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English - Or. English

9 July 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**Phase 4: Additional Written Report by Chile**

11-14 June 2024  
Paris, France

This document is for discussion under item 4.d. of the agenda. Chile has submitted supporting documentation with its written report. These can be obtained upon request to the Secretariat.

JT03547327

## PHASE 4 EVALUATION OF CHILE: ADDITIONAL WRITTEN FOLLOW-UP REPORT

### Instructions

This document seeks to obtain information on the progress that Chile has made in implementing a number of outstanding recommendations of its Phase 4 evaluation.

Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 51-59).

Please submit completed answers to the Secretariat on or before **10 May 2024**.

Name of country:	CHILE
Date of approval of Phase 4 Report:	13 December 2018
Date of approval of Phase 4 Two-Year Follow-Up Report:	12 March 2021
Date of information:	24 May 2024

## Part I: Recommendations for Action

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

### Recommendations regarding the detection of foreign bribery

In March 2023, the Working Group on Bribery invited Chile to report in one year on its progress in adopting comprehensive whistleblower protection legislation to address Phase 4 recommendations 1(a) and (b).

#### Text of recommendation 1(a):

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

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

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

- **Law N° 21.592, that establishes a new protection statute in favour of whistleblowers of acts against administrative probity**

On 21 August 2023, Law N° 21.592 was published in the Official Gazette. This law establishes a legal framework that protects whistleblowers who report infringements in the public sector by providing a reporting channel, protection measures, and mechanisms to address possible retaliation. Its scope includes also certain non-profit entities and companies with state participation and makes the complaint applicable too against private persons and institutions that receive public funds by permanent laws, as a subsidy or contribution from the state, under the conditions that the law determines. The protection applies to public servants as well as private sector employees. Further information on this new law in our report for recommendation 1(b).

- **National Public Integrity Strategy**

The National Public Integrity Strategy (ENIP) is an evidence-based participatory public policy tool launched by the Government of Chile in December 2023. It has a proactive approach aimed at improving the standards of transparency, integrity, and the fight against corruption. To this aim, it contains 210 measures, of which 203 are categorized in 5 axes (Civil Service, Public Resources, Transparency, Politics and Private Sector) and 7 measures are categorized as “cross-cutting measures”. The ENIP has been recognised as a top performer among OECD countries’ strategic framework on anti-corruption and public integrity, by the 2024 OECD Anti- Corruption and Integrity Outlook (Country Fact Sheet).

Among the anticorruption measures incorporated to the ENIP, there is one under the axe “Private Sector” (measure N° 194), establishing the creation of a technical working group, whose objective

is to address the regulation of a protection statute for whistleblowers of acts of corruption in the private sector and state-owned companies, aimed at strengthening the current regulatory framework. Coordination among different entities has already started to put in place the working group.

Another measure of the ENIP directly related to the Anti-Bribery Convention is measure N° 175 (also under the axe "Private Sector"), which contemplates advancing Chile's implementation of the OECD Anti-Bribery Convention and carrying out a dissemination plan with recommendations for the private sector. Under this measure, the two-pager "Prevention of Foreign Bribery" was recently published, for its diffusion to businesses. This document focuses on the importance of the Offense Prevention Models and the internal whistleblower protection systems, and the main elements recommended for them.

- **Law N° 21.634**

On 11 December 2023, Law N° 21.634 which modernizes Law N° 19.886 (Public Procurement System) and other laws, was published in the Official Gazette. This new law improves the quality of public expenditure and increases the standards of probity and transparency in state procurement.

The law mandates that the Public Procurement and Contracting Directorate (ChileCompra) maintains a reserved channel to receive reserved complaints about irregularities in the contracting procedures.

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

**Text of recommendation 1(b):**

1. With regards to the **detection of foreign bribery**, the Working Group recommends that Chile:  
(b) Provide comprehensive and adequate protection to whistleblowers in the public sector [2009 Recommendation IX.iii and Phase 3 Recommendation 11(c)].

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

- **Law N° 21.592, that establishes a new protection statute in favour of whistleblowers of acts against administrative probity**

On 21 August 2023, Law N° 21.592, that establishes a new protection statute in favour of whistleblowers of acts against administrative probity, was published in the Official Gazette.

This law establishes a legal framework that protects whistleblowers who report infringements in the public sector by providing a reporting channel, protection measures, and mechanisms to address possible retaliation. Its scope includes also certain non-profit entities and companies with state participation and makes the complaint applicable too against private persons and institutions that receive public funds by permanent laws, as a subsidy or contribution from the state, under the conditions that the law determines.

The law contemplates mechanisms for direct and indirect protection of whistleblowers, both in criminal and administrative procedures, and regarding public servants as well as private sector employees.

The provisions of the law aim to facilitate the enforcement of the existing complaint mechanisms, strengthening at the same time other general channels for submitting complaints – in addition to the new channel for complaints administered by the Comptroller General of the Republic (CGR) – creating protection measures that apply at different levels.

The law modifies article 485 of the Labour Code (on the procedure for the protection of workers' fundamental rights) to explicitly acknowledge the use of the labour protection action in case of retaliation against the workers when a claim has been submitted, regardless of the events denounced or the institution where it was submitted. Specifically, it adds the expression “for the filing of complaints”, to extend the protection of the indemnity guarantee, which translates into an extension of the judicial action for the protection of the workers' fundamental rights. Additionally, in agreement with modifications previously introduced to Law N° 21.280 in this matter, this action can be used, regardless of whether it is a public servant or a private sector worker.

The law also modifies the Criminal Procedure Code to establish a new protection mechanism for whistleblowers and their family in criminal justice procedures. The law establishes the duty of the Public Prosecutor's Office (PPO) to enact the necessary general instructions, protocols, and mechanisms to provide protection measures to whistleblowers, when the entity and nature of the events or specific condition of the whistleblowers, imply that they might be at a plausible risk of suffering harassment, threats or other attacks against them or their family, because of the complaint. This change represents the enactment of an innovative protection statute for the whistleblower in the criminal justice system, that, in the same way that the labour protection action, does not distinguish between the whistleblower's legal status or the nature of the denounced events. These measures complement the protection norms in favour of victims and witnesses that already exist in the criminal justice system.

Even though the law reinforces and creates a new mechanism of protection for public servants, it also establishes mechanisms of sanction and control aimed to avoid acts of retaliation or harassment by public servants involved in this type of procedure, creating an indirect mean of protection for the interests and integrity of people.

Although the law promotes the filing of complaints for a broad spectrum of irregular behaviours, it particularly aims to capture denunciations on corruption. With that end, it incorporates the non-criminal concept of “corruption”. This definition seeks to include an all-encompassing concept of the corruption phenomenon within the Public Administration, including the anticipated capture of wrong doings (misbegotten meeting, unfair gifts, among others), and the reception of evidence that, without constituting a crime, has the potential to enable the detection of anomalies committed within the public administration.

Additionally, even though the law enacts the creation of a special protection statute in favour of those who act as public servants – who are obliged to file any anomaly that they get to know in the exercise of their position – it also includes protection measures in favour of every whistleblower, including private sector workers. Among these measures, we can find:

1. Identity confidentiality in the filing of a complaint through the digital channel administered by the CGR.
2. Sanctions in case of harassment against a whistleblower or witness, or their family.

The sanction is the destitution of the public servants who take part in the harassment against any person who files a complaint, or witnesses in an administrative or judicial investigation, or take actions of this nature against their relatives. This situation is qualified as a serious contravention to public probity.

### 3. Crimes.

The existing regulation is complemented on the matter of breach of secrecy to better protect the confidentiality of information within the complaints system and the procedures that could begin on its regard, particularly, on the matter of identity confidentiality when the whistleblower has asked for it.

It should be noted that, for the purposes of this regulation, the traditional concept of "State Administration Staff" is also extended to include those who carry out internships, traineeships, or similar activities and those who provide personal services or maintain an employment relationship with regular service providers in the offices of the respective bodies of the Administration.

During the first half of 2024, the Government will issue a Regulation to norm the technical, operational and any other aspects necessary for the proper implementation and operation of the Whistleblower Channel.

- **Law N° 21.634**

Same comments as in our report for recommendation 1(a)

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

## Part II: Report on the status of the Bill to introduce a new Criminal Code

In March 2023, the Working Group on Bribery invited Chile to report in one year on its progress to adopt a new Criminal Code to address several outstanding Phase 4 recommendations.

### Report on the status of the Bill to introduce a new Criminal Code:

#### Bill for a New Criminal Code

The bill to introduce a new Criminal Code was submitted to the Congress on 7 January 2022 (Bulletin N° 14.795-07). It was presented during a ceremony held at “La Moneda” Presidential Palace, by former President Sebastián Piñera.

The current administration, headed by President Gabriel Boric and that assumed office on 10 March 2022, in a joint effort with the Parliament, decided to prompt the processing of this bill.

On 9 January 2023, the Constitution, Legislation, Justice and Regulation Committee of the Chamber of Deputies initiated the general discussion of the bill, after holding public hearings with two cycles of seminars, during the first half of 2023. The purpose of these seminars was to discuss the innovations of this broad project, based on presentations of experts in different areas of the most relevant topics of the bill.

In August and September 2023, the processing of the bill continued with the holding of five sessions, in which presentations of different authorities and institutions were made. At the end of the session of 12 September 2023, the bill was approved in general by the Constitution, Legislation, Justice and Regulation Committee of the Chamber of Deputies and the members of this Committee agreed upon a three-month deadline to present amendments to the bill. To prompt institutional debate for the proposal of possible modifications, the Ministry of Justice coordinated a technical round table to analyse the bill with representatives of different authorities and parliamentary advisors. At the end of this process, in December 2023, the Chilean government, through the Ministry of Justice, presented suggestions of amendments to the bill.

To date, the bill is in its first constitutional procedure and the Constitution, Legislation, Justice and Regulation Committee of the Chamber of Deputies has discussed and approved its first eight articles, related to the general principles of our criminal law system, jurisdiction of Chilean courts on criminal matters and Intertemporal criminal law.

#### Law N° 21.595 on Economic Crimes

On 17 August 2023, Law N° 21.595 was published in the Official Gazette. This new legislation systematizes economic crimes and attacks against the environment, modifies several legal bodies that typify crimes against the socioeconomic order (including the Criminal Code and Law 20.393 that establishes the criminal responsibility of legal persons), and adapts the penalties to all of them.

In general terms, the new law comprises the following aspects: i) determination of a catalogue of economic crimes, which includes the bribery of foreign public officials; ii) new system for the determination of penalties and alternative penalties applicable to natural persons for those crimes; iii) regulation of confiscation of profits; iv) modification and introduction of new offences; and v) amendments to the law on criminal liability of legal persons, in areas such as legal persons covered, regulation of the pecuniary penalties, disqualifications, and regulation of confiscation of profits.

One of the objectives of this new legislation is to avoid a feeling of impunity in relation to the commission of economic crimes, considering the social and economic impact that they may have.

The major change introduced by the Law is the creation of a special sentencing regime for a new category of offences: economic crimes. As a result, penalties have increased and the catalogue of offences attributable to companies has extended significantly.

When the offence has a theoretical penalty of imprisonment, now it is much more likely that it will be effectively served with deprivation of liberty.

Another purpose of this law is to prevent the commission of economic crimes by imposing greater requirements on legal entities and their internal compliance systems. The law wants to generate a paradigm shift in the understanding of compliance: from a formalistic culture of checklists to a real culture of crime prevention, where the Offence Prevention Model (OPM) is key. Under the new law, the only way to be exempted from criminal liability is to have an OPM effectively implemented by the legal person, according to the new requirements established by the law.

Additionally, the scope of application of Law 20.393 is extended from legal persons under private law and public companies created by law, to political parties, religious legal persons under public law, and state-owned companies, societies and universities.

This law on Economic Crimes is very relevant for the implementation of several recommendations that have been made to Chile:

- Recommendation 3(c). This law establishes as a new sanction in Law 20.393, the supervision of the legal person. The court may impose this sanction if, due to the absence of an effective OPM, the supervision is necessary to prevent the perpetration of further offences by the legal person. The court-appointed supervisor is responsible for ensuring that the legal person effectively develops, implements or improves an adequate OPM and to monitor such development, implementation or improvement, for a minimum of six months and a maximum of two years. This new law also establishes as an accessory penalty, the confiscation of the proceeds of the offence for which the legal person is liable.
- Recommendation 4(c). This new law establishes as an accessory penalty, the confiscation of the proceeds of the offence for which the legal person is liable, as well as other property, effects, objects, documents, instruments, money, or securities derived from it. When for any reason it is not possible to confiscate these items, the confiscation may be applied to a sum of money equivalent to their value.
- Recommendation 4(d). According to this law, the profits obtained by the legal person through the offence for which it is responsible shall be confiscated.
- Recommendation 6(c). This new law establishes that for an OPM to exempt the legal person from criminal liability, it has to - to the extent required by the corporate purpose, line of business, size, complexity, resources and activities of the company – seriously and reasonably consider, among other aspects: i) the appointment of one or more persons responsible for the implementation of the OPM, with adequate independence, and with effective powers of direction and supervision and direct access to the management of the legal person in order to inform it in a timely manner of the measures and plans implemented in the fulfilment of its tasks, to account for its management and to require the adoption of measures necessary for its tasks which may go beyond its competence; the legal person shall provide the person or persons in charge with the necessary resources and means for the proper performance of their work, taking into consideration the size and economic capacity of

the legal person; and ii) the provision for periodic evaluations by independent third parties and mechanisms for improvement or updating on the basis of such evaluations.

- Recommendation 6(e). This law eliminates the certification as a one of the requirements for an effective OPM. Therefore, now it should be clear that the certification of the OPM cannot create a presumption that the legal entity has successfully performed an OPM.
- Recommendation 9(a). This new law establishes that the conducts contained in the Tax Code - in Article 8 ter (4); Article 97(4), (5), (8), (9), (12), (13), (14), (18), (22), (23), (24), (25) and (26); and Article 100 - are economic crimes, if the act is committed in the exercise of an office, function or position in an enterprise, or if the act is for the benefit of an enterprise.

### Part III: Enforcement

Please describe any developments in the detection, investigation, prosecution and resolution of any foreign bribery (or related) case since March 2023.

#### Report on enforcement progress:

On 21 January 2023, a new administration took office in the Chilean Prosecutor's Office, headed by General Prosecutor Ángel Valencia. One of his institutional guidelines is to focus primarily on the detection and prosecution of corruption and related money laundering cases. To achieve this, the PPO's Anti-Corruption Unit (UNAC) has been reformed to adopt a more operational approach in the strategic support of cases and to facilitate their detection.

The Public Prosecutor's Office (PPO) is proactively pursuing the detection of cases of transnational bribery, and continuously checking if there is any new information available on the investigations that are provisionally filed.

With the main objective of strengthening the capacity of detection and investigation of cases of transnational bribery through financial intelligence, an Agreement of Interinstitutional Collaboration will be subscribed soon by the PPO, the Financial Intelligence Unit of Chile (FIU) and the Undersecretariat of International Economic Affairs (SUBREI). This agreement will improve internal workflow to obtain more relevant data and information for the detection and investigation of new cases, strengthening - as a result - the enforcement of foreign bribery in Chile.

Additionally, on 23 May 2024, the Council of Regional Prosecutors of the Chilean PPO approved a new General Instruction on transnational bribery and related money laundering offences, presented by the General Prosecutor and UNAC. This new General Instruction addresses different matters to improve the criminal prosecution of these crimes, with special emphasis on the regulation of extrajudicial resolutions, considering the recommendations provided by the Working Group on Bribery to Chile.

This new General Instruction is relevant for the implementation of several recommendations that haven been made to Chile, such as:

- Recommendation 1(i). This new General Instruction establishes incentives for self-reporting foreign bribery through the application of a specific extenuating circumstance, called "substantial cooperation through self-reporting", which could considerably reduce the sanctions by two degrees.
- Recommendation 2(b). The National Prosecutor's Office created in March 2023 a new Asset Financial Investigation Support Unit (INFIPAT) made up of analyst engineers. The New General Instruction provides performance criteria regarding foreign bribery by introducing a section on minimum investigative proceedings, which prosecutors are instructed to carry out,

such as the request to INFIPAT for its financial analysts to perform an asset and liabilities analysis of the defendant, his/her family group and corporate partners. Also, among these minimum investigative proceedings, is the request to the Financial Intelligence Unit (FIU) of Chile to obtain relevant data for the detection of new cases and obtain information related to suspicious transaction reports and other relevant information on money laundering, associated with foreign bribery as a predicate offence.

- Recommendation 3(b). Prior to adopting a conditional suspension of proceedings (SCPs) in this type of crimes, the new General Instruction establishes that the Regional Prosecutors must consult the opinion of the UNAC, for which they must send the corresponding background information and indicate the reasons why they consider the request pertinent and appropriate, in addition to justifying the conditions provided for it.
- Recommendation 3 (e). Under the new law on Economic Crimes and this new General Instruction, the only way to be exempted from criminal liability is to have an OPM effectively implemented by the legal person, according to the new requirements established by the law.
- Recommendation 3(f). This new General Instruction requires specifically that in case of foreign bribery, donations to charity - as a term of an SCP - must be effective, proportional, and dissuasive (of sufficient amount and greater than a financial penalty). It also establishes that such donations are not tax deductible; and that in all cases the suitability, prestige and transparency of the charities that receive the donations will be verified.
- Recommendation 10(a). On 13 June 2023 the Chilean Prosecutor's Office and the Internal Taxation Service (SII) signed an Agreement of Interinstitutional Collaboration, to periodically inform convictions for foreign bribery, as well as those SCPs in which any of the conditions imply a disbursement of money, to avoid that those funds are deducted from taxes and the SII can systematically re-examine the relevant tax return. Additionally, the new General Instruction establishes the obligation of prosecutors to report to the SII and UNAC all convictions for transnational bribery.

[The case-specific information provided by Chile is omitted from the published version of the report.]