

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

CHILE

(Information as of 30 June 2004)

Date of deposit of instrument of ratification/acceptance or date of accession

Signature of the Convention: December 17, 1997.

Deposit of instrument of ratification: April 18, 2001.

Implementing legislation

Executive Decree No. 496, published in the Official Gazette on January 30, 2002, date on which the Convention was enacted in Chile.

To comply with the requirements of the Convention as well as to implement Chile's national policy to combat corruption, Law No. 19,829 amended the Chilean Criminal Code by adding article 250 bis A, which penalizes the bribery of a foreign public official in international business transactions, and article 250 bis B, which defines the term "foreign public official". This law also amended the domestic active bribery offence (article 250) to reflect the different sanctions corresponding to the foreign bribery offence. Law No. 19,829 entered into force on October 8, 2002, date on which it was published in the Official Gazette.

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or Recommendations

Law No. 19,913, published in the Official Gazette on December 18, 2003, established the Financial Analysis Unit (FAU). It is a decentralized public agency having legal existence and equity on its own, which reports to the President of the Republic through the Ministry of Finance.

The said agency began to operate in our country immediately upon appointment of its Director, Mr. Víctor Andrés Ossa Frugone, by Executive Decree No. 358 from the Ministry of Finance, dated April 16, 2004, and published in the Official Gazette on May 10, 2004.

Mr. Ossa Frugone is a Civil Engineer holding a Master's Degree in Tax Management and having a vast experience in finance, international business and management of banks and both revenue-earning enterprises and public utility corporations.

Currently, this agency is under organization, its staff being appointed. It shall be formed by a director, a head of division and 3 heads of unit. However, the Director is empowered to hire personnel until filling the 15 positions established under the first budget year. Additionally, the Unit may be joined by officials from other public agencies which may be required to discharge its duties.

The Unit is located at the Ministry of Finance, Teatinos 120, sixth floor, Santiago, Chile, where it will temporarily operate until moving to its final premises. The contact telephone is (56-2) 4732000.

Concurrently with the said organization process, the Unit has begun to operate. It should be noted that the duty by several economic actors to inform any suspicious acts, transactions or operations that have come to their knowledge in the discharge of their duties became effective in May, 2004.

In addition, on April 28, 2004, Chile ratified the Inter-American Convention on Mutual Assistance in Criminal Matters, which allows Chilean authorities to provide mutual assistance to States Parties to this Convention in investigations, prosecutions and proceedings that pertain to crimes over which Chile has jurisdiction. Even though most of the States Parties to the Inter-American Convention are not parties to the OECD Convention, some of them are. In this context, Chilean judicial authorities can now provide the Parties to both Conventions with better assistance in legal matters, such as taking of depositions or statements, immobilization and sequestration of property, freezing of assets and assistance in seizure, confiscation or search related matters.

Other information

Relevant authorities

Within the Metropolitan Region (in the case of offences perpetrated up to June 16, 2005) and other regions (in the case of offences perpetrated before the phased entry into force of the criminal procedure reform), the old Criminal Procedure Code continues to apply. Article 83 thereof provides that offences of any kind must be informed to “Carabineros de Chile”, the Chilean Investigations Police and any court having jurisdiction in criminal matters. In any case, information must be forthwith transmitted by said entities to the competent Criminal Court.

In regions where the Criminal Procedure Reform has already been implemented, the new Criminal Procedure Code shall apply. According thereto, offences of any kind must be informed to the Public Prosecutor’s Office, “Carabineros de Chile”, the Chilean Investigations Police and any court having jurisdiction in criminal matters (either criminal “Guarantee Courts” or “Oral Courts”), all of which must forthwith inform the Public Prosecutor’s Office.

The State Defense Council shall act as complainant to safeguard State property and interests under both criminal procedure systems, particularly as regards offences – including bribery – perpetrated by public officials or employees of State and Government agencies, regional governments, municipalities or decentralized agencies or services – both from a functional or territorial point of view - in the performance of their functions.

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/52/45/33742154.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/38/10/39540391.pdf>