Member States, by virtue of article 9º of this Convention and in conformity with article 20 bis of the Criminal Procedure Code that allows the Public Prosecutor's Office to give international cooperation in matters of investigation proceedings.

Nevertheless, it should be highlighted that there are in force other international agreements such as the United Nations Convention against Corruption, the Inter-American Convention on Mutual Assistance in Criminal Matters, United Nations Convention against Transnational Organized *Crime*, among others, since in many cases these agreements establish major facilities for the legal cooperation such as the exemption of authentication procedures, detailed regulations on the records required, etc.

In all cases in which MLA has been requested to Chile in criminal investigations that have required the lifting of bank secrecy, a favourable response has been given by Chilean Courts authorizing the lifting of bank secrecy, thus allowing the reporting on the bank accounts.

This has happened with the applications received until now from the Prosecutor General's Office of the Russian Federation; Department of Justice of the United States; the Public Ministry of Ecuador and the National Criminal Court of Instruction No. 45 of Argentina. The referred cases have been related to money laundering and also to fraud. So far it has not been requested to Chile a requirement to lift bank secrecy based on the foreign bribery offence but, in the opinion of the Public Ministry, it should not exist any impediment to the Guarantee Judge in granting the knowledge of a bank account in response to the request of a prosecutor. The practice of Chilean prosecutors in investigations of domestic bribery and offences committed by public officials is that the Guarantee Judges lift banking secrecy and allow the knowledge of the bank accounts of the alleged offender when requested within the framework of a criminal investigation.

According to the previously informed, it is feasible to provide mutual legal assistance to the Member States, by virtue of article 9 of this Convention and in conformity with article 20 bis of the Criminal

Procedure Code that allows the Public Prosecutor's Office to give international cooperation in matters of investigation proceedings.

Notwithstanding the foregoing, it should be considered whether other international treaties bind us with the country requesting our assistance like the United Nations Convention against Corruption, the Inter-American Convention on Mutual Assistance in Criminal Matters, the United Nations Convention against Transnational Organized *Crime*, among others, since in many cases these agreements establish major facilities for the legal cooperation such as the exemption of authentication procedures, detailed regulations on the records required, etc.

If there is no international treaty, international assistance can be provided in accordance with general rules (reciprocity, general international principles of international law, among other principles) and respecting the faculties of our domestic legislation. For requests such as mere formality notices, information, address, or other personal data, it is not necessary to analyze whether there is dual criminality. However, in cases or applications that are of greater complexity or impact on entitlements, particularly in cases where it is necessary to seek court authorization to implement the required measures, it is relevant to analyze not only the double criminality but also that the request complies with the requirement of our domestic legislation.

Text of recommendation 3 (d):

With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Chile:

consider aligning the treatment of the foreign bribery offence with the money laundering offence with regard to the investigative tools made potentially available to prosecutors in appropriate cases (Convention, Article 5; Revised Recommendation, Paragraph 1);

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

It is considered that the current powers and techniques of prosecutors to conduct the investigation of the offences of bribery of foreign public officials are sufficient to carry out investigations successfully. This statement takes into account the assumption that in general the referred powers are also sufficient for investigating other offences of our legal system, including offences of major complexity, such as economic, tax, and bribery of national public officials' offences.

It is important to reiterate that the new criminal procedure system implemented in Chile offers enormous possibilities and powers to prosecutors, without need for special rules

For these reasons, at least by the time being, it is not considered appropriate to modify the law in order to make uniform the techniques provided for the investigation of money laundering offence.

Text of recommendation 3 (e):

With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Chile:

promptly take all necessary action to ensure that territorial jurisdiction extends over all foreign bribery offences committed in whole or in part in Chilean territory; and adopt nationality jurisdiction in foreign bribery cases in order to strengthen enforcement of the offence (Convention, Article 4(1), (2) and (4));

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

The Project contained in Bulletin 6476-07, which will be promulgated in the coming days, amends Article 6 of the Organic Code of Courts stating that Chilean Courts are competent to sanction the bribery of foreign public officials committed abroad by a Chilean person or by a person who has habitual residence in Chile.

Text of recommendation 3 (f):

With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Chile:

take action to ensure that the overall limitations period for the foreign bribery offence is sufficient to ensure adequate investigation and prosecution, including that the two year period for formalised investigations can be extended as necessary (Convention, Articles 5 and 6; Revised Recommendation, Paragraph 1).

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

According to the current penalty for the offense of international bribery, the statute of limitations of the penal action is 5 years, the same term that, in general, governs for all crimes of civil servants in our legislation.

In reference to the extension of the term of two years of formal investigation it is possible to say that one of the central aims of the criminal procedure reform - which was initiated in Chile in the year 2000 -, has been the establishment of a process that meets the basic standards of due process as required by international human rights treaties and by our own Political Constitution.

To meet this objective it has not only been necessary to crystallize within the Code of Criminal Procedure a set of safeguards that were not explicitly recognized in our previous law on criminal procedure, one of which relates to the right to be tried within a reasonable term, a right fully incorporated in international human rights treaties

Thus, for example, the American Convention on Human Rights sets out two specific rules that relate to the subject (Articles 7.5 and 8.1). Something similar happens with the European Convention on Human Rights (Articles 5.3 and 6.1) and the International Covenant on Civil and Political Rights (Articles 9.3 and 14.3 c)

The rules contained in international treaties distinguish two dimensions of the guarantee of being judged in a *reasonable time period*. The first one, contained among others, in Article 8.1 of the American Convention on Human Rights refers to the right to be judged within a reasonable time. This dimension establishes the right of any alleged offender to that the extent of the proceedings against him does not exceed what is reasonable.

The second, contained among others, in Article 7.5 of the same Convention, relates to the right to a reasonable time period of the pre-trial detention according to which jurisprudence under international treaties consider that by the mere passage of time pre-trial detention becomes unlawful, despite the fact that the assumptions that allowed its original application remain untouched.

This doctrine was developed by the European Commission in the case Huber v/s Austria, of February 8th 1973, and adopted by the European Court in the case Foti v/s Italy, of December 10th 1982. Since then it has been applied in hundreds of cases.

The doctrine has also been adopted by the Inter-American Court of Human Rights in the Genie Lacayo case (January 29th, 1997) and in its subsequent jurisprudence. In the specific area of the length of reasonable time period and pre-trial detention, the Inter-American Commission has established an analysis methodology that complements the development of jurisprudence. Thus, the Commission established in the Giménez case (report 12/96 of March 1st 1996), that in order to analyze the reasonableness of the period of detention it was necessary to conduct a review of two parts. First, it should be examined the *pertinence and sufficiency* of the justifications used to keep the accused person deprived of liberty and then, only to the extent that this is satisfied, it should be revised whether the authorities had acted with *special diligence* in the procedures so that the period of detention was not excessive. In this second part of the examination, the Commission indirectly incorporated the criteria mentioned above.

The above allows the conclusion that the guarantee of the reasonable time period has been largely recognized in the international human rights law. It has been the subject of intense development of jurisprudence and specific criteria have been established for the analysis of cases and decisions which might guide the interpreter in the implementation of the corresponding guarantee. Because of the above mentioned it is not possible to accept increasing the two years time period of legal investigation without affecting a guarantee recognized by international treaties.

It should be clarified that under the provisions of our Criminal Procedure Code it is possible to distinguish two periods of penal investigation. One called the pre-formalized period (preparatory or preliminary), in which the Public Ministry can make all inquiries deemed necessary for the accreditation of an unlawful act and its authors, which does not have established any legal period time. In the event a prior judicial authorization is needed, (because fundamental guarantees are affected) it may be required without the Public Ministry being obliged to inform to the alleged offender on its verification, as indicated in article 236 of the Criminal Procedure Code[1].

[1] Article 236. Authorization to practice proceedings of investigation without the knowledge of the person concerned. The proceedings of investigation which in accordance with Article 9 require prior judicial authorization may be requested by the prosecutor, even before the formalization of the investigation. If the prosecutor requires that the proceedings are conducted without prior notice to the affected person, the judge shall allow doing so when the seriousness of the facts or the nature of the proceedings allows assuming that this condition is essential to its success.
If after the formalization of the investigation, the prosecutor requests to proceed in the manner described in the preceding paragraph, the judge shall authorize when the reserve results as strictly necessary to the effectiveness of the proceeding.

The second investigation period begins when the investigation in relation to a person is formalized. The legal term assigned to this period cannot exceed from two years.

Therefore, is not deemed necessary to amend the period of two years of formalized investigation, in consideration of the international commitments that the country has taken, regarding the trial of persons within a reasonable time. As above mentioned, during the pre-formalized investigation stage the Public Ministry does not have a restriction threatening the success of the investigation since it can carry out inquiries without the knowledge of the suspected person and without any legal period time delimiting its work, unless of course, the statute of limitations of the offense.

For the above indicated reasons, it does not appear as necessary to modify the time limit of two years for the formalized investigation. This, considering international commitments adopted by Chile with regard to judging the persons in a reasonable term, and the fact that during the stage of pre-formalised investigation, the Public Prosecutor's Office does not have restrictions that could jeopardize the success of the investigations, since proceedings can be executed without knowledge of the affected person and without a legal term affecting the work, except for the term of prescription of the crime.

Text of recommendation 4 (a):

With respect to the offence of foreign bribery, the Working Group recommends that Chile:

amend the law to ensure that (i) the foreign bribery offence can apply to bribes composed of non-pecuniary benefits; and (ii) vagueness with regard to the requirement that the advantage supplied by the briber be "undue" is eliminated (Convention, Article 1);

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

Law 20.341 of April 22nd 2009, expressly provides that the benefit may be non-pecuniary in nature, as required by the Working Group on Bribery recommendations. This means that bribery may include a benefit that cannot be quantified or reduced to a pecuniary value.

The fact that the Chilean offence does not specify that the benefit must be undue, it does not imply that a benefit of that nature should be considered acceptable by the national Courts, according to the general rules of interpretation that prevail in Chile. If something is forbidden (expressly or implicitly) by the law of the person bribed, it shall be considered a banned advantage by our Courts.

Text of recommendation 4 (b):

With respect to the offence of foreign bribery, the Working Group recommends that Chile:

take all necessary measures to ensure that (i) the foreign bribery offence can apply to the giving of a bribe; and (ii) the concept of "public service enterprise" in the definition of "foreign public official" is consistent with the Convention definition of a "public enterprise" (Convention, Article 1).

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

i) Law 20.341 of April 22nd 2009, incorporates all three verbs referred to in the Convention, "to offer, to promise, and to give." This guarantees that all acts foreseen in the Convention are covered: to offer a bribe, to promise a bribe and to give a bribe.

ii) To correct and harmonize terminology, *"public service enterprise"* which has been considered as restrictive in terms of the Convention, it has been approved law 20.341 of April 22nd 2009, which replaces the expression *"public service enterprise"* by the term "public enterprise", in the description of the offence of bribery of foreign public official. In this way it is achieved the harmonization of concepts between our Criminal Code and the Convention on the matter. By using this latter term, its restrictive nature is eliminated and its scope is widened to be the same as the Convention.

Text of recommendation 5:

With respect to the liability of legal persons for foreign bribery, the Working Group recommends that Chile amend the law to ensure that all legal persons can be held liable for bribery of foreign public officials in accordance with the Convention (Convention, Article 2).

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

In March 2009 the Executive Branch submitted to the Congress the Bill establishing penal liability of legal persons for the offenses of money laundering, terrorist financing and bribery of national and international public officials. Currently the Bill is in the second constitutional stage of legislative process in the Senate.

This legal initiative has resulted in the establishment of a new logicality in criminal matters, since it accepts the principle of *"Societas delinquere potest"*. From this point of view, through this Bill it will be established a different paradigm from that one prevailing for other crimes not covered by this initiative, as regulated in Article 58 of the Criminal Procedure Code, which states that on behalf of legal persons their representatives shall be criminally liable.

In this context the initiative establishes the responsibility expressed in different kinds of criminal sanctions imposed by a criminal court, entrusting the prosecution and investigation of the offense to the Public Ministry (Prosecution). In this way it has been sought the assignment of the judgement of the crime of bribery of foreign public officials to criminal courts, in the sense that, in addition, the tools of due process should be also applicable to legal persons.

In reference to the substance of the Bill, the penal liability of the legal person is configured, when one of the natural persons with powers of direction within the company, a direct subordinate, or any official having management powers, commits any of the offenses mentioned in Article 1 (money laundering, financing terrorism and bribery of national or foreign public officials) direct and immediately in the interest or profit of the entity provided it has not established models of prevention of offenses, or although having been established, they have been insufficient.

The prevention models above mentioned are established in Article 4 of the Bill. A body within the

legal person will be responsible for ensuring the prevention model's compliance. This body will have all the guarantees of autonomy and independence to fulfil its purpose. It will also be given the necessary means to perform its functions.

Therefore the course assumed by the Bill is to establish a preventive system of offenses but also a self regulated one. In fact, the regulated liability system gives priority to the ways in which organizations can enable their direction and supervisory duties, focusing them towards the prevention and early detection of events that may entail offense elements. In this regard, it has been privileged an imputation system tending to attain that legal persons seek ways which allow them to be proactive in preventing offenses.

In general the imputation system is based on the need to create mechanisms that can make responsible the legal person for its own acts and for the acts of others. The "acts of others" shall consist in the commission of offenses by natural persons with the functions identified in the first and second indents of Article 3 of the Bill, while the "own acts" shall consist in the need to establish that the duties of direction and supervision of the directive bodies of the entity, have not functioned properly.

Notwithstanding the dependence of the liability of the company with respect to the individual responsibility, in certain cases and under certain conditions the responsibility of the legal person will be autonomous allowing the criminal investigation against the legal person to continue. Such cases shall arise when the liability of the natural person is extinguished (by death or by the prescription of the prosecution faculty)**,** when the dismissal of the natural person is decreed (because he is not available or he is insane) or when it has not been possible to establish specifically the individual responsible within the proceeding but the existence of the offense has been sufficiently proved, and especially when it has been determined that the criminal decision has come from the scope of functions performed by the persons exercising directive functions within the organization.

In the procedural scope, the institutions of the Criminal Procedure Code are applied, except in some matters that are specially treated in view of the particular nature of those entities. In this sense it has been sought to apply to these entities all the procedural guarantees which currently exist in our penal system. So, the due process and all its tools shall be applicable to them.

Text of recommendation 6 (a):

With respect to sanctions for foreign bribery, the Working Group recommends that Chile:

substantially increase the criminal sanctions applicable to foreign bribery in order (i) to provide for effective, proportional and dissuasive sanctions, including in cases where the bribe is solicited by the foreign public official; and (ii) to ensure that effective mutual legal assistance and extradition are not excluded by the level of applicable sanctions in any foreign bribery case (Convention, Article 3(1));

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

i) The first indent of the new Article 251 bis, established by Law 20.341 of April 22nd.2009, provides that when an active subject offers, promises or gives an economic or of other nature benefit, that may be considered as a bribery of a foreign public official, the sanctions to be applied (so copulative) are as follows:

- Short-term confinement, medium to maximum degree (541 days to 5 years).
- Fine. In the event that an economic benefit is offered, the fine imposed will range from the same amount of the benefit offered to the double of it. If the benefit is different in nature to the economic, the fine will range from 100 UTM (Monthly Tax Units) to 1000 UTM
- Special or absolute disqualification for public office or functions in any of its degrees (hence the disqualification can be imposed for a term ranging from three years and one day to ten years).

Consent to Solicitation

As for the offense described in the second indent of Article 251 bis, that is, when the active subject consents to the request of bribery, the sanctions to be imposed (so copulative) are as follows:
- short term confinement, minimum to medium degree (61 days to 3 years)
- Fines and disqualification equal to those established for the offence mentioned in the first indent of Article 251 bis.

Text of recommendation 6 (b):

With respect to sanctions for foreign bribery, the Working Group recommends that Chile:

eliminate mandatory reductions of sanctions for foreign bribery (i) in cases of solicitation of the bribe by the foreign public official; and (ii) in cases where the case begins more than half way through the limitation period (Convention, Article 3(1));

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

The situation of the foreign bribery is equivalent with the domestic bribery. When the initiative comes from the foreign public official and not from the private person a different sanction is applied, particularly because the legislator observes that the disvalue of the action is minor.

There are not special rules when the case has been initiated more than half way through the limitation period and the provisions and principles of the Chilean legal system are applied. The need to consider as consolidated the rights and to resolve the abnormal situations, when a sufficient time has elapsed, has motivated the inclusion of the statute of limitations in criminal matters, in the same way as it exists in civil matters.

The statute of limitations for the sanctions and for the criminal actions is one of the general rule of our criminal system, which has extremely restricted exceptions, like the one contemplated in the final indent of Article 250 of the Criminal Procedure Code, that establishes that a judge cannot order the dismissal of the proceedings in a case related to certain offences which, according to international treaties in force in Chile, do not prescribe.

Text of recommendation 6 (c):

With respect to sanctions for foreign bribery, the Working Group recommends that Chile:

in conjunction with the recommended amendment of the law to ensure its application to bribes

composed of non-pecuniary benefits, appropriately modify the method of fixing pecuniary sanctions for foreign bribery (Convention, Art. 3);

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

Simultaneously with the amendment to the criminal offence, which incorporates the possibility that the benefit in which the bribe consists of shall have a non-economic nature, a pecuniary sanction is established. The sanction is a fine from 100 to 1000 monthly taxation units (*unidades tributarias mensuales)* A monthly taxation unit is a Chilean economic indicator which varies from month to month. In August 2009 it has a value of $36.910, equivalent to US$ 65 dollars approximately.

Text of recommendation 6 (d):

With respect to sanctions for foreign bribery, the Working Group recommends that Chile:

amend the law to provide that legal persons shall be subject to effective, proportional and dissuasive sanctions for foreign bribery, including fines or monetary sanctions, and confiscation (Convention, Articles 2, 3);

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

The Bill, as already indicated, assumes a criminal liability for legal persons deserving a sanction, establishing a special system of penalties applicable to legal persons separating therefore, from the general model of penalties contained in the Penal Code for natural persons.

In this sense the following penalties are included:

1. Dissolution or cancellation, which involves the permanent loss of legal status, involving also the existence of a liquidator who will be responsible for the fulfilment of all the obligations of the legal person until its extinction. Protection rules are explicitly established during the period of liquidation, of the preferential rights that may exist for workers as well as for the claims that minority shareholders of the company may exercise.
This penalty is exceptional, so it applies only when the fact merits the penalty of a crime and provided that the aggravating circumstance specified in the Bill occurred, ie, recidivist, or when the conviction is imposed for repeated events pursuant to the provisions of article 351 of the Criminal Procedure Code.

2. Temporary or permanent prohibition to perform acts and contracts with the State Administration. It shall consist in a prohibition imposed on the convicted to celebrate contracts with the State Administration. The penalty can be perpetual or temporary. In the latter case, the penalty is graduated, ranging from 2 to 5 years.

3. Partial or complete loss of state or absolute prohibition to receive them for a specified period. In this way the organization will no longer receive state benefits provided by the State or its agencies, as subventions or benefits. This is also a graduated penalty which could cause the loss from 20 to 100% of that benefit. If the legal person has not received benefits, it will be stated in the

sentence the prohibition to receive them for a period ranging from 2 to 5 years.

4. Fine. As for this sanction, understanding that it is one of the most widely used in comparative systems, it has been sought that it meets two basic aspects. On the one hand, to adjust the proportionality of the quantum with the severity of the offense, and on the other, to be sufficiently deterrent for preventing new acts of the same character within the legal person. Therefore it has been established a fine graduated as follows: in the minimum degree the fine ranges from 200 to 2000 UTM; in its medium degree from 2001 to 10,000 UTM and in its maximum degree from 10,001 to 20,000 UTM. In this way ranges are established that shall adjust to the seriousness of the offense. For the specific case of misdemeanours (bribery of foreign public officials) fines could be imposed as far as its medium degree, that is, 10,000 UTM.

5. Likewise it has been included as ancillary sanctions the seizure keeping the institution of the Chilean Penal Code, but adding the devolution of investments exceeding the income earned. It also considers the publication of the ruling. Regarding the latter, it has been sought to include sanctions tending to impose a social reprimand for the acts committed, achieving thereby that this reprobation discourage the future use of the legal persons for criminal offenses.

Text of recommendation 6 (e):

With respect to sanctions for foreign bribery, the Working Group recommends that Chile:

take all necessary measures to ensure that seizure can be initially obtained in appropriate cases without the prior knowledge of the suspect (Convention, Article 3(3));

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

The confiscation is an accessory penalty considered in our Penal Code, related to the loss of the goods obtained as a result of the crime and the instruments with which it was executed. It is applied jointly and obligatorily with the principal penalty assigned to the crime.

Nevertheless the recommendation of the WGB can be fulfilled by resorting to the so called real precautionary measures**,** which are restrictive measures or of depriving the freedom of administration and/or patrimonial disposition, which can be adopted by the court against the alleged offender in the penal process, in order to assure the patrimony object of the procedure and particularly, when the penalty has a patrimonial content. These measures are considered in article 157 of the Criminal Procedure Code, one of which is referred to the retention of certain goods and other, to the prohibition of celebrating acts and contracts related to certain goods.

The above mentioned measures and also the confiscation can be applied without the previous knowledge of the person affected, since the article 236 of the Criminal Procedure Code authorizes the Public Prosecutor's Office to execute proceedings of investigation without the knowledge of the suspected person, when the seriousness of the facts or the nature of the proceeding allows the presumption that this circumstance is indispensable for its success. This would be the case of an investigation for a crime of bribing a foreign public official in international transactions.

During the investigation, a prosecutor may request the Guarantee Judge to apply any of the precautionary measures contained in section 157 of the new Criminal Procedure Code, which reads as follows:

"*Section 157. Appropriateness of in rem precautionary measures. During the investigation, the Public Prosecutor's Office or the victim may request, in writing, that the Guarantee Judge take, as regards the accused, any of the precautionary measures authorized in Title V, Book II, of the Civil Procedure Code. In such a case, the said requests shall be processed and abide by the provisions in Title IV of that same Book. All in all, upon the said request being granted, the term to file an action shall be the one in section 60. Additionally, when filing a civil action, the victim may request that one or more of said measures is taken."*

Title V, Book II, of the Civil Procedure Code, section 290, lists four precautionary measures, labeled as *ordinary* by the procedural doctrine, including:

(a) Seizure of the *res* involved in the case;
(b) Appointment of one or more court-appointed administrators;
(c) Sequestration of certain property; and
(d) Prohibition to enter into acts or contracts over certain property.

Sections 291 to 297 to some extent provide details on such measures, which obviously, may be requested during a criminal action, as they are expressly authorized by section 290, Title V.
Finally, section 298 of the Civil Procedure Code sets forth precautionary measures which are not expressly authorized by law. In such a case, the court may require a bond from plaintiff. These are known as *special* precautionary measures. During a criminal proceeding, such precautionary measures may also be requested as they are contained in Title V, Book II, of the Civil Procedure Code, to which section 157 of the new Criminal Procedure Code refers. Said Title not only authorizes a court to decree the adoption of measures in section 290, but also other measures which are not expressly provided for in said section.

Therefore, prosecutors may request the Guarantee Judge to impose certain ordinary or special precautionary measures to secure pecuniary liability of the accused. We use the conjunctions "and/or" without distinction since section 157 explicitly provides that prosecutors may request the adoption of "one or more" precautionary measures in Title V, Book II. Accordingly, an ordinary measure may be adopted concurrently with a special measure, to the extent necessary to fulfill the foregoing purpose."

These measures may be requested without the defendant knowing it, with the consent of the judge, as provided for in section 236 of the new Criminal Procedure Code.
If, after the investigation becoming formal, the prosecutor requests that measures be taken as described in the foregoing paragraph, the judge shall grant said request should secrecy be critical to the success of the proceeding**.**

Text of recommendation 6 (f):

With respect to sanctions for foreign bribery, the Working Group recommends that Chile:

consider the imposition of additional administrative sanctions upon natural and legal persons subject to criminal sanctions for the bribery of a foreign public official (Convention, Article 3(4)).

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

The Directorate for Public Procurement decentralized public service subordinated to the Ministry of Finance, manager of the governmental purchases, has elaborated a draft that seeks to improve and to update the law of purchases and public contracting (Law 19.886). It contains also **a proposal to modify the Regulations of this law which includes a group of measures related to the development of the**

system of public contracting, among them, the ones related to comply with this recommendation of the WGB.

Amendments to the law

- To prohibit the condemned for crimes of corruption, among them, the crime of bribery to foreign public officials, to act as suppliers of the State;

- To incorporate as a precautionary measure the possibility to decree in a penal process the suspension of the alleged offender, or of the society in which this person has the quality of partner or director, from the Suppliers' Record of the State, in the cases of the offences before mentioned.

The above mentioned initiative is in a stage of analysis and discussion, especially in the budgetary instances of the Ministry of Finance, because of the financial commitment that this new body of measures involves. The Director of **Public Procurement**, by Official Letter N° 0783, dated September 10th, 2008, required the incorporation of new provisions.

The existence of several bills that overload the legislative agenda for the remaining term of the current government, have implied the postponement of the decision to submit this draft to legislative process. It is feasible that the decision will have to be adopted by the new government assuming in the year 2010.

Amendments to the Regulations

- To introduce as ineligibility for celebrating administrative contracts with the public organizations subject to the above mentioned law, to have been condemned for offences of corruption, among them, the bribery of foreign public officials;

With regard to the above mentioned regulatory initiative, the Ministry of Finance has issued the Executive Decree No. 1,763 of December 26th 2008, currently in process of control of legality by the Comptroller General of the Republic, which amends the Regulations of the Law on Public Procurement and Contracting. Paragraph 30 of Article 1 of the mentioned Executive Decree disables the enrolment in the State Registry of Suppliers to those who have been convicted for domestic bribery and foreign public officials' bribery. The inability will last for a period of 3 years.

The decree is based on Article 17 of Law N ° 19.886, Law on Public Procurement and Contracting, which stipulates that the regulations will establish the ineligibility, incompatibility, suspension and removal from the State Registry of Suppliers for breach of obligations or other reasons.

The inability of the society will also affect those who are their managers, in the case of limited liability companies, including individual companies, as well as collective and "*en comandita*" companies. In the case of corporations, the inability will affect all of its directors. In all cases, the inability will affect all those who have the use of the legal name.

Text of recommendation 7:

With respect to related accounting/auditing offences and obligations, the Working Group encourages the Chilean authorities to extend international financial reporting standards (IFRS) to all registered companies in accordance with the intent of the Superintendence of Securities and Insurance (SVS); to consider adopting developing simplified international accounting standards for small and medium sized enterprises; to enforce accounting and auditing offences more effectively in bribery cases; and to continue

their efforts to improve audit quality standards, including with regard to certification and independence (Revised Recommendation, Paragraph V).

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

Chile has adhered and committed to adopt the International Financial Reporting Standards (NIIF/IFRS), which will be implemented by the regulatory organisations of the Chilean markets and of the countable profession. Both instances have declared their intention to adopt these regulations.

The SVS has established, for the entities subject to its inspection, a schedule for each type of entity, in which the International Financial Reporting Standards **(NIIF/IFRS)** must be adopted. The period considered is January 1st, 2009 to January 21th, 2010. On April 25th, 2008 the SVS issued Circular Letter N° 1879, establishing the Model for Presentation of Financial Statements prepared according to IFRS standards and the Information Means to be used (available in www.svs.cl).

However, given the complex situation that the global markets are currently facing and which have had an impact on Chile, the SVS decided to make flexible the mandatory beginning of the presentation of financial statements under IFRS standards for the year 2009.

The referred flexibility consists in that companies can make the first delivery of financial statements, under the new accounting standards, as from December 31st, 2009, instead of doing it starting from the first quarter, as it had been originally established.

Also, in May 2009, the SVS, for the reason noted, reported on new terms for the convergence of the following entities and the manner for the implementation, as follows:

Fondos Mutuos, Fondos de Vivienda, FICE, Fondos de Inversión, Sociedades Administradoras e Intermediarios de Valores	Year 2010 ---------- Year 2011	*(Mantener para el ejercicio 2010 la presentación de Estados Finacieros anuales y trimestrales, según la actual normativa. Adicionalmente para diciembre de 2010 presentar pro-forma bajo IFRS, auditados, no comparativos.)* Maintaining for 2010 the submission of annual and quarterly financial statements, under current legislation. Additionally for December 2010 to present pro-forma under IFRS, audited, non-comparative, ---------- *Presentar estados financieros trimestrales y anuales completos de acuerdo al IFRS, con los comparativos correspondientes*

		Submit full quarterly and annual financial statements under IFRS, with the corresponding comparatives.

Insurance Companies	Year 2011 ---------- Year 2012	*Estados financieros trimestrales y anuales completos bajo IFRS, no comparativos* Full quarterly and annual financial statements under IFRS, non-comparative. ---------- Estados financieros trimestrales y anuales completos de acuerdo a IFRS, con comparativos Full quarterly and annual financial statements according to IFRS, with comparatives

The application of IFRS for not regulated companies, depends on the decisions adopted by the Chilean Accountants Association A.G (www.contach.cl), which is committed to the transition to IFRS. The proposed timing for the change is the same one proposed for open societies. This Association has issued Technical Bulletin N º 79, establishing the application of the IFRS in Chile. The bulletin is published on the website of the Chilean Accountants Association: http://www.contach.cl/datos_niif.php

Consider the adoption of simplified accounting standards for SMEs

The Council of International Financial Reporting Standards (IASB) issued on July 2009 a new set of accounting standards or pronouncements that apply to SMEs, which aims to establish standards for a type of business much simpler, reducing the requirements compared with the full set of IFRS, so that Chile must be careful to consider them in the process of harmonization in which is committed.

(**http://www.iasb.org/Home.htm. IASB publishes IFRS for SMEs.- 09 July 2009.-** *The IASB issued today an International Financial Reporting Standard (IFRS) designed for use by small and medium-sized entities (SMEs), which are estimated to represent more than 95 per cent of all companies. The standard is a result of a five-year development process with extensive consultation of SMEs worldwide.*).

To prosecute more efficiently accounting and auditing offenses in cases of bribery.

As above mentioned the **SVS** has adopted a work prog**r**am orientated to the fulfilment of the Convention's provisions, especially regarding the obligations of the external auditors as for the denouncing of irregularities detected in the exercise of their duties.

By Official Letter Nº 127 dated July 28th 2008, t**he Chilean Accountants Association A.G.,** has informed that the SVS issued a document addressed to all the external auditors requesting the implementation of, among others initiatives, induction and training programs for all the associated professionals, related to the

fulfilment of the duty to report offences by external auditors, and also the need to implement best practices and manuals and/or procedures to report offences to the management of the companies and to the competent authorities. Besides, the Accountants Association has informed about their conduction of practical works, lectures and seminars related to the improvement and quality, certification and independence of the professional exercise. **(annex 7)**

By letter of September 24th 2008, the President of the Institute of Internal Audit and Corporate Governance of Chile A.G., informed about the activities undertaken aimed at the certification of internal auditors and on the preparation for the respective examination. He also expressed his commitment to the fulfilment of the WGB recommendations.

In addition to the activities of the Securities and Insurance Superintendence and those of the Chilean Accountants Association A.G., related to the matter, it is added the Internal Revenue Service (SII) whose area of competence encompasses perhaps the broadest spectrum, since it is constituted by all the taxpayers of the country. In this way, the SII informed by Official Letter 1312 of June 15th, 2008, specifically in relation to this recommendation, that the Tax Code includes infractions and offenses related to accounting and to the activities of accountants. Thus, in the administrative field, Article 20 of the Tax Code prohibits accountants to elaborate financial statements, to be submitted to the Internal Revenue Service, by extracting data from simple drafts, and signing them without closing at the same time the inventories and balances book. On the other hand, Article 100 of the Tax Code punishes the accountant who, when making or signing any statement or balance sheet or when in charge of the accounting of a taxpayer, incurs in falsity or malicious acts. The foregoing is without prejudice to the possible incrimination that could correspond because of his/her a participation in the tax offence. The Internal Revenue Service, in the presence of irregularities that could be punished under any of the figures described above and to the extent that the background report gathered so warrants, will interpose appropriate actions, either to pursue the application of a pecuniary sanction, or to present a denounce or complaint for a tax offence.

In addition, activities of dissemination and training on the Convention which have been made to both public and private institutions contribute to give compliance to this recommendation.

Efforts to improve quality regulations for auditing, certification and independence

As above mentioned the **SVS** has adopted a work program orientated to the fulfilment of the Convention's provisions, especially regarding the obligations of the external auditors as for denouncing irregularities detected in the exercise of their duties.

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In reference to this section of the recommendation it is important to mention, in particular, the following initiatives:

1. Certification Plans for Professionals defined since 2007 by the Chilean Accountants Association A.G.:

The activities related to the project *Interamerican Development Bank (IDB) - Multilateral Investment Fund (MIF)*, on studies to carry out the process of convergence of accounting and auditing standards with international standards, have helped to generate incomes with training programs for the dissemination of IFRS, which, in turn, will provide the basis for the certification process of the profession, as required by the referred standards and the various international treaties (see Note No. 2 of the Financial Statements of the Chilean Accountants Association at December 31st 2007, page 7) at the following web site:
http://www.contach.cl/chilecont/pdf/Estados%20Financieros%20Colegio%20de%20Contadores%20_%20Definitivo%20_.pdf

2. Technical Commission on Training and Professional Certification of the Chilean Accountants Association A.G.

The Chilean Accountants Association A.G., has a Technical Commission called "Training and Professional Certification", which is working on the process of certification of the Association's Professionals. Its web site is: http://www.contach.cl/chilecont/comis_endesarrollo.php

3. Project on Certification of Professionals of the Chilean Accountants Association A.G.

The Project on Professionals Certification, the Launch Proposal and the Competence Certification Program, of the Chilean Accountants Association are published at the following web site: http://www.contach.cl/chilecont/certificacion.php

4. Certification by the Institute of Internal Audit and Corporate Governance of Chile AG:

The Institute of Internal Audit and Corporate Governance of Chile AG, which is part of the Institute of Internal Auditors (IIA), www.theiia.org in Chile, has posted on its website the names of the19 Chilean professionals who as of December 31st 2007, have become Certified Internal Auditors (CIA). http://www.iaigc.cl/

In addition, a significant group of Internal Auditors of Ministries, of dependent bodies and related to the Ministry of Finance, are members of the Institute of Internal Auditors (IIA).

5. Preparatory courses for the Certification CIA, imparted by the General Government Internal Auditing Council and the Institute of Internal Audit and Corporate Governance of Chile AG:

Furthermore, the General Government Internal Auditing Council - CAIGG - and the Institute of Internal Audit and Corporate Governance of Chile AG, conduct training courses for audit professionals, who are applying to become a Certified Internal Auditor of the THIIA:
http://www.auditoriadesistemas.cl/course/info.php?id=11
http://www.iaigc.cl/

In addition, a significant group of Internal Auditors of Ministries, of dependent bodies and related to the Ministry of Finance, are members of the Institute of Internal Auditors (IIA).

Text of recommendation 8:

With respect to related tax offences and obligations, the Working Group recommends that Chile implement the decision of the Internal Revenue Service (SII) to strengthen the explicit nature of the prohibition on deducting foreign bribes from taxable revenue in a generally applicable, public and binding circular.

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

As a result of the Phase II evaluating process, Chile received a recommendation of the WGB, related to implement the decision of the Internal Revenue Service to reinforce the explicit nature of the prohibition of the tax deduction of the foreign bribe by means of a Circular letter of general, public and obligatory application.

Circular Letter N° 56, dated November 8th, 2007, on *"Payments of Bribes or Bribes to Foreign Public Officials in International Commercial Transactions. Inadmissibility to consider them as Necessary Expenses to produce Income. Article 31 of the Income Tax Law"*, was published in extract in the Official Gazette of November 16th, 2007 and is available in the web site of the Internal Revenue Service: http://www.sii.cl/documentos/circulares/2007/circu56.htm The above mentioned document is nowadays in force and in full application.

The Internal Revenue Service (SII) is also committed to disseminate the OECD Manual on the Convention, in basic and regular training courses of its personnel. The initiative has been incorporated to the induction program of the new SII officials and in the regular training programs given to all the SII employees.

By Official Letter N ° 208, dated September 23rd, 2008, the Director of the Internal Revenue Service informed that during the period 2007-2008, 380 SII employees, among them lawyers, income tax inspectors, valuers and other civil servants (professionals, technical, administrative and auxiliary personnel) have participated in the mentioned training activities, specifically in induction courses.

By official letter No. 34 of January 14th 2009, addressed to the Minister of Finance, the Director of the Internal Revenue Service reported that a compilation is being done of all the rules and instructions existing in our legislation concerning payments for concept of bribes and bribery of public officials, in order to expedite and make the public aware of the rules governing this matter. This collection will soon be available on the website of the SII (www.sii.cl) [**annex 9]**

In this respect, on June 2009, within the process of access to the OECD, Chile transmitted its adhesion to the instrument **C (2009) 64**, in the following terms: *Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which succeeded to the 1996 Recommendation on the Tax Deductibility of bribes to Foreign Public Officials "(C (96) 27/final)* .- ***Conclusion****: Chile accepts this Recommendation* .- ***Comments:*** *Article 31 of the Income Tax Law restricts the deductibility of expenses to those that are "necessary to generate income." Circular No. 56 issued by the SII on 8 November 2007, explicitly confirms that bribes to foreign public officials or to any other person do not comply with the requirement of being "necessary expenses" and are, thus, non-deductible for tax purposes.*

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up 9 (a):

The Working Group will follow up on the issues below, as practice develops, in order to assess:

a) the functioning of MLA under the CPC, and in particular with regard to seizure and confiscation and the provision of MLA in cases involving legal persons;

b) the coverage of bribery through intermediaries, including unwitting intermediaries;

c) whether the prevalence of bribery in the foreign jurisdiction can constitute a defence or mitigating factor;

d) the enforcement of the foreign bribery offence under the CPC as it develops;

e) the application in practice of the Company Law provisions implementing Article 8 of the Convention.

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:

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LIST OF ANNEXES

Most annexes listed below are in Spanish only and are available upon request to the Secretariat. The Bill of Law establishing the penal liability of legal persons, in English, is annexed at the end of the document.

Recommendation 1(c)

Annex 1. President of the Chilean Accountants Association, statement to its members

Annex 2. President of the Institute of Internal Audit and Corporate Governance of Chile A.G., letter dated September 24th 2008

Annex 3. Chilean Auditors Association

UAF informativo: *Normativa nacional contra el lavado de activos y Convención para combatir el cohecho de funcionarios públicos extranjeros en transacciones comerciales internacionales de la OCDE*

Recommendation 1(d)

CORFO, Official Letter 11011 of November 2nd 2008

Recommendation 2(a)

MFA documents: instruction and Explanatory brochure

Recommendation 2(c)

Financial Analysis Unit, Official Letter N 155 dated September 16th, 2008

Annex 4. New indication (N 1373-356) to the Bill authorising the lifting of bank secrecy in relation to money laundering (Bulletin 4426-07)

Recommendation 2(d)

Annex 5. SVS Official Letter No. 481

Annex 6. Chilean Accountants Association A.G; Official Letter Nº 127 dated July 28th 2008

SVS Official Letter 496, January 12th 2009

Annex 8. Chilean Accountants Association, Circular Letter dated July 27th 2007

Recommendation 3(a)

Official letter FN 059/2009 of the National Prosecutor, dated 30 January 2009

Recommendation 3(e)

Case law on jurisdiction

Historia de la ley 20,341

Recommendation 3(f)

Case law on *media prescription*

Recommendation 5

Bill of Law establishing the penal liability of legal persons (Bulletin N° 6.423-07) as of 02/04/2010

Recommendation 7

Annex 7. Chilean Accountants Association A.G., Official Letter Nº 127 dated July 28th 2008

Recommendation 8

Annex 9. Documents related to tax issues

BILL OF LAW ESTABLISHING THE PENAL LIABILITY OF LEGAL PERSONS (BULLETIN N° 6.423-07) AS OF 02/04/2010 (NON-OFFICIAL TRANSLATION)

BILL OF LAW:

Article 1. The following text of the law establishing criminal liability for legal persons is hereby adopted:

"**Article 1. Contents of the law.** The law hereby regulates the criminal liability of legal persons in respect of crimes described under Law No. 19 193, article 27; Law No. 18 314, article 8; and articles 250 and 251 of the Criminal Code, the investigation procedure, prosecution of proper penalties, and execution thereof.

Regarding whatever is not contemplated hereunder, the provisions contained in Book I of the Criminal Code, in the Criminal Procedure Code, and under the special laws aforesaid, shall apply in supplementary form, as pertinent.

For the purposes hereunder, the provisions contained under the Criminal Procedure Code, article 58, item two, shall not apply.

Article 2. Scope. The provisions hereunder shall be applicable to legal persons subject to private law and public enterprises created by law.

– TITLE I

CRIMINAL LIABILITY OF LEGAL PERSONS

1. ON ATTRIBUTING CRIMINAL LIABILITY TO LEGAL PERSONS

Article 3. Attribution of Criminal liability. Legal persons shall be liable for the offenses listed under article 1 hereunder, directly and immediately committed in the interest or for the benefit thereof by the owners, controllers, officers, top executives, representatives, or whosoever performs management and supervisory functions, provided that commission of such offense is the result of non-fulfillment by such person of such management and supervisory duties.

Under the same assumptions contained in the preceding paragraph, legal persons shall also be liable for offenses committed by natural persons under the direction or direct supervision of any of the individuals mentioned in the preceding paragraph.

Direction and supervisory duties shall be considered fulfilled whenever, prior to committing such offense, the legal person has adopted and implemented organization, management, and supervision models intended to prevent offenses such as the one committed, pursuant to the provisions under paragraph 4 below.

Legal persons shall not be liable in the event that natural persons described under the preceding paragraphs have committed such offense exclusively for their own advantage or in favor of a third party.

Article 4. Model for offense prevention. For the purposes described under Article 3, paragraph 3 hereunder, legal persons may adopt the offense prevention model mentioned therein, which shall contain at least the following:

1) Designation of a person responsible for prevention.

a) The top-ranking management officer of the legal person, whether the board of directors thereof, a managing partner, a manager, a chief executive officer, an administrator, a liquidator, the representatives,

owners, or partners, as appropriate in respect of the form of management of such organization, hereinafter the "Management of the Legal Person", shall designate a person responsible for prevention, who will remain in such capacity for up to three years, and may be renewed for similar periods.

b) The person responsible for prevention shall be autonomous in respect of the Management of the Legal Person, the owners, partners, shareholders, or controllers thereof. Notwithstanding, such person may perform control or internal audit functions.

In the case of legal persons whose annual income does not exceed one hundred thousand UFs (*Unidades de Fomento*), the owner, partner, or controlling shareholder may assume himself or herself the duties of responsible for prevention.

2) Means and authority of the person responsible for prevention.

Management of the Legal Person shall provide the prevention manager with sufficient means and authority to perform his/her duties, including at least the following:

a) Funds and material means necessary for adequate performance of his/her work, bearing in mind the size and economic capability of the legal person.

b) Direct access to the Management of the Legal Person to advise it in timely fashion and by appropriate means of the measures and plans implemented to perform his/her task, render account for his/her performance, and report at least once every semester.

3) Establishing a system for offense prevention.
1.
2. The prevention manager, jointly with the Management of the Legal Person, shall establish a system for prevention of offenses against the legal person, which shall cover at least the following:

a) Identification of the various activities or processes of the organization, whether habitual or sporadic, in the context whereof the risk of committing offenses listed under article 1 above may arise or increase.

b) Establishment of specific protocols, rules, and procedures enabling persons participating in the activities or processes mentioned under paragraph a) above to program and carry out the tasks or work thereof in such a way as to prevent commission of such offenses.
3.
4. c) Identification of procedures for managing and auditing financial resources enabling the organization to prevent utilization thereof for committing the above offenses.

d) Existence of internal administrative penalties, together with procedures for reporting or pursuing pecuniary liabilities against persons failing to comply with the offense prevention system.

5. Such obligations, prohibitions, and internal penalties shall be described in the regulations that the legal person may issue for such purpose and shall be notified to all workers. Such internal rules shall be expressly included in the respective work contracts and agreements on rendering services by all workers, employees, and suppliers of services of the legal person, including the top-ranking executives thereof.
6.
4) Supervising and certification of the offense prevention system.

a) The prevention manager, jointly with the Management of the Legal Person, shall establish methods for effectively applying the offense prevention model and supervising it, in order to detect and correct defects as well as to update it in accordance with changed circumstances of the organization concerned.

b) Legal persons may obtain certification of the adoption and implementation of the offense prevention model thereof. The certificate involved shall state that such model contemplates all requirements listed under paragraphs 1), 2), and 3) above, in relation to the position, size, scope of business, level of income, and complexity of the legal person.

7. Certificates may be issued by external auditing firms, risk-grading companies or other organizations registered with the Superintendence of Securities and Insurance, with authority to perform such task, pursuant to the rules that such Superintendence may issue for such purpose.
8.
9. c) It shall be understood that in performing the functions contemplated hereunder, firms performing certification activities according to the preceding paragraph, perform a public function under the terms covered under article 260 of the Criminal Code.
10.
11. **Article 5. Autonomous Criminal liability of the legal person.** The liability of the legal person shall be independent from the Criminal liability of natural persons when, fulfilling the rest of the requirements described under Article 3 hereunder:
12.
1) Individual Criminal liability has been extinguished pursuant to article 93, paragraphs 1 and 6 of the Criminal Code; or

2) The criminal trial against the natural persons mentioned in paragraphs one and two of Article 3 hereunder, is temporarily dismissed for the individual or individuals accused, pursuant to the causes provided under article 252 (b) and (c) of the Code of Criminal Procedure.

Such liability may also be pursuit when, provided it has been shown that one or more of the offenses contained under Article 1 hereunder existed and that the rest of the requirements under Article 3 hereunder are met, it has not been possible to establish the participation of the individual or individuals responsible therefore, provided that it be convincingly shown in the process that such offense must necessarily had been committed within the scope of the functions and attributions of the persons singled out under Article 3, paragraph one, above.

2. ON CIRCUMSTANCES MITIGATING LIABILITY OF A LEGAL PERSON

Article 6. Mitigating Circumstances. The following **mitigating circumstances** shall be applicable to a legal person:

1) The circumstance covered under Article 7, paragraph 11 of the Criminal Code.

2) The circumstance dealt with under Article 11, paragraph 9 of the Criminal Code. It shall be especially understood that the legal person cooperates substantially when, at any stage of the investigation or the juridical procedure, the legal representatives thereof, before being aware that the judicial proceeding is directed against such legal person, have acquainted the authorities with the punishable fact or contributed information to establish the facts under investigation.

3) When the legal person has established, prior to initiation of the trial, effective measures to prevent and detect the same class of offenses under investigation.

3. CIRCUMSTANCES AGGRAVATING CRIMINAL LIABILITY

Article 7. Aggravating circumstance. A circumstance aggravating the Criminal liability of the legal person is the fact that such person was sentenced, within the five previous years, for the commission of the same crime wherefore such person is currently held liable.

TITLE II

CONSEQUENCES OF THE DECLARATION OF CRIMINAL LIABILITY OF THE LEGAL PERSON

1. ON PENALTIES IN GENERAL

Article 8. Penalties. One or more of the following penalties shall be applicable to legal persons sentenced hereunder:

1) Dissolution or cancellation of the legal person.

2) Temporary or perpetual prohibition from taking action or executing contracts with the State Administration.

3) Partial or total loss of fiscal benefits or prohibition to receive such benefits for a specified period.

4) Fine for fiscal benefit.

5) Cumulative penalties described in Article 14.

The penalty provided under paragraph 1) shall not apply to State-owned organizations or private-law legal persons providing services for public convenience, interruption whereof might have serious social and economic consequences, or cause serious damage to the community owing to application of such penalty.

Article 9. Dissolution or cancellation of the legal person. Dissolution or cancellation shall cause definitive loss of juridical status.

The sentence declaring dissolution of the legal person shall provide, consistent with type and juridical nature, and in the absence of a regulatory legal provision, designation of the receiver or receivers that shall proceed to liquidate such person. Moreover, and under the same conditions, such sentence shall entrust them with performance of actions or contracts necessary for:

1) Conclusion of all activities of the legal person, notwithstanding the conclusion of activities in progress that are indispensable for successful liquidation;

2) Payment of liabilities of the legal person. The terms of all such obligations shall be understood to have lapsed as a matter of law, making them payable immediately; payment thereof shall be conducted under compliance with the credit preferences and priorities provided under Book IV, Title XLI of the Civil Code, particularly the rights of workers of the legal person, if any; and

3) Lastly, distribution of the remaining assets, if any, to shareholders, partners, owners or proprietors, pro rata according to their respective holdings. The foregoing shall be understood without prejudice to the right of the affected parties to pursue compensation for damages against the parties responsible for the offense. In the case of corporations, the provisions under article 133bis of law No. 18 046.

Under reasoned resolution and when public benefit so advises, the judge may order the disposal of all or part of the assets of the legal person so dissolved as a whole or economic unit, at public auction and to the highest bidder. Such auction shall be conducted in the presence of the judge.

The foregoing penalty may be imposed only in the case of crimes where the aggravating circumstance described under article 7 above is present. Moreover, application of such penalty shall be in order when the conviction is based on actions constituting reiterated crimes as provided under article 351 of the Criminal Procedure Code.

Article 10. Ban on entering into acts and contracts with government agencies. This involves loss of the right to be a supplier of goods and services to Government agencies; thus the legal person may not enter into acts or contracts with such Government agencies.

The court may apply any of the following forms:

1) Perpetual ban on entering into acts or contracts with Government agencies.

2) Temporary ban on entering into acts or contracts with Government agencies. Ban duration shall be graduated as follows:

a) Minimum degree: two to three years.

b) Medium degree: three years and a day to four years.

c) Maximum degree: four years and a day to five years.

13. The above ban shall take effect as of the date when the resolution is declared final; the court shall notify the Department of Purchases and Public Hiring for the latter to maintain updated information on legal persons sentenced to such penalty.
14.
15. Article 11. On partial or total loss of fiscal benefits, or absolute ban on receiving such benefits for a specified period. For the purposes hereof, fiscal benefits shall be understood to mean those granted by the Government or agencies thereof in the form of subsidies free of reciprocal delivery of goods or rendering of services, and in particular subsidies for funding specific activities or special programs and expenses inherent in or associated to such activities or programs, whether such funds are made available by competition or under permanent laws or subsidies, or counterclaims provided under special statutes, and others of a similar nature.
16.
17. The penalty shall be graded as follows:

1) Minimum degree: loss of twenty to forty percent of fiscal benefit.

2) Medium degree. Loss of forty-one to seventy percent of fiscal benefit.

3) Maximum degree: loss of seventy-one to one hundred percent of fiscal benefit.

In the event that the legal person is not entitled to such fiscal benefits, the penalty applied may take the form of a ban on receiving same for a period of two to five years counted from the date when the sentence declaring such liability is final. In compliance therewith, the court shall notify the Secretariat and General Administration of the Ministry of Finance and the Office of the Under Secretary for Regional and Administrative Development of the Ministry of the Interior, by official letter, for entry in the central

registers of persons cooperating with the Government and Municipalities, which they are respectively entrusted to keep under law No. 19 862.

Article 12. Fine for fiscal benefit. This penalty shall be graduated as follows:

1) Minimum degree: from two hundred to two thousand Monthly Tax Units.

2) Medium degree: from two hundred one to ten thousand Monthly Tax Units.

3) Maximum degree: from ten thousand one to twenty thousand Monthly Tax Units.

The court may authorize payment of the fine in installments, within a term not to exceed twenty-four months, if the amount of such penalty might jeopardize the continuing business of the legal person so penalized, or when public benefit so advises.

Once the conviction is made final, the court shall notify the Office of the Treasurer-General of the Republic, which shall be responsible for collection and payment thereon.

In the event that the legal person voluntarily fails to meet the fine imposed within the term set by the court for such purpose, the criminal courts, at the request of the Office of the Public Prosecutor, may decree the legal person under intervention until such penalty is totally paid up. To such purpose, the provisions under articles 290, 293, and 294 of the Code of Civil Procedure shall apply, insofar as they do not run counter to the present law or the object of such intervention.

Article 13. Cumulative penalties. The following penalties shall be applied, cumulatively, in addition to the above:

1) Publication of an extract of the sentence. Publication of the conviction shall be made in the form of an extract of the resolutory part of the conviction. Publication shall be made in the Official Gazette (*Diario Oficial)* or in a newspaper of nationwide circulation.

The legal person so penalized shall bear the costs of publication of the sentence.

2) Confiscation. Confiscation of income obtained as a result of the crime and other goods, chattels, objects, documents, and instruments thereof, under the terms provided in article 21 of the Criminal Code. In the event that the crime committed involves investment of resources of the legal person in an amount higher than the income generated thereby, a cumulative penalty shall be applied in an amount equivalent to the investment made.

2. ASSESSMENT OF PENALTIES

Article 14. General scale. The penalty imposed on the legal person shall be determined in relation to that contemplated for such crime in article 1 hereunder, in accordance with the following scale:

General Scale Of Penalties For Legal Persons

1) Penalties for crimes:

a) Dissolution or cancellation of the legal person.

b) Ban on entering into acts and contracts with the Administration.

c) Loss of fiscal benefits in maximum degree or absolute ban on receiving same from three years and one day to five years.

d) Fine for fiscal benefit in maximum degree.

In such cases, the penalties provided under article 13 hereunder shall always be applied as cumulative.

2) Penalties for misdemeanors:

a) Temporary ban on entering into acts and contracts with the State, in minimum to medium degree.

b) Loss of fiscal benefits in minimum to medium degree, or absolute ban on receiving same for two to three years.

c) Fine in minimum to medium degree.

In such cases, the penalties provided under article 13 hereunder shall always be applied as cumulative.

Article 15. Legal assessment of the penalty applicable to the crime. The crimes contemplated under articles 250 and 251bis of the Criminal Code, and article 8 of law No. 18 314 shall be penalized with the penalties contemplated hereunder for misdemeanors, as provided under the preceding paragraph.

To the crime contemplated under article 27 of law No. 19 913, the penalties contemplated for crimes shall apply, as provided under the previous article.

Article 16. Extenuating circumstances modifying liability. In the event that an extenuating circumstance and no aggravating circumstance is present, in the case of misdemeanors, only two of the penalties provided under article 14 above shall apply, one of them in minimum degree. In the case of crimes, the court shall apply only two of the penalties provided under such article, in minimum degree if applicable.

In the event of there being an aggravating circumstance as covered hereunder and no extenuating circumstance being present, in the case of misdemeanors the court shall apply all penalties in maximum degree. In the case of crimes, the court shall apply all penalties in maximum degree, if applicable, or dissolution or cancellation.

In the event that two or more extenuating circumstances appear and no aggravating circumstance, in the case of misdemeanors the court shall apply only one such penalty in any degree. In the case of crimes, the court shall apply two penalties from among those provided for misdemeanors.

In the event that several extenuating circumstances appear together with the aggravating circumstance contemplated hereunder, the latter shall be rationally offset for one of the extenuating circumstances, and penalties shall be adjusted in accordance with the previous paragraphs.

Article 17. Rules for judicial assessment of penalty. To regulate the quantum and nature of penalties to be set, the court shall consider the following criteria, giving details of their reasoning in the verdict:

1) The quantum of the amounts of money involved in committing the crime.

2) The size and nature of the legal person.

3) The economic capacity of the legal person.

4) The degree of subjection to and compliance with the legal and regulatory framework, and with technical regulations of mandatory observance in the exercise of the business or habitual activity thereof.

5) Extent of the harm inflicted by the offense.

6) The relevance of the social and economic consequences or, as the case may be, the serious damages to the community that imposition of the penalty may cause, when the offender is a company created by law or a private company rendering services for public convenience.

Article 18. Transmission of Criminal liability in situations modifying the legal existence of the legal person. In the event of transformation, merger, takeover, division or agreed or voluntary dissolution of a legal person liable for one or more of the crimes or misdemeanors described under Article 1° herein, its liability arising from those actions that took place prior to such event shall de transmitted to the resulting legal person or persons, if any, pursuant to the following rules, without prejudice to the rights of third parties in good faith.

1) If the penalty imposed is a fine, in cases of transformation, merger or takeover of a legal person, the resulting legal person shall be liable for the total amount. In the event of division, the resulting legal persons are jointly and severally liable for payment thereof.

2) In the event of the voluntary dissolution of a for-profit legal person, the penalty shall be transmitted to the partners and those who had an interest in its capital, who shall be liable up to the amount of the liquidation quota they received upon the dissolution.

3) In the event of any other penalty being applied, the judge shall assess the advisability thereof, taking into account the end pursued in each instance.

In adopting such decision, attention shall be paid above all to substantial continuity of the material and human means involved and the activity pursue.

4) From the moment the investigation against a not-for-profit legal person is initiated and until the sentence thereof is issued and fulfilled, when applicable, the authorization mentioned in paragraph one of article 559 of the Civil Code shall not be granted.

3. EXTINCTION OF CRIMINAL LIABILITY OF THE LEGAL PERSONS

Article 19. Extinction of Criminal liability. The criminal liability of the legal person shall be extinguished for the same reasons given under article 93 of the criminal Code, except the reason given under paragraph 1 thereof.

TITLE III

PROCEDURE

1. INITIATION OF THE INVESTIGATION OF CRIMINAL LIABILITY OF LEGAL PERSONS

Article 20. Investigation of criminal liability of legal persons. If in the course of the investigation of any of the offenses contemplated under article 1 hereunder, should the Office of the Public Prosecutor become

cognizant of possible participation by any of the persons described under article 3 above, such Public Prosecutor shall extend such investigation in order to establish the liability of the respective legal persons.

Article 21. Application of rules regarding the defendant. In whatever is not regulated hereunder, the provisions applicable to the accused, the defendant, and the convicted contained in the Criminal Procedural Code and special laws associated thereto shall apply to legal persons, provided such provisions are consistent with the special nature of legal persons.

In particular, the provisions contained under articles 4, 7, 8, 10, 93, 98, 102, 183, 184, 186, 193, 194, and 257, all of the Criminal Procedural Code, rights and guaranties that may be exercised or recognized in respect of any representative of the legal person.

Article 22. Formalizing investigation of the legal person. When the prosecutor finds it advisable to formalize the procedure against the legal person, such prosecutor shall request the judge to summon the legal representative thereof, in accordance with article 230 and following articles of the Criminal Procedural Code. A prerequisite for proceeding as described is having requested a hearing to formalize the investigation or submitted a requirement to proceed in accordance with simplified rules of procedure, regarding the natural person who might compromise the liability of the legal person as provided under Article 3, paragraphs one and two hereunder, except in cases established under Article 5 hereunder.

Such request shall contain, in addition, the description of the legal representative of the legal person.

Article 23. Contempt of court of the legal person. If the legal representative of the legal person accused, being summoned to appear at a hearing before the court, unreasonably fail to appear, the court may order such person to be arrested until such hearing is held, which shall take place within not more than twenty-four hours from the time such person is deprived of liberty.

In the event that such legal representative is not found, the prosecutor shall request the court to appoint a public defender, who shall act as curator ad litem, representing the legal person.

In any case, the legal person may appoint its own private defendant at any time. When the criminal procedure calls for the presence of the accused as condition or requirement for the validity of the hearing, it shall be understood that such requirement and conditions are met with the presence of the private defendant. For such purposes, the measure described in paragraph one, above, shall apply to the private defendant.

Article 24. Irrelevance of application of the opportunity principle. What is provided under article 170 of the Criminal Procedural Code shall not apply in respect of criminal liability of the legal person.

Article 25. Conditional suspension of proceedings. Conditional suspension of procedure may be decreed provided there is no sentence or other conditional suspension of the ongoing proceeding, in respect of the legal person accused of any of the crimes contemplated hereunder.

The judge guarantor shall rule, as appropriate, that for the duration of the suspension period, which may not be less than six months or more than three years, the legal person shall be bound to comply with one or more of the following conditions:

1) Paying a specified sum for fiscal benefit.

2) Providing certain services for the benefit of the community.

3) Reporting from time to time to the institution designated, on the financial condition thereof.

4) Implement a program to give effect to the organization, management, and supervision model described under Article 4 hereunder.

5) Any other condition deemed appropriate considering the circumstances of the specific case involved, and proposed with reasons given by the Office of the Public Prosecutor.

In cases where the judge imposes the condition numbered 1 under the preceding paragraph, this shall be conveyed to the Office of the Treasurer-General of the Republic.

Article 26. Determination of procedure applicable to criminal liability of the legal person. If the prosecutor, in accusing or requiring under the rules of simplified procedure, should request application of any of the penalties contemplated for misdemeanors, in minimum degree, the associated hearing and sentence shall be conducted in accordance with the rules for simplified procedure.

In cases where the prosecution accuses requesting no penalties for crime or for misdemeanors in medium degree, accusation and sentence shall be conducted in accordance with the rules for oral trial, provided the prosecutor requests at least one of the penalties in its minimum degree.

Should the prosecutor summon or accuse the natural and the legal person in the same act, the procedure applicable to the natural person shall be followed. The foregoing shall not be applicable in the case of penalty for crime or in respect of abridged procedure.

Article 27. Abridged procedure. The procedure established under articles 406 and following articles of the Criminal Procedural Code shall be applicable for establishing liability and applying penalties regulated hereunder.

Such procedure shall be applied to hearing and rendering judgment on the facts in respect whereof the prosecutor requires application of one or more penalties for misdemeanor.

The court cannot impose a more severe or more unfavorable penalty than that demanded by the prosecutor, provided such penalty meets the requirements prescribed under paragraph one hereunder.

Article 28. Defense of legal persons. Any legal person unable to obtain defense services on its own shall be entitled to request the judge to appoint public criminal defense counsel.

Article 29. Suspension of sentence. The court, when issuing a conviction against a legal person, where at least one penalty for misdemeanor in minimum degree is contained, may, under a resolution giving reasons and as an exception, with special consideration of the number of workers or annual sales or amounts of exports of the organization, rule for suspension of the sentence and the effects thereof for a period of not less than six months nor more than two years. In such event, considering the nature, the court may remove from this effect the cumulative penalty of confiscation.

In the case of companies created by law or private companies that render services for public convenience, interruption whereof might have serious social and economic consequences, or cause serious damage to the community, the court may rule for suspension of the sentence whatever the nature of the offence.

The term provided under the first paragraph having expired without the legal person having been the object of a new accusation or of formalization of the investigation, the court shall cancel such sentence and instead decree dismissal of the case.

Such dismissal does not affect the penal liability arising from the crime."

Article 2. The following paragraph 2 is hereby added to article 394bis of the Criminal Code:

"When the association has been formed through a legal person, dissolution or cancellation of juridical status shall be imposed in addition, as a cumulative consequence of the penalty imposed on the individuals so liable."

Article 3. The following paragraph two is hereby introduced in article 28 of law No.19 913, which Creates the Financial Analysis Unit and Amends various Provisions on Asset Laundering:

"When the association has been formed through a legal person, dissolution or cancellation of juridical status shall be imposed in addition, as a cumulative consequence of the penalty imposed on the individuals liable."