



CHILE: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

May 2016

This report, submitted by Chile, provides information on the progress made by Chile in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on May 31 2016.

The Phase 3 report evaluated Chile's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of Findings

1. In March 2016, Chile presented a Written Follow-Up Report describing its implementation of the Recommendations in the March 2014 Phase 3 Report by the OECD Working Group on Bribery. The Follow-up Report also described developments regarding the Follow-Up Issues identified in the Phase 3 Report. Overall, the Working Group considered that Chile has taken some positive steps in the area of foreign bribery enforcement but additional efforts are needed in other areas. Out of 34 Phase 3 Recommendations, 5 are fully implemented, 14 partially implemented and 15 not implemented.

2. Under Chilean law, companies may not be liable for foreign bribery if they have an “offence prevention model” at the time of the offence. In December 2014, the Public Prosecutors’ Office (PPO) issued Guidelines for Best Practices on Investigation of Criminal Liability of Legal Persons. The Guidelines state that Article 4 of Law 20 393 only stipulates “minimum requirements” for an effective model. The Guidelines describe some important elements of an effective model (e.g. codes of conduct) and address some bribery-specific issues (e.g. risk areas where bribery may be committed). The Guidelines, however, do not describe elements of a model for preventing foreign bribery (as opposed to another offence). A series of full-day workshops on Offence Prevention Systems addressed models to prevent bribery. Other events referred either to foreign bribery but not specifically to corporate liability, or to corporate liability but not the offence prevention model. Recommendation 1(a) is partially implemented. Law 20 393 Art. 4(1)(b) continues to allow a company’s owner, partner or controlling shareholder to serve as the company’s offence prevention officer if the company’s annual income does not exceed 100 000 *unidades de fomento* (UF). Chile needs to amend its law in this respect. Recommendation 1(b) is not implemented.

3. Law 20 393 allows a legal person to seek certification of its offence prevention model. The Phase 3 Report noted conflicting opinions on the legal effect of certification. Since then, Chile issued the 2014 Guidelines for Corporate Investigations which state that “Certification [...] does not imply that the company has satisfactorily discharged its supervision and managerial duties. Such determination must be made by a court. It does involve a greater challenge for the investigation, since it must be effective enough to disprove compliance evidenced by the certification granted.” The Guidelines add that a prosecutor must prove that a certified model was not “effectively and efficiently implemented”. Overall, more precise clarification of the legal effect of certification would be beneficial. Recommendation 2(a) is partially implemented.

4. Concerns about the process for certifying offence prevention models remain. Certification is conducted by private sector entities. A supervision plan requires the reporting of breaches of the internal regulation governing the certification process, particularly the rules on conflict of interest. However, Chile has not taken sufficient steps to ensure that certifying entities are qualified in anti-corruption corporate compliance. Nor has Chile specified the standard and methodology that certifying entities must apply. There is no guidance on the elements of an offence prevention model that are important for preventing foreign bribery (as opposed to another offence). These are pressing issues given the pace at which companies in Chile are seeking certification. Recommendation 2(b) is partially implemented.

5. Regarding sanctions and confiscation, Chile submitted Bill 10155-07 to Congress on 18 June 2015. If enacted, the Bill would eliminate mandatory sentence reductions for foreign bribery where a foreign public official solicits the bribe, but not where the case begins more than half way through the limitation period (*media prescripción*). The Bill also would not ensure equivalence between the fines

applied to domestic and foreign bribery. Nor would it increase the maximum fine available against legal persons for foreign bribery. In any event, the Working Group considers a recommendation to be implemented only when a law is passed, not when a Bill is still under consideration. Recommendations 3(a), 3(b) and 3(d) are not implemented. In the *Cement (Bolivia) Case* which was settled in 2015, a company manager agreed to donate CLP 1 million (approximately USD 1 400) to “Fundación Santa Clara”, and to set up a fixed place of residence and inform of the PPO of any changes. Chile has not taken other steps to increase sanctions imposed against natural persons for foreign bribery in practice. Recommendation 3(c) is partially implemented. Chile amended Law 19 913 to allow value confiscation in cases of money laundering but not foreign bribery. Recommendation 3(e) is therefore not implemented.

6. Regarding investigations and prosecutions of foreign bribery, Chile has taken positive steps. The Phase 3 Report noted that Chile filed or terminated four foreign bribery cases without sufficient investigations. Chile reopened one of the cases just before the Phase 3 Report was adopted. Since then, a second (*Cement (Bolivia) Case*) was reopened and resulted in settlements with a company and its manager in 2015. A new foreign bribery case was opened after information provided by the financial intelligence unit. Chile has sought MLA in these foreign bribery cases more actively than when the Phase 3 Report was adopted. Enforcement has also been reinforced at the institutional level. The PPO has issued instructions to ensure that regional prosecutors conduct foreign bribery cases. The Specialised Anti-Corruption Unit (UNAC) is informed of all foreign bribery cases, thereby strengthening co-ordination. The PPO Guidelines on foreign bribery and corporate investigations remind prosecutors and investigators of Article 5 of the Convention. Recommendations 4(b)-4(e) are thus fully implemented.

7. Additional matters relating to enforcement and jurisdiction remain outstanding. Formal investigations of foreign bribery must still be concluded within two years. Law 20 818 eases the rules on bank secrecy for cases of money laundering but not foreign bribery. Chile has not amended its legislation to clearly provide territorial and nationality jurisdiction to prosecute legal persons for the foreign bribery offence. Instead, it maintains that it has such jurisdiction. It has not aligned the investigative tools available in investigations of foreign bribery and money laundering. Recommendations 4(a), 4(f), 4(g) and 5 are not implemented. Chile has provided some training to the police and financial intelligence unit on corporate liability. There has not been training on forensic accounting and information technology. Recommendation 4(h) is partially implemented. Chile has created a database of foreign bribery cases. The SII (tax authorities) have statistics of cases of false accounting under tax laws. There remains no statistics on domestic bribery or on false accounting offences under four non-tax statutes. Recommendation 6 is partially implemented.

8. Concerning money laundering, Chile has amended its legislation to enhance investigations of this offence. However, it has not taken steps to ensure that its law provides that an individual is simultaneously convicted of money laundering and foreign bribery where appropriate. Recommendation 7(a) is partially implemented. Chile continues not to require lawyers, accountants and auditors to report suspected money laundering transactions. The Financial Analysis Unit’s annual typology reports do not specifically address foreign bribery-related money laundering. Recommendation 7(b) is not implemented.

9. Regarding false accounting, during the Phase 3 evaluation Chile referred to five legislative provisions that applied to this conduct. However, none of the provisions covered the full range of conduct described in Art. 8 of the Convention. Since Phase 3, Chile has enacted legislation that created new tax offences. However, these offences are not directly related to false accounting and do not cover false accounting that is unrelated to tax issues. Legal persons still cannot be held liable for false accounting. Recommendation 8(a) is not implemented.

10. Regarding external auditors, the Securities and Insurance Superintendence (SVS) General Rule 275 Section B.5 (as amended by General Rule 355/2013) requires external audit firms to report foreign bribery discovered during an audit to the firm's partners, the audited entity's board of directors, the PPO and SVS. This provision was not brought to the evaluation team's attention during the Phase 3 evaluation and should therefore be followed up in Chile's Phase 4 evaluation. Action has not been taken to protect auditors who report suspected foreign bribery from legal action; to encourage external auditors to take greater account of the risks of foreign bribery in the companies that they audit; or to improve audit quality standards. Overall, Recommendation 8(b) is partially implemented.

11. As for tax-related measures, SII Circular 56 now refers to the current foreign bribery offence. Recommendation 9(a) is fully implemented. SII and PPO meet monthly to discuss various matters, including specific cases. However, the PPO has not reported a foreign bribery conviction to SII because there have not been such convictions. Recommendation 9(b) is partially implemented. SII has published the 2013 OECD Bribery Awareness Handbook for Tax Examiners. However, SII has not integrated the Handbook into its Standard Plan for Tax Audits, or examined why it failed to detect the bribery in the *Fragatas Case*. Recommendation 9(c) is therefore partially implemented. Chile has included the language of Art. 26 of the OECD Model Tax Convention in recent bilateral tax treaties. Congress ratified the Convention on Mutual Administrative Assistance in Tax Matters in late 2015. The process for depositing the instrument of ratification is on-going. Recommendation 9(d) is also partially implemented.

12. With regards to international co-operation, Chile has not amended its legislation on bank secrecy or value confiscation as applied to incoming mutual legal assistance requests in foreign bribery cases. As mentioned above, provisions on these issues have been amended for cases of money laundering but not foreign bribery. Chile's report referred to one MLA request where bank secrecy was lifted approximately one month after the request was received. This is encouraging, but this is only one case and not sufficient to draw any conclusions. Recommendations 10(a) and 10(b) are not implemented.

13. Regarding awareness-raising, a series of one-day workshops on private sector integrity and offence prevention models was organised in four cities in 2015 by the General Comptroller, State Defence Council, PPO, judiciary, and Financial Analysis Unit. It is also positive that the General Directorate for International Economic Relations (DIRECON) reached out to small- and medium-sized enterprises. However, efforts have not been made by the SVS and Chilean SME agencies, namely the *División de Empresas de Menor Tamaño* and *Consejo Nacional Consultivo de la Empresa de Menor Tamaño*. Recommendation 11(a) is partially implemented.

14. Concerning reporting, the Ministry of Foreign Affairs (MOFA) has sent instructions to overseas missions and trained staff before they are posted overseas. This is commendable. However, similar MOFA instructions issued before the Phase 3 evaluation were ineffective because overseas missions failed to report actual foreign bribery allegations. Chile has not analysed why the previous instructions were ineffective. An amendment to Law 19 913 dealt with the reporting of suspicious money laundering, not foreign bribery allegations. There is no information on the enforcement of the obligation on public officials to report suspicions of crimes. Recommendation 11(b) is partially implemented.

15. Regarding whistleblower protection, a Bill before Congress would extend protection to government contractors and require a whistleblower's identity to be kept confidential. However, the Bill would not address the shortcomings of the Administrative Statute identified in the Phase 3 Report, namely the non-coverage of employees of state-owned enterprises, and the ending of protection when the report is rejected or 90 days after the end of the investigation or proceeding triggered by the report. In any event, as mentioned above the Working Group considers a recommendation to be implemented only when a law is passed, not when a Bill is still under consideration. Recommendation 11(c) is not implemented.

16. Regarding public advantages, Chile has not taken specific steps to ensure that all government procuring agencies verify whether an individual or company has been convicted of foreign bribery before granting a procurement contract. Procuring agencies are still not required to routinely check debarment lists of multilateral development banks. At the time of Chile's follow-up report, two companies were on the debarment list, neither of which had been convicted of foreign bribery. Recommendation 12(a) is not implemented. Chile has not adhered to the 2006 Export Credit Recommendation because *Corporación de Fomento de la Producción* (CORFO) does not grant export credits. Nevertheless, CORFO has conducted workshops for exporters on the Convention, and introduced some anti-foreign bribery measures in its work. Recommendation 12(b) is partially implemented.

Conclusions of the Working Group

17. Chile has satisfactorily implemented Recommendations 4(b), 4(c), 4(d), 4(e) and 9(a); partially implemented Recommendations 1(a), 2(a), 2(b), 3(c), 4(h), 6, 7(a), 8(b), 9(b), 9(c), 9(d), 11(a), 11(b) and 12(b); and not implemented Recommendations 1(b), 3(a), 3(b), 3(d), 3(e), 4(a), 4(f), 4(g), 5, 7(b), 8(a), 10(a), 10(b), 11(c) and 12(a). Follow-up Issues 13(a)-(f) remain outstanding. Chile is invited to further report to the Working Group in writing in October 2016 on its implementation of key outstanding Recommendations 1(a)-(b), 2(a)-(b), 3(a)-(e), 4(a), 4(f), 4(g), 5 and 11(c).

PHASE 3 EVALUATION OF CHILE: WRITTEN FOLLOW-UP REPORT

Name of country:	Chile
Date of approval of Phase 3 evaluation report:	13 March 2014
Date of information:	19 February 2016

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 1(a)

1. With regards to the liability of legal persons and offence prevention model defence, the Working Group recommends that Chile:

- (a) Provide guidance on the elements of an effective model for preventing foreign bribery as required by Law 20 393 and (i) train judges, prosecutors on police on this guidance; and (ii) encourage Chilean companies, especially SMEs, to adopt models that conform to the guidance

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

As of the date of approval of Chile's Phase 3 evaluation the following initiatives aimed at training judges, prosecutors and police on foreign bribery have been carried out:

I) During the year 2014 the Chilean Public Prosecutors' Office developed the following three official documents intended to provide guidance to Prosecutors in the investigations of bribes to foreign public official and criminal liability of legal persons:

- 1) Prosecutors Instruction No. 699/2014 that establishes "General Performance Criteria for Corruption Crimes". The Instruction provides specific guidelines for the investigation of the crime of bribery of foreign public officials and is applicable to all Regional Prosecutors, Deputy Prosecutors, legal counsellors and assisting attorneys nationwide - September 2014.¹ This instruction is published at:
<http://www.fiscaliadechile.cl/Fiscalia/archivo?id=17768&pid=168&tid=1&d=1>
- 2) Guidelines for legal support and analysis for investigations related to the offense of transnational bribery - October 2014.² This guideline is published at
<http://www.fiscaliadechile.cl/Fiscalia/archivo?id=24175&pid=191&tid=1&d=1>
- 3) Guidelines for Best Practices on the Investigation of Criminal Liability of Legal Persons - December 2014.³ This guideline is published at
<http://www.fiscaliadechile.cl/Fiscalia/archivo?id=24164&pid=190&tid=1&d=1>

II) On June, 2014 a three-day course on the "*Convention against Bribery of public officials in*

¹ See Annex I to this Report.

² See Annex II to this Report.

³ See Annex III to this Report.

international business transactions” was dictated in the Judicial Academy of Chile by professors and lawyers from the Public Prosecutors’ Office aimed at judges from the Courts of Appeal, Guarantee Courts (*Juzgados de Garantía*) and Oral Criminal Trial Courts (*Juzgados de Juicio Oral en lo Penal*). 29 judges attended the course.

III) On November 2014 the Public Prosecutors’ Office conducted a two-day seminar for tax advisers and lawyers named “*Update of Criminal Law, Prevention Models and Corporate Compliance*”, in which acted as speakers law professors and compliances officers of Chilean and Foreign companies experienced in applying prevention models and having as attendees prosecutors and advisors specialized in anticorruption investigations.

IV) On August 2014 and June and September 2015 the Public Prosecutors’ Office conducted a training program on the Criminal Liability of Legal Persons Law (Law 20,393) in the “group of ethics and compliance” of the “Fundación Generación Empresarial” which encompasses private sector representatives responsible for crime prevention, including lawyers and accountants.

V) Throughout 2014 Chile’s Ministry of Foreign Affairs (MOFA) trained ambassadors and diplomatic officials on the OECD Convention, and distributed to all government agencies a booklet with the guidelines of the OECD Convention.

VI) The General Directorate for International Economic Relations (DIRECON) trained SMEs on the OECD Convention and prepared a brochure with this instrument. This brochure was distributed to 1,230 Chilean SMEs on January 2015.⁴

VII) On September 2015, the Public Prosecutors’ Office conducted a workshop aimed to analysts of the Chilean Finance Intelligence Unit on anticorruption issues, including criminal liability of legal entities.

VIII) On November 2015, a workshop on anticorruption issues, including criminal liability of legal entities, was conducted by the Public Prosecutors’ Office for a selected team within the section of the Police force (“Carabineros de Chile”) dealing with complex investigations.

X) Workshops on Law No. 20,393 in the context of UNCAC implementation project

From late 2014 and through 2015, the Office of the General Comptroller of the Republic (CGR) and UNDP-Chile led the “Agenda Anticorrupción UNCAC 2015” project, which aims at promoting anti-corruption efforts in Chile, particularly regarding compliance with the United Nations Convention Against Corruption. The project involves 27 institutions, from the public sector, private sector and civil society that are considered as relevant for preventing and/or countering corruption in Chile. In the context of this project, a sub-group of institutions carried out a series of full-day workshops titled “Sistemas de prevención de delitos, de la teoría a la buena práctica” (“Offence Prevention Systems, From Theory to Good Practice”) in four cities of the country in late 2015: Valparaíso (October 22nd), Rancagua (November 12th), Puerto Montt (November 19th) and Arica (December 10th). Besides the CGR and UNDP, the sub-group of institutions included Consejo de Defensa del Estado (State Defense Council), Ministerio Público (Public Prosecutor’s Office), the Judiciary –represented by judges from criminal courts- and Unidad de Análisis Financiero (Financial Analysis Unit). Participants included government officials (central and local), and representatives from private companies, trade unions and civil society organizations. The workshops aimed at raising awareness and disseminating knowledge and best practice on integrity in the private sector and more specifically on the implementation of the offence prevention models of Law No. 20,393. (Further information on the workshops is available at the project’s website, www.agendaanticorruccion.cl).

⁴ For further information see

<http://trk.masterbase.com/V0/23/R/213950/7451/2?http://www.prochile.gob.cl/difusion/difusion2015/enero/informativo-cohecho/OCDE.pdf>

XI) Under the same project lead by the Comptroller General's Office and UNDP, on 2015 a group of officials of the Comptroller General's Office, the Public Prosecutor's Office, the Financial Intelligence Unit, the Transparency Council, ChileCompra, UNPD, Ministry of Foreign Affairs and the Transparency commission within the Ministry General Secretariat of the Presidency determined the key factors in designing and implementing a e-learning program on integrity and drafted the terms of reference of a program for the public sector.

XII) Assessment of the implementation of Law No. 20,393

On March 10, 2015, President Michelle Bachelet announced the creation of the Advisory Council Against Conflicts of Interest, Influence Peddling and Corruption, comprising a group of experts from various backgrounds. This Advisory Council issued a report on April 24, which contains recommendations for countering corruption, divided in five chapters: 1. Prevention of Corruption; 2. Conflicts of Interest Regulation; 3. Financing of Politics for Strengthening Democracy; 4. Trust in Markets, and 5. Integrity, Ethics and Citizens' Rights.

Following the Advisory Council's report, President Bachelet launched the "Agenda for transparency and probity in business and politics" (Anti-corruption Agenda), which collects a group of administrative measures and legislative initiatives that aim at addressing and implementing various recommendations included in the final report, as well as other improvements proposed by think tanks, members of National Congress, political parties and civil society organizations, and some measures that were already included in the Government Programme.

The Advisory Council took into consideration specific recommendations made by the WGB, and in some cases these were included literally in the final Report.

(Further information can be found at the Advisory Council's website, www.consejoanticorrupcion.cl, and at the Anti-corruption Agenda's website, www.agendadeprobidad.gob.cl).

XIII) For the entities under its supervision, the SVS issued on June 8, 2015 the General Rule No. 385, which establishes standards for the disclosure of information regarding corporate governance practices adopted by listed corporations. In order to stress the relevance of the adoption of offence prevention models these rules, through the system "comply or explain", set various practices that can be adopted by companies. In the literal f) paragraph iv) of the Annex of the General Rule the following practices are contained: "(f)The board meets at least quarterly with the internal audit unit, compliance officer or the head of the equivalent function in order to analyse: iv) The effectiveness of the Offence Prevention Models implemented by the company." Thus, companies are encouraged to review the effectiveness of the models implemented as a good practice of corporate governance.

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 liability of legal persons and offence prevention model defence, the Working Group recommends that Chile:

- (b) Ensure that under Art. 3 of Law 20 393 the requisite independence of prevention officers is determined based on all relevant factors, and not solely the size of the company's revenues (Convention, Art. 2; 2009 Recommendation Annex I.B and Annex II).

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

Every prevention officer shall meet the requirement on independence even in companies with low revenue, thus there is no need to ensure that such requirement is determined upon factors other the income amount.

From a legal perspective, Art. 4 (1) (b) of Law 20 393 establishes as a minimum requirement that the prevention officer is autonomous from the company's administration, shareholders, partners and controllers.

The provision allowing the company's owner, partner or controlling shareholder to serve as prevention officer provided the company's annual income does not exceed 100,000 Unidades de Fomento⁵ does not necessarily means that the independence requirement does not apply to said person acting as prevention officer. On the contrary, it only can be understood that in the rest of the cases the prevention officer cannot be the company's owner, etc. In these cases the prevention officer shall also remain autonomous from the administration, shareholders, etc. For instance the effectiveness of the prevention model should be subject to independence of such prevention officer from the management not exercised by the owner. Another example could be the case in which a prevention officer of this kind should need to be autonomous from his or her partners who have a say in the running of the company.

This approach is compatible with statements in legal doctrine. Professor Juan Ignacio Piña, in regards to this statutory provision, refers that the requirement of independence shall be applied in manner correspondent to the real capabilities of each legal entity because in certain cases it cannot be required absolute independence without triggering expenses hardly manageable by the company.⁶ Commenting on the essential requirements of a prevention model, Balmaceda and Guerra distinguish the possibility of owner, partner, etc. acting personally as prevention officer from the requirement to act in an independent manner from the top managers of the company.⁷

⁵ Unidad de Fomento: an inflation-linked Chilean peso denominated unit of account that is set daily based on the Chilean CPI of the immediately preceding 30 days as calculated and published daily by the Central Bank of Chile. As of February 2016 is US\$ 4,065,110.

⁶ Juan Ignacio Piña Rochefort, Modelos de prevención de delitos en la empresa, Abeledo Perrot Thomson Reuters, Santiago, 2012, p. 58: "esta exigencia de autonomía debe interpretarse también conforme a las reales posibilidades de cada persona jurídica... porque a ciertas organizaciones no puede exigírseles responsablemente una plena autonomía del encargado de prevención sin generar costos difícilmente absorbibles."//Translation: "Requirement of independence must also be interpreted in accordance with the real possibilities of each legal person... because some organizations cannot responsibly be required full autonomy Manager without generating hardly absorbable prevention costs."

⁷ Gustavo Balmaceda Hoyos and Rodrigo Guerra Espinoza, Políticas de prevención de delitos en la empresa, Legal Publishing Thomson Reuters, Santiago, 2014, p. 40: "Si se trata de una empresa cuyos ingresos no exceden de 100 mil Unidades de Fomento... el dueño, sus socios, accionistas, controladores podrán asumir

Furthermore, the Guidelines for Best Practices on the Investigation of Criminal Liability of Legal Persons issued by the Public Prosecutors' Office suggests that the above mentioned provision allows the possibility of serving the function of prevention officer not exclusively, albeit in addition to the general requirement of independence (page 22).

Notwithstanding the above, it shall be borne in mind that in these cases the rest of the requirements are fully applicable, thus the prevention model could generate the effects provided by law insofar a real and adequate prevention system is effectively design and put in place.

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 2(a)

2. With regards to the liability of legal persons and certification of offence prevention models, the Working Group recommends that Chile take immediate steps to:

(a) Clarify the legal effect of certification of an offence prevention model under Law 20 393

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

With regards to the certification of an offence prevention model the Public Prosecutors' Office considers that if a company has implemented a prevention model and this has been certified by a Certifying Entity duly registered with the Securities and Insurance Superintendence (SVS), such certification shall have the effect of raising the standard of evidence with regard to the Prosecutor's investigation, which shall prove that the offence prevention model is effectively and efficiently implemented, and not a mere paper model.

Certification of an offence prevention model does not produce a legal effect on a company on its own nor does it constitute an exonerating or an extenuating circumstance of criminal liability. Its value and effect on an investigation will depend on the effective implementation of the offence prevention model in the company and other factors specific to each criminal investigation.

This understanding of the effects of the certification of an offence prevention model is contained in Prosecutor Instruction No. 440/2010 and on the abovementioned Guidelines for Best Practices the Investigation of Criminal Liability of Legal Persons issued on 2014.

Regarding the need to clarify the legal effects of the certification of an offence prevention model under Law 20,393, the following shall be taken into account:

4. 1. Law 20 393 regulates criminal liability of legal persons, however in order to determine such liability the special rules of procedure established under Title III of Law 20 393 shall be applied. In absence of special rules on the matter the general rules set forth under the Criminal Procedure

personalmente la tarea del encargado de prevención... El encargado de prevención debería ser una persona que opere de manera independiente de la alta administración de la empresa."//Translation: If it is a company whose income does not exceed 100,000 UF ... the owner, partners, shareholders, drivers can personally take on the task of prevention officer ... The prevention officer should be a person who operates independently from senior management of the company. "

Code (CPP) should be applied.

5. 2. In this regard, CPP Arts. 295 and 297 should be considered. CPP Art. 295 establishes a principle of freedom of evidence as follows: “*all relevant facts and circumstances pertinent to the proper settlement of the case before trial may be proved by any means produced and incorporated in accordance with law*”.
6. In relation to the standard of proof, Art. 297 states that “the courts assess the evidence freely, but it may not contradict the principles of logic, the maxims of experience and scientifically supported knowledge”.
7. 3. In conclusion, the mere existence of a certification shall not constitute sufficient proof in order to exempt legal persons from criminal liability. Any other evidence produced on trial must also be analyzed and considered by court according to general rules of the CPP.
8. 4. However, it is effective that –as pointed out by Prosecutors during the evaluations team’s on-site visit on October 2013– the existence of this certificate could raise the standard of proof that must be reached by Prosecutors. In this case, Prosecutors could be able to detract from that evidence for example, by questioning the certification process itself; or by producing other evidence which, altogether, could a greater probative value to establish the liability of the legal person.

Finally, the possibility that such certificate could raise grounds for excluding criminal liability must be entirely discarded. Law 20 393 does not provide grounds for exemption from criminal liability beyond those established in Art. 10 of the Penal Code (PC).

Similar approach may be found in legal doctrine: “The effect of this certificate could be subject to debate, although it seems that it provides the legal entity with a rebuttable presumption of adoption of a prevention model. In fact, a certificate does not assure that the model is fully operative and as a result the Prosecutors Office could successfully prove that its ordinary operation do not cover the prevention needs.”⁸

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:

⁸ Juan Ignacio Piña Rochefort, Modelos de prevención de delitos en la empresa, Abeledo Perrot Thomson Reuters, Santiago, 2012, p. 58: “El efecto de esta certificación puede ser discutido, pero más bien parece que dota a la persona jurídica de una presunción simplemente legal respecto de la adopción del modelo de prevención. De este modo, la existencia de una certificación no garantiza que el modelo de prevención se mantenga plenamente operativo, de modo que el Ministerio Público podría acreditar exitosamente que en su operación regular no se cubren las exigencias de prevención.”// Translation: “The effect of this certification can be discussed, but it seems that provides the legal person of a legal presumption regarding the adoption of prevention model. Thus, the existence of a certificate does not guarantee the prevention model remains fully operational, so that the PPO could successfully prove that in its regular operation prevention requirements are not met.”

Text of recommendation 2(b)

2. With regards to the liability of legal persons and certification of offence prevention models, the Working Group recommends that Chile take immediate steps to:

- (b) Strengthen and enforce rules and standards that apply to certifying entities, including those regarding qualifications, certification requirements (Convention, Art. 2; 2009 Recommendation Annex I.B and Annex II).

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

Actions taken by the SVS:

Following the recommendations made by the working group, the Superintendency of Securities and Insurance, has taken the following steps in the last year:

Based on the recommendation issued by the OECD and subject to the statutory powers currently allocated to the Superintendence of Securities and Insurance regarding this matter, by 2015, the SVS implemented a supervision plan for Certifying Entities of Offense Prevention Models (CEOPM) through Ordinary Office No. 24,565, of November 6, 2015, by which it requires to report back:

any breaches of the Internal Regulation and particularly violations of the provisions of Section III of the General Rule No. 302 of 2011 with regard to “incompatibility of services”.

Through this monitoring plan, the SVS seeks to establish whether the certification entities have violated the rule prohibiting providing certification services to legal entities with which they have conflict of interest (incompatibility):

On the other hand, following the OECD recommendation, on December 29, 2015, the SVS approved by Resolution No. 271, the Supervision Manual of Smaller Companies, following the guidelines of Law No. 20,416, which establishes special rules for this type of entities.

Finally, the SVS is currently working on a Registration and Operational Standards rule for supervised entities, which includes Prevention Models Certifying Entities. The main project goal is to improve standards and to enhance its supervision.

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 3(a)

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

- (a) Eliminate mandatory reductions of sanctions for foreign bribery (i) where a foreign public official solicits the bribe; and (ii) where the case begins more than half way through the limitation period (Convention, Art. 3(1));

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

Amendment of foreign bribery provisions in the Criminal Code

As a part of the Presidential Anti-Corruption Agenda, a bill of law was sent to Congress, for the amendment of several corruption conducts sanctioned under the Criminal Code including the offence of bribery of foreign official (Bulletin No. 10.155-07 entered on June 18, 2015). Regarding this offence, it is proposed to amend the definition to include hypotheses in line with the Phase 3 Report recommendations such as: (a) coverage of bribes to induce an official to perform his/her duty; and (b) coverage of bribery by a company that was the best qualified bidder or otherwise could properly have been awarded the business.

The proposed new drafting of Article 251 bis of the Criminal Code is the following:

“A person who, with the purpose of obtaining or maintaining for him/herself or for a third party any business or advantage in the field of any international transactions or of an economic activity performed abroad, offers, promises, gives or consents in giving to a foreign public official a benefit, economic or of other nature, for that official to omit or execute, or for having omitted or executed, an action in the exercise of his/her functions, will be sanctioned with minor imprisonment in its medium to maximum degree and with fine of one hundred to a thousand monthly tax units⁹.”

The proposed law can be found at the following url:

<https://www.camara.cl/pley/pdfpley.aspx?prmID=10363&prmTIPO=INICIATIVA>

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:

⁹ Art. 251 bis. El que, con el propósito de obtener o mantener para sí o para un tercero cualquier negocio o ventaja en el ámbito de cualesquiera transacciones internacionales o de una actividad económica desempeñada en el extranjero, ofreciere, prometiére, diere o consintiere en dar a un funcionario público extranjero un beneficio económico o de otra naturaleza en provecho de éste o de un tercero, para que omita o ejecute, o por haber omitido o ejecutado, una acción en el ejercicio de sus funciones, será sancionado con presidio menor en su grado medio a máximo y multa de cien a mil unidades tributarias mensuales.”

Text of recommendation 3(b)

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

- (b) Amend the Penal Code to ensure equivalence between the fines applied to domestic and foreign bribery cases (Convention, Art. 3(1))

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

The bill (Bulletin 10155-07) establishes a penalty of imprisonment from 541 days up to 5 years in its ,and a fine ranging from one hundred and one thousand monthly tax units ¹⁰ (UTM in Spanish) in the case of bribery of a foreign public official.

The aforementioned Bill proposes the following amendment: "6) Replace the current Article 251 bis by the following:" Art. 251a. Which, in order to obtain or retain for himself or for a third party any business or advantage in the field of international transactions or any one economic activity performed abroad, offers, promises, shall give or agrees to give a foreign public official economic benefit or other benefit of this or of a third party to bypass or perform, or for having omitted or performed, an action in the exercise of their duties, shall be punished by imprisonment in its medium degree to maximum and a fine between one hundred and thousand monthly tax units."

The proposed modification increases the sanctions compared to the current Article 251 bis, and is also more burdensome than the current provisions of the Criminal Code, Articles 248, 248a, 249 and 250, for domestic cases.

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 3(c)

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

- (c) Take steps to ensure that sanctions against natural persons are effective, proportionate and dissuasive in all foreign bribery cases in practice (Convention, Art. 3(1))

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

The proposed change in the wording of Article 251 bis contained in Bulletin No. 10155-07 establishes a custodial sentence of imprisonment in its medium to maximum degree (from 541 days to 5 years), and a fine ranging from one hundred and one thousand monthly tax units. This measure is designed to ensure the effectiveness and deterrent of the sanctions.

If no action has been taken to implement this recommendation, please specify in the space below the

¹⁰ Unidad Tributaria Mensual: monthly tax units, an inflation-linked unit of account.

measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(d)

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

- (d) Increase the maximum fine available against legal persons for foreign bribery to a level that is effective, proportionate and dissuasive (Convention, Art. 3)

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

Our legislation in the Article 8 of Law No. 20.393 establishes criminal liability of legal persons for offenses of money laundering, terrorist financing and bribery, indicating:

Article 8. Penalties. Legal persons shall be subject to one or more of the following penalties:

- (1) Dissolution of the legal person or cancellation of its legal status;

This penalty shall not apply to State-owned companies or to private legal persons that provide a public utility service the interruption of which might cause grave social and economic consequences or serious damage to the community as a result of the application of such penalty.

- (2) Permanent or temporary prohibition from entering into acts and contracts with State agencies organs;

- (3) Permanent or temporary loss of fiscal benefits, or absolute prohibition from receiving the same for a specified period of time;

- (4) Fine for fiscal benefit;

- (5) The ancillary penalties prescribed by article 13.

As to what is stated in section 4 of Article 8 above, Article 12 of Law No. 20.393 establishes the scale of fines applicable:

Article 12. Fine for Fiscal benefit: This penalty shall be rated as follows:

- (1) Lowest Degree: from two hundred to two thousand monthly tax units
- (2) Medium Degree: from two thousand and one to ten thousand monthly tax units.
- (3) Highest Degree: from ten thousand and one to twenty thousand monthly tax units.

The Court may authorize that the payment of a fine be made in installments within a time limit not exceeding twenty-four months, when the quantum thereof is liable to endanger the continuity in business of the sanctioned legal person or when the corporate social interest so warrants.

The competent Court shall, once conviction becomes enforceable, communicate the application of the fine to the Treasury General of the Republic, which shall enforce its collection and payment.

The Court, once the condemnatory sentence is final, will notify the application of the fine to the General Treasury of the Republic, who will take care of the collection and payment.

If the legal person changes, the criminal liability is transmitted and is punishable in the same way to its new form, as stated in the Article 18 of Law No. 20,393 which establishes the criminal liability of legal of a legal person in offenses such as money laundering, terrorist financing and bribery: "Article 18. Transfer of criminal responsibility of the legal person. In the case of transformation, merger, acquisition, division or dissolution in mutual of voluntary agreement of the responsible legal person, for one or more offenses referred in Article 1, its liability for crimes committed before the occurrence of any of these acts will be

transmitted to the resulting legal persons therefrom, if any, in accordance to the following rules, without prejudice to the rights of third parties in bona fide”¹¹.

- 1) If a fine is imposed, in cases of transformation, merger or takeover of a legal person, the resulting legal person is liable for the total amount. In the case of division, the resulting legal persons shall be jointly responsible for paying it.
- 2) In the cases of dissolution by mutual agreement of a legal person for profit, the fine shall be transmitted to partners and participants in the capital, who will answer to the limit of the value of the assigned settlement share.
- 3) In the case of any other penalty, the judge will assess the convenience, taking into account the final objectives in each case. In adopting the decision the judge should serve mainly to the substantial continuity of the material and human resources and the activity.
- 4) Since the formal indictment of the investigation is requested against a nonprofit legal person and up to the acquittal or conviction and while this is not fulfilled, the authorization of the first paragraph of Article 559 of the Civil Code may not be granted.

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 3(e)

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

- (e) Amend its legislation without delay to provide for confiscation of property, the value of which corresponds to that of the proceeds of a foreign bribery offence, where the bribe and the proceeds of foreign bribery cannot be confiscated, or monetary sanctions of comparable effect (Convention, Art. 3(3)).

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

Improvements have been made following this recommendation regarding money laundering offences. Key to this was the amendments introduced to the UAF Law under Law No. 19,913 passed in 2015 to amend several aspects of anti-money regulation in Chile. A reformed Article 37 of the UAF Law now allows to seizure - during the course of an investigation - the value corresponding to that associated with the offence, under specific circumstances. The new Article 37 reads: “During the investigation of crimes referred to in Articles 27 and 28 of this law, cases where as a result of acts or omissions of the accused, the seizure or some precautionary measure on goods which are proceeds thereof could not be decreed, the appropriate court with criminal jurisdiction may order, at the request of the prosecutor and by a reasoned

¹¹ “Artículo 18.- Transmisión de la responsabilidad penal de la persona jurídica. En el caso de transformación, fusión, absorción, división o disolución de común acuerdo o voluntaria de la persona jurídica responsable de uno o más de los delitos a que se refiere el artículo 1°, su responsabilidad derivada de los delitos cometidos con anterioridad a la ocurrencia de alguno de dichos actos se transmitirá a la o las personas jurídicas resultantes de los mismos, si las hubiere, de acuerdo a las reglas siguientes, todo ello sin perjuicio de los derechos de terceros de buena fe

decision, seizure or any precautionary measures set out in the law, regarding other assets that are owned by the accused by an amount equivalent to that associated with the offenses, except those declared non-seizable by Article 445 of the Civil Procedure Code (...).¹²

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 4(a)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (a) Take steps to ensure that the overall limitation period for the foreign bribery offence, including the two-year period for formalised investigations, is sufficient for proper investigation and prosecution (Convention, Arts. 5 and 6)

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

The rules currently in force do not state a short overall limitation period, even considering the time consuming nature of the foreign bribery investigations, therefore there is no need to take steps to ensure that it is sufficient for proper investigation and prosecution.

The statute of limitation applicable to foreign bribery cases is 5 years, which is suspended not only when the preliminary investigation is formalized, this is, it is suspended not only when the second time frame is triggered (the two-years period of formalized investigations). As per PC Art. 96, the general five-year statute of limitations is suspended when the proceedings are directed against the defendant. The Chilean Supreme Court has ruled that this occurs not only when the preliminary investigation is formalized but also when a formal complaint (*querrela*) is filed.¹³ Regardless of the conflicting views over whether foreign bribery is a victimless crime, the Government's Defence Council is authorized to file such complaints. Therefore in theory and in practice the five-year statute of limitations is suspended and the second two-year time frame is not necessarily triggered at the same time. Should a complaint be filed, the two year limitation depends on a decision of the prosecutor to formalize a preliminary investigation.

It should be borne in mind that the preliminary investigations are not subject to any time restriction other than the general statute of limitations. Additionally, neither the five-year nor the two year limitation applies to the preliminary and trial hearings. Therefore a defendant could be convicted even when five years since the date of the offence have already passed. As a result, foreign bribery investigation and prosecution do not necessarily have to be concluded within five years from the date of the offence.

The general requirement to allow investigative measures that affect individual's constitutional rights is the authorization of a guarantee judge (CPC Art. 9). Under CPC Art. 236 the measures need to be indispensable to the investigation for the purpose of requesting them without the knowledge of the defendant, and not for requesting them during the preliminary investigation.

Furthermore, Chile is obliged under Article 7 (5) of the American Convention on Human Rights to ensure

¹² Articles 27 and 28 of Law 19,913 refer to money laundering offences, among which foreign bribery is included as a predicate offence.

¹³ E.g. Chilean Supreme Court, January 8th, 2015, Case Nr. 24990-2014.

that investigations conclude within a reasonable time. In this context, an overall limitation of seven years to just indict a person does not seem short, especially if such limitation may be easily extended by means of formal complaint.

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 4(b)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (b) Periodically review its laws implementing the Convention and its approach to enforcement in order to effectively combat international bribery of foreign public officials (Convention, Art. 5 and 2009 Recommendation V)

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

As a result of a review of the laws implementing the convention, important steps have been taken in order to improve our capacities to better fight the international bribery of foreign public officials, among the most relevant we can mention this following initiatives

Since February 2015, an important amendment to law 19.913 (regarding the “Establishment of the Financial Analysis Unit and Amendment of Several Provisions on Money Laundering”) See answer in Recommendation 3(e) above.

The Ministry of Finance issued an instruction in order to public officials implement the new obligations made by the abovementioned amendment.

A bill of law was sent to Congress, for the amendment of bribery provisions of the Criminal Code (bulletin No. 10.155-07 entered on June 18, 2015). Regarding the offence of bribery of foreign public officials, it is proposed to amend the definition for including hypotheses that are not covered (as noted in the Phase 3 Report), such as (a) coverage of bribes to induce an official to perform his/her duty; (b) coverage of bribery by a company that was the best qualified bidder or otherwise could properly have been awarded the business. The proposed law can be found at the following url:

<https://www.camara.cl/pley/pdfpley.aspx?prmID=10363&prmTIPO=INICIATIVA>

Also see answers 1 (a); 1 (b); 3 (a); and 4 (c)(v).

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 4(c)(i)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (c) (i) Take steps to ensure that foreign bribery allegations are thoroughly investigated and not prematurely filed, and that corporate liability is fully explored;

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

Section 7 of Prosecutors Instruction No. 699/2014 specifically refers to the application of early termination and other alternative procedures to corruption cases. Pursuant to the Instruction the application of any of the following measures in regards to corruption crimes shall require authorization by the Regional Prosecutor¹⁴: a) provisional filing (“*Archivo Provisional*”) of an investigation; b) the decision not to investigate or to desist in a corruption case; c) exercise of prosecutorial discretion (“*Principio de Oportunidad*”); and d) conditional suspension of a proceeding. In addition, a criminal proceeding for bribery may only be “conditionally suspended” once the Anti-bribery Special Unit of the National Prosecutors’ Office (UNAC) issues a favourable technical report to this effect.

Under the same Instruction foreign bribery cases are set to be in charge of a Regional Prosecutor.

In addition, the relevance of this type of investigations has been reinforced in the abovementioned Guidelines for Good Practice on the Investigation of Criminal Liability of Legal Persons.

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 4(c)(ii)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (c) (ii) use proactive steps to gather information from diverse sources to increase sources of allegations and enhance investigations;

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

Important steps has been consider in order to provided more information to increase sources of allegations an enhance investigation, among others:

The MOFA has trained ambassadors and diplomatic officials on the OECD Convention and on the active role that they must assume when facing this crime.

The General Comptroller Office, the Public Prosecutor Office and de State Defence Council lunch the Anti-corruption site, an online platform to facilitate citizen’s access to information regarding facts

¹⁴ Other than with regards to “active, low complexity bribery” where this alternatives and measures do not require the Regional Prosecutors’ approval.

that could constitute a crime related to corruption. At the same time, the site has a link to file an online complaint or to information regarding the manner in which a complaint may be filed. More information could be found in: <http://www.anticorruccion.cl>

The Chilean National Contact Point (NCP) is based on the Ministry of Foreign Affairs, in the General Directorate of International Economic Relations (DIRECON), OECD Department.

For further information, visit the NCP link: <http://www.direcon.gob.cl/ocde/punto-nacional-de-contacto/difusion/>

Regarding the recommendation, it is important to bear in mind that all Chilean Public Officials have an obligation to report all crimes that are regarded as true beyond any doubt in the exercise of their functions in accordance with CPP Art. 175.

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 4(c)(iii)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (c) (iii) seek co-operation and MLA from foreign countries whenever appropriate, including through the Working Group's Informal Meetings of Law Enforcement Officials, and solicit the assistance of Chilean embassies and other international fora to facilitate MLA

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

MLA requests using the Convention as legal basis have been addressed by Chilean authorities to foreign counterparts. These requests have been addressed to Argentina (2), Korea (1), Cuba (1), the U.S. (1) and the Netherlands (1). They have been issued on the Travel Company, Airlines and Military Equipment Cases, referred below.

In the context of WGB meetings, Chilean officials have reached representatives of States to which Chile has addressed pending MLA requests.

Since Chile's last report to the WGB MOFA has continued to train Ambassadors and Diplomatic Officials on the OECD Convention emphasizing the active role that they must assume in the complaint and dissemination of this crime.

Also see answer 13 (e) below.

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 4(c)(iv)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (c) (iv) take steps to ensure that Chilean authorities thoroughly explore territorial links with Chile in foreign bribery cases, including by issuing guidance to law enforcement authorities on the jurisdiction to prosecute foreign bribery;

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

Members of the Public Prosecutors' Office and the courts of justice have jurisdiction to investigate and get to know a case of bribery abroad in accordance with CPC Article. 6, which has been explicitly mentioned in Prosecutors Instruction 699/2014.

In Guidelines for legal support and analysis for investigations related to the offense of transnational bribery, highlights the OCDE recommendations on the matter (see pages 21 to 22). In addition, said Guidelines include as a planning and evaluation tool a checklist, which comprises items encouraging to plan and evaluate the possible territorial link to the country (section II, 5, page 55) and to determine the territoriality factor of the offence (section IV, page 61).

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 4(c)(v)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (c) (v) take appropriate steps to further investigate the foreign bribery cases that have been provisionally filed or where a decision had been taken to not open an investigation (Convention, Arts. 2, 4(1), 5, Commentary 27; 2009 Recommendation XIII, Annex I.D);

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

The Public Prosecutors' Office has taken measures to investigate in greater depth some of the above-mentioned investigations by performing new proceedings: Aerolíneas case (Argentina), which was reopened, and Cement case (Bolivia) which was also reopened in 2014 after being provisionally filed, in which a deferred prosecution agreement has been reached.

In addition, Prosecutors Instruction 699/2014, establishes that these investigations are to be conducted directly by a Regional Prosecutor. Pursuant to the Instruction prosecutors must consider Art. 5 of the OECD Convention, under which the investigation of these crimes cannot be influenced by considerations of national economic interest, by the potential effect on his relations with another State or by the identity of the natural or legal persons involved.

Also see answer 4 (b) above.

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 4(d)(i)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (d) Improve its internal co-ordination and intelligence gathering in foreign bribery cases by (i) ensuring that prosecutors and law enforcement authorities systematically inform the UNAC of any foreign bribery allegation which comes to their knowledge, including via incoming MLA requests

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

Prosecutions' Instruction Nr. 658/2014 establishes that Regional Prosecutors shall inform the UNAC, as well as the Division of International Cooperation of the Public Prosecutors' Office, of any foreign bribery investigation instructed by him or her.

Furthermore, Prosecutions' Instruction Nr. 064/2014 establishes criteria to improve the coordination amongst the divisions of the National Public Prosecutors' Office. These criteria include that the International Cooperation Division shall inform the corresponding specialized units of any MLA request being within the scope of said specialized unit. This applies to foreign bribery MLA request which shall be reported to the UNAC.

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 4(d)(ii)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (d) Improve its internal co-ordination and intelligence gathering in foreign bribery cases by [...] (ii) considering establishing a national database of all foreign bribery cases (Convention, Art. 5; 2009 Recommendation V)

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

Recently UNAC established a data base of foreign bribery cases investigated by the Prosecutors' Office. This data base includes information such as case number, status and facts under investigation. This data base is of an internal use due legal restrictions and sensitive information concerns. The Regional Prosecutors have been informed of said data base, reminding their obligation to report these investigations to the UNAC.

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 4(e)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (e) Raise awareness of Art. 5 of the Convention among Chilean judges, prosecutors, investigators and relevant government officials, including by adding references to factors enumerated in Art. 5 to the relevant prosecutor instructions (Convention Art. 5, Commentary 27; 2009 Recommendation III.i)

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

Please see actions described under recommendation 1(a) above.

In addition, Prosecutors Instruction Nr. 699/2014 states that prosecutors shall take especially into account the provisions of Art. 5 of the Convention, which states that the investigation and prosecution shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Finally, the Guidelines for legal support and analysis for investigations related to the offense of transnational bribery issued by the National Prosecutions' Office highlights that the Convention states that the investigation and prosecution of foreign bribery cases shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Anti-money laundering and anti-corruption system in the public services

As a part of the Presidential Anti-corruption Agenda, and in close relation to the OECD recommendations, it was announced that the Administration would develop a preventive anti-money laundering and anti-corruption system in the public services. The objective of this measure was to strengthen the Administration's control and oversight instruments and it would be materialized with the publishing of a Recommendations Guide for the public sector.

In order to implement this measure, the Ministry of Finance issued Official Letter No. 20 on May 15, 2015, providing general orientations for the public sector in relation to paragraph six of Article 3 of Law No. 19,913, which establishes that the superintendences and other public services and bodies are required to report any suspicious operations that they note in the exercise of their functions to the Financial Analysis Unit - UAF (this provision was recently added by Law No. 20,818 published on February 18, 2015). According to the Official Letter, this new obligation should strengthen the commitment and collaboration of the public bodies with the highest standards of transparency and probity in the State Administration, countering corruption and preventing the commission of offences such as bribery, fiscal fraud and embezzlement of public funds, among others. Each of the public entities now supervised by UAF must designate an official as liaison with UAF and should perform a preventive analysis of all acts, operations or transactions in order to establish which ones should be reported to UAF. Each liaison official must be registered with UAF and file any reports via the UAF website.

In the Official Letter it is also informed that UAF will carry out promotion and training activities permanently, on matters related to the prevention of money laundering and financing of terrorism for the

public sector. Additionally, a “Recommendations guide for the public sector in the implementation of a preventive system against official offences [including bribery], money laundering and financing of terrorism” is attached.

The Council of General Audit of Government (CAIGG) is in charge of overseeing compliance with the orientations of the Official Letter and the recommendations guide. Each internal audit unit should inform the CAIGG on a biannual basis.

The recommendations guide includes the identification of risks in each institution; the implementation of an internal system for preventing money laundering, official offences and financing of terrorism (supervision of detected risks and internal communications); the drafting of a manual for the prevention of such offences; establishing internal mechanisms to ensure an adequate flow and analysis of the information inside the institution; developing monitoring procedures; generating policies and procedures for the detection of suspicious operations (the guide details how to identify a suspicious operation); the installing of internal procedures for reporting suspicious operations; and the adoption of other policies and procedures in order to reinforce an adequate protection of the public institutions, including dissemination of the applicable rules on transparency and probity and the creation of codes of ethics or probity manuals. A self-assessment questionnaire on compliance with the prevention system is annexed to the recommendations guide.

The Official Letter and the recommendations guide can be downloaded at the following url:

<http://www.agendadeprobidad.gob.cl/wp-content/uploads/2015/05/Oficio-Circular-N%C2%B0-20-2015.pdf>

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 4(f)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

- (f) Align the rules for lifting bank secrecy in foreign bribery cases with the rules applicable in domestic bribery cases, tax offences and money laundering; and take measures to ensure that financial institutions provide the required financial information promptly in appropriate cases (Convention, Arts. 5 and 9(3))

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

Strengthening of mechanisms of prevention, detection, control, investigation and judgement of money laundering

Law No. 20,818, enacted on February 18, 2015, strengthens the mechanisms of prevention, detection, control, investigation and judgement of money laundering and includes improvements of the provisions related to the lifting of bank secrecy. It establishes some tax offences as a predicate offence for money laundering (those established in Article 97.4 of the Tax Code).

This Law also brings improvements for obtaining information from financial institutions: prosecutors are now allowed to require information and documents on accounts and operations in relation with persons,

communities, entities or non-legal entities that are subject of an investigation or related to the investigation (thus this is no longer limited to “specific operations”, or only to parties or defendants in the case, and a “direct” relation with the investigation is no longer required, as it was formerly established in the law).

Law No. 20,818 also broadens the scope of entities that are required to report suspicious operations, which now include savings and credit unions, foreign bank representations and securities deposit companies; and superintendencies, ministries, intendencies, governorates, and any other public body or service created for carrying out public functions, including the Office of the General Comptroller of the Republic, the Central Bank, the Armed Forces and the Public Order and Security Forces, Regional Governments, Municipalities and public companies created by law.

Law No. 20,818 can be found at the following url: <http://bcn.cl/1pqws>

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 4(g)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

(g) Align the investigative tools available in investigations of foreign bribery and money laundering, so that special and covert investigative techniques are available in foreign bribery investigations (Convention, Art. 5, Commentary 27)

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

The Final Report of the Presidential Advisory Council Against Conflicts of Interest, Influence Peddling and Corruption, addresses prosecution and sanction of corruption in Chapter I.d. (p. 45-46). It contains the following recommendations:

1. To generate an official statistics system that allows to follow-up the impact of corruption offences;
2. To revise the type, sanctions and statute of limitations related to corruption offences, according to standards and recommendations by international bodies;
3. To homologate the currently existing tools that are used in the investigation of money laundering offences with those destined to investigate corruption;
4. To create a High Complexity Prosecutor’s Office, with the necessary powers and resources for addressing the investigation and prosecution of corruption offences, in the framework of the strengthening of the Public Prosecutor’s Office. [A constitutional reform for the creation of the High Complexity Prosecutor’s Office is currently under discussion in Congress (bulletin No. 9608-07), see <https://www.camara.cl/pley/pdfpley.aspx?prmID=9820&prmTIPO=INICIATIVA>]
5. To strengthen the investigative capacity of the Investigations Police (PDI) in corruption matters, providing it with specialized personnel with exclusive dedication to these matters.

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 4(h)

4. Regarding investigations and prosecutions, the Working Group recommends that Chile:

(h) Take urgent steps to ensure that expertise in corporate investigations, evaluation of offence prevention models, forensic accounting and information technology is available in foreign bribery investigations (Convention, Arts. 2, 5; 2009 Recommendation III. ii)

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

For the purpose of recording and disseminating gained experiences and best practices in the investigations, the Public Prosecutors' Office has published reports on the relevant cases, some of them prepared by the prosecutors handling the cases:

“Criminal liability of legal entities. Deferred prosecution agreement. Industrias Ceresita S.A.”, by Prosecutor Macarena Cañas Aranda (June, 2013). Also published in the Prosecutors Office Law Review (June 2013).¹⁵

“Criminal liability of legal entities. Conviction of Salmenes Colbún Ltd. and Servicios Agrícolas Mecanizados Ltda.” by Prosecutors Patricio Caroca Luengo and Francisco Ávila Calderón (December, 2013). Also published in the Prosecutors Office Law Review (March 2014).¹⁶

“Conviction of Sociedad de Áridos Maggi Limitada through a guilty plea for criminal liability of legal entities”, by Legal Advisor Roberto Morales Peña (December 2014).

In the UNAC Intranet this reports are available internally to the prosecutors handling relevant investigations.

For the purpose of sharing experience, prosecutors act as speakers in training programs and workshops as has been the case in some of those activities mentioned in the response to recommendation 1(a) above and also in the Seminar held in September 2015 regarding corruption at the local level.

Further, within the scope of the APEC Anticorruption and Transparency Working Group, the Public Prosecutor's Office from Chile led a project together with the National Anticorruption Agency from Thailand, with the objective of publishing a handbook with Best Models on Prosecuting Corruption and Money Laundering Cases Using Financial Flow Tracking Techniques and Investigative Intelligence for Effective Conviction and Asset Recovery. The handbook is considered an investigative tool and addresses the following topics:

Basics of any investigation, how to develop a plan, how to organize the resources, identify potential targets, define the scope of the investigation and select the techniques that will be used to potentially prove the allegations (Chapter I).

Coordination, both domestic and international, building cooperative networks, information sharing, especially financial information.

Gathering of peripheral and financial evidence, through open sources techniques, database searches,

¹⁵ Available on: <http://www.fiscaliadechile.cl/Fiscalia/archivo?id=11377&pid=149&tid=1&d=1>

¹⁶ Available on: <http://www.fiscaliadechile.cl/Fiscalia/archivo?id=17271&pid=164&tid=1&d=1>

and digital forensics tools

Practical approach on how to perform human intelligence, specifically the technique of profiling suspects.

Asset recovery process.

Restraining measures encompassing the provisional freezing and seizure of assets, on the different types of restraining orders (person or asset directed), and on obtaining freezing orders from another economy and enforcing foreign restraining orders.

Asset management after seizure according to the type of asset, the powers and duties of the asset manager and best practices for handling practical issues, such as expenses or use of restrained assets.

Methods of confiscation, the different confiscation proceedings, the disposal of confiscated assets, and potential substitutes for confiscation, such as fines and disgorgement of profits.

Best practices related to the repatriation of confiscated assets.

The handbook was developed between 2013 and 2015, and has been published in the APEC website, in the following link: http://publications.apec.org/publication-detail.php?pub_id=1666

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 5

5. Regarding jurisdiction over foreign bribery cases, the Working Group recommends that Chile amend its legislation to clearly provide territorial and nationality jurisdiction to prosecute legal persons for the foreign bribery offence (Convention, Art. 4(4)).

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

Under current legislation, Chile has territorial and nationality jurisdiction to prosecute legal persons for foreign bribery offences.

Pursuant to PC Art. 5, the general rule is territorial jurisdiction. Under Organic Court Code Art. 6 (2) foreign bribery offences committed abroad are subject to Chilean jurisdiction. Thus, nationality jurisdiction is available to prosecute not only natural but also legal persons.

First, the law refers purely to “a Chilean” and “a person ordinarily resident in Chile” and thus see no difference between natural and legal persons. Please take into account that under Art. 54 of the Chilean Civil Code persons may be either natural or legal persons.

In addition, under Chilean law, a legal person could be referred to as “Chilean”. As pointed out by a legal scholar, “our law accepts and have accepted directly the characterization of legal person as either national or foreign, acknowledging the possibility of having nationality.”¹⁷ Art. 121 *et seqq.* of Law Nr. 18 046 rule

¹⁷ Alberto Lyon Puelma, *Personas Jurídicas*, Ediciones Universidad Católica de Chile, 2006, pp. 50-51: “nuestro ordenamiento jurídico acepta y ha aceptado directamente la caracterización de una persona jurídica como nacional o extranjera, con lo cual reconoce la posibilidad de que puedan ostentar una nacionalidad.”

the establishment of an agency of “foreign corporation”. Art. 16 *et seqq.* of the Code of Private International Law expressly characterize legal entities as national or foreign.

On the other hand, under Chilean law, legal entities have “residency”. Legal doctrine highlights that “rules of Art. 59 *et seqq.* of the Civil Code are fully applicable to legal persons”.¹⁸ Under Chilean law, two different terms are used: *domicilio* (formal residence) y *residencia* (natural residence). A person’s formal residence depends on the natural residence, as stated by said Art. 59, which is applicable to legal entities.¹⁹ Furthermore, Art. 142 of Organic Court Code state that if a plaintiff is a legal entity it shall be considered as its formal residence the place where the legal entity is settled.²⁰ Please bear in mind that this provision is part of the same piece of legislation which uses de concept “resident” to establish nationality jurisdiction over foreign bribery offences.

Therefore, Art. 6 (2) of the Chilean Organic Court Code applies both to legal and natural persons and not only to latter.

Additionally, Art. 5 of Law 20 393 states that a legal person may be convicted without the conviction of a natural person (though a court must still conclude that a natural person committed the crime). Under such provision, corporate criminal liability shall be prosecuted even if it has not been possible to “establish the involvement of the individual defendants”. An obstacle to “establish the involvement of the individual defendants” could perfectly be the lack of jurisdiction to prosecute them. Therefore, the provision could be applied in cases such as those arising concerns.

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:

//Translation: "Our legal system has directly accepted the characterization of a legal person, national or foreign, which recognizes the possibility that they may hold a nationality."

¹⁸ Alberto Lyon Puelma, *Personas Jurídicas*, Ediciones Universidad Católica de Chile, 2006, p. 56: “las normas de los arts. 59 y siguiente del Código Civil son íntegramente aplicables a las personas jurídicas”. //Translation: "Rules of the arts. 59 *et seqq.* of the Civil Code are fully applicable to legal persons."

¹⁹ Art. 59. El domicilio consiste en la residencia, acompañada, real o presuntivamente, del ánimo de permanecer en ella.//Translation: The address consists of the residence, accompanied, actual or presumptive, of the intention of remaining there.

²⁰ Art. 142. Cuando el demandado fuere una persona jurídica, se reputará por domicilio, para el objeto de fijar la competencia del juez, el lugar donde tenga su asiento la respectiva corporación o fundación.// Translation: When the defendant is a legal person shall be deemed per household, for the purpose of fixing the jurisdiction of the court, the place where it has its seat the respective corporation or foundation

Text of recommendation 6

6. With regards to statistics, the Working Group recommends that Chile maintain detailed statistics on (i) sanctions imposed against natural and legal persons in domestic and foreign bribery cases; (ii) enforcement of false accounting offences; (iii) format, regularity, audience and impact of its awareness-raising seminars and events (Convention Arts. 3(3), 8; 2009 Recommendation II).

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

9. (i) In regards to statistics on sanctions imposed, please note that UNAC established a data base of foreign bribery cases investigated by the Prosecutors' Office.
10. (ii) Regarding the recommendation to maintain statistics on enforcement of false accounting offenses the Internal Revenue Service maintains an updated series of statistics in relation to different tax crimes, among which false accounting is included, but no specific statistical records of such offence is available.

Periodo 1 de enero de 2014 al 31 de diciembre de 2015

Delito	Tipo Término	Término	Año Término		Total
			2014	2015	
DELITOS QUE CONTEMPLA EL CÓDIGO TRIBUTARIO. ARTS. 97 AL 114	SALIDA JUDICIAL	ACUERDO REPARATORIO	5	3	8
		SENTENCIA DEFINITIVA ABSOLUTORIA	42	10	52
		SENTENCIA DEFINITIVA CONDENATORIA	193	42	235
		SUSPENSION CONDICIONAL DEL PROCEDIMIENTO	21	29	50
DECLARACION MALICIOSA IMPSTOS 97N4(EXCEPTO INC3)COD TRIB	SALIDA JUDICIAL	SENTENCIA DEFINITIVA ABSOLUTORIA	-	1	1
		SENTENCIA DEFINITIVA CONDENATORIA	-	4	4
OBTENCION INDEBIDA DEVOL IMPUESTOS 97 N° 4 INC 3 COD TRIB	SALIDA JUDICIAL	SENTENCIA DEFINITIVA CONDENATORIA	-	217	217
		SUSPENSION CONDICIONAL DEL PROCEDIMIENTO	-	1	1
INFRACCIONES TRIBUTARIAS CONTEMPLADAS EN OTRAS LEYES	SALIDA JUDICIAL	SENTENCIA DEFINITIVA CONDENATORIA	6	5	11
		SUSPENSION CONDICIONAL DEL PROCEDIMIENTO	4	-	4
Total			271	312	583

11. (iii) Please see answer to recommendation 1 (a) above in regards to seminars and events. Attached to this report, are the list of attendees to: training sessions related to the Convention, held for foreign service personnel of the Ministry of Foreign Affairs; and a lists of attendees to the diffusion and training activities undertaken by the General Comptroller of the Republic.

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 7(a)

7. With regards to money laundering, the Working Group recommends that Chile:

- (a) Take appropriate measures to enforce the money laundering offence more effectively in connection with foreign bribery cases, and ensure that its law provides that an individual is simultaneously convicted of money laundering and foreign bribery where appropriate

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

In 2009 Law N°20,341 was published modifying the Chilean Penal Code by incorporating in article 251 the foreign bribery of public official. This crime is in the 9th paragraph, of the V book of the Penal Code.

Law 19,913, regarding the “Establishment of the Financial Analysis Unit and Amendment of Several Provisions on Money Laundering”, states in its Article 27 the money laundering conduct that is punishable, independently from its predicate offence. Article 27 specifically includes paragraph 9 bis from title V of book two of the Chilean Penal Code, as a predicate offence. Therefore, an individual may be convicted simultaneously for money laundering and for foreign bribery, where appropriate.

Relevant amendments of Law 19,913, introduced by Law 20,818 in February 2015, include the following:

12. 1. Destination of seized or confiscated assets in the course of ML investigations, to the criminal prosecution of said offences. (Article 36)
13. 2. Seizure of assets of equivalent value (regarding precautionary measures related to assets belonging to the defendant and not necessarily direct product of the ML offence). (Article 37)
14. 3. Empowerment of the Public Prosecution Office to request the lifting of bank secrecy law. (Article 33).

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 7(b)

7. With regards to money laundering, the Working Group recommends that Chile:

- (b) Require appropriate non-financial entities including lawyers, accountants and auditors to report suspected money laundering transactions, develop typologies on money laundering related to foreign bribery, and further encourage reporting entities to make STRs (Convention Art. 7; 2009 Recommendation III. i).

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

Law 19,913, regarding the “Establishment of the Financial Analysis Unit and Amendment of Several Provisions on Money Laundering”, establishes a legal obligation to report suspicious transactions to the Financial Analysis Unit, for all reporting entities. Among these entities, several DNFBP's are included

such as: public notaries, free trade zones, casinos, public auctioneers, hippodromes, real state agencies, customs brokers, public land registrars and sports associations. Noncompliance with the reporting obligation is punishable by law.

Additionally the Financial Analysis Unit elaborates each year a typology report where it analyses convictions of money laundering and its predicate offences.

For further information: http://www.uaf.cl/publicaciones/senales_nac.aspx

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 8(a)(i)

8. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Chile:

- (a) Regarding the false accounting offence, (i) amend its legislation to prohibit both natural and legal persons from engaging in the full range of conduct described in Art. 8(1) of the Convention, and subject such conduct to effective, proportionate and dissuasive sanctions

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

15. 1. The 29th of September of 2014 it was published the Law 20.780 on Tax Reform, which introduce the following legal modification:

- a. Incorporates seven new criminal hypothesis sanctioned as false tax declaration. Modifying the Income Law, entering in force in January of 2017; the Tax Code, entering in force one year after the law publishing; and the N° 828 Decree which establish rules for Tabaco commercialization.
- b. It establishes a general anti-avoidance rule which set a fine to the tax payers who designed or planned the tax avoidance structures.

16. 2. In February the 15th of 2015, the Law N°20.818 enters in force, modifying the Law 19.913 on money laundering, including as predicated crime the false tax declarations.

Regarding this recommendation, it is worthy to mention the sanctions currently established by the Chilean legislation in Article 59 paragraphs a) and d) and Article 60 literal j), both of Law No. 18,045 on Securities Market, since in the report is only mentioned article 59 paragraph a):

Article 59: " The following persons shall suffer penalties of medium-term rigorous imprisonment in the medium degree to long-term rigorous imprisonment in the minimum degree:

a) The persons who maliciously provide false information or certify untrue facts to the SVS, to a stock exchange, or to the public in general, for the purposes of the provisions herein; [...]

d) Accountants and auditors that give false opinions of the financial status of a person subject to mandatory registration pursuant to this law; [...] "

Article 60: The following persons shall suffer penalties of medium-term rigorous imprisonment in any

of its degrees:

j) Persons who deliberately eliminate, alter, modify, conceal or destroy records, documents, digital backup files, or any other information, impeding or hindering supervision from the SVS."

Additionally, the Superintendence of Securities and Insurance, according to Article 27 of its Organic Law (DL. 3.538), has the power to impose administrative sanctions for conduct classified as offenses in those mentioned articles. A concrete evidence of that fact is the sanctions applied by the SVS in the case named La Polar in 2012.

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 8(a)(ii)

8. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Chile:

- (a) Regarding the false accounting offence, [...] (ii) vigorously pursue false accounting cases and take all steps to ensure such cases are investigated and prosecuted where appropriate (Convention, Arts. 3, 5, 8(1); 2009 Recommendation X. A. i.)

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

(ii) The Public Prosecutors' Office is vigorously combating false accounting cases. In some cases even the High Complexity Prosecutors' Units lead directly the investigation and prosecution of these offences.

To further strengthen the investigations, and with the purpose of develop joint actions, if needed, the PPO maintains permanent communication and coordination with all the strategic institutions involved, such as: Internal Tax Service, the Superintendence of Insurance and Securities and the State Defense Council, among others.

Under this approach, alternative resolution mechanisms are restricted by Prosecutors Instruction No. 060/2009. As a result, the conditional suspension of the proceeding (a sort of deferred prosecution agreement) may only be applied if the defendant agrees to pay at least the amount of the fine set up by law.

Also see actions under recommendation 8 (a) above.

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 8(b)(i)

8. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Chile:

- (b) Regarding external auditors, (i) consider requiring “external audit firms” to report crimes to competent authorities;

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

On 2013, General Rule N°275 was amended by General Rule No. 355 of 12.02.2013 in order to require external audit firms to establish and implement internal policies and rules that address any anomaly or felony detected during the audit process and that may compromise the management or accounting of the audited entity. The amendment also requires that those internal rules include mechanism for communicating those situations to the external audit firm partners, the audited entity board of directors, to the Public Ministry and the Securities and Insurance Regulator according to the relevance of the situation.

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 8(b)(ii)

8. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Chile:

- (b) Regarding external auditors, [...] (ii) ensure that auditors who report suspected wrongdoing reasonably and in good faith to competent authorities are protected from legal action

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

No action has been taken in this regard.

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 8(b)(iii)

8. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Chile:

- (b) Regarding external auditors [...] (iii) take steps to encourage external auditors to take greater account of the risks of foreign bribery in the companies that they audit

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

No action has been taken in this regard.

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 8(b)(iv)

8. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Chile:

- (b) Regarding external auditors [...] (iv) improve audit quality standards, including with regard to certification and independence (2009 Recommendation X. B. i, ii, v)

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

At the end of 2009, Law 20.382 was enacted. This law improved operational and quality standards for external auditors by establishing a specific regulation for those entities (registration, independent judgment, incompatibility of services and so on). Also, on 2013 the General Rule N°275 was amended by General Rule No. 355 with the purpose to improve the quality standards for external auditors. The amendments require external audit firms to adopt and implement policies and internal rules for a fit and proper assessment of their audit partners and staff participating in an audit, code of conduct, incompatibilities and internal control rules, among others.

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 9(a)

9. With regards to tax-related measures, the Working Group recommends that Chile:

- (a) Update Circular 56/2007 to refer to PC Art. 251bis and Law 20 393 (2009 Recommendation VIII.i; 2009 Tax Recommendation I.i)

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

The Circular N° 56, of 2007, was modified by Circular N° 28 , from April 25th, 2014, in terms of update the reference to the article of the Criminal Code that penalize as an offense the bribery of foreign public officials.

However, the Internal Revenue Service has informed that is also working in a new Circular about this subject, which will be issued and published no later than April this year.

The new Instruction will define the protocol to be followed by all public officials of the Internal Revenue Service, in case of detection of indications to the occurrence of events that may constitute the crime of bribery of foreign public official. It explains, for better understanding, the nature of this crime, its legal regulation as well as the perpetrator of this conduct, the governing verb and penalty.

Moreover, for tax purposes, it is expressly stated that the gifts of bribery or bribery that may be granted to a foreign public official are not expenditures that can be accepted as deductible expenses to fix the taxable income tax. This because, whatever the circumstances in which it made inconceivable to estimate legally required to turn a business, since any economic activity required for development of illegal or illicit levies, besides constituting an offense pursuant to Article 251 bis of the Penal Code. All of which is provided in Circular N° 56 of November 8, 2007.

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 9(b)

9. With regards to tax-related measures, the Working Group recommends that Chile:

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

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

As an inter-institutional policy, SII and Public Prosecutor's Office, maintain a permanent and fluently communication in diverse matters. However since no conviction on foreign bribery offences has been issued, there has not been a report yet.

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 9(c)

9. With regards to tax-related measures, the Working Group recommends that Chile:

- (c) Incorporate the essential elements of the 2013 OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors into the SII's Standard Plan for Tax Audits, and examine why SII has failed to detect proven cases of bribery (2009 Recommendation III.i, III.iii, VIII.i; 2009 Tax Recommendation II)

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

The Internal Revenue Service consider this recommendation is implemented through the publication of the “2013 OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors” in the intranet of the Service, for the knowledge and application by tax examiners.

link; http://intranet_sii/noticias/2016/280116noti01prb.htm

The screenshot shows the SII Intranet homepage. At the top, there is a navigation bar with icons for SII, a calculator, a question mark, a magnifying glass, and a document. Below this is a menu with buttons for 'ATENCIÓN DE CONTRIBUYENTES', 'APLICACIONES USO INTERNO', 'MI PORTAL', 'INSTRUCCIONES Y MATERIAL DE CONSULTA', and 'PLANIFICACIÓN Y CONTROL DE GESTIÓN'. The main content area is titled 'NOTICIAS INSTITUCIONALES 2016' and features a date 'Santiago 28 enero 2016'. The article headline is 'Disponible Manual OCDE para inspectores fiscales sobre la detección del cohecho'. The article text discusses the OECD Manual for tax inspectors and provides links to the current (2013) and previous (2009) versions. To the right, there is a 'Noticias Anteriores' section with several news items, including regional visits, a director's agreement, a risk management workshop, a scholarship application, and a consultants' forum. A 'Ver más' link is at the bottom of the news section.

Also, the content of the Handbook is considered in the training of new and current SII officials and it is in project its implementation through enforcement programs.

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 9(d)

9. With regards to tax-related measures, the Working Group recommends that Chile:

- (d) Promptly ratify the Convention on Mutual Administrative Assistance in Tax Matters, and consider systematically including the language of Art. 26 of the OECD Model Tax Convention in all future bilateral tax treaties with countries that are not parties to the multilateral Convention (2009

Recommendation VIII. i; 2009 Tax Recommendation I. iii)

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

The Convention on Mutual Administrative Assistance in Tax Matters was ratified by National Congress in late 2015 and Chile has started the process for depositing the instrument of ratification of the Convention before the OECD.

Regarding bilateral tax treaties, confirms that Chile has the language of Article 26 of the OECD Model Tax Convention in its standard model for bilateral tax treaties. In fact, recently signed with China, Argentina, Japan, agreements Italy and Czech Republic include that language.

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 10(a)

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

- (a) Take all necessary measures to ensure that it will not deny MLA in foreign bribery cases on grounds of bank secrecy (Convention, Art. 9(3))

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

Although Chile has a rather succinct legislation governing MLA, article 20 bis of the Chilean Criminal Procedure Code provides that Chilean prosecutors should execute MLA requests according to the domestic legislation, requiring the intervention of the relevant Guarantee Judge, depending on the nature of the measure, being the lifting of bank secrecy one of the measures that require the intervention of the said judge.

It must be pointed out that Chilean legislation does not consider bank secrecy as an obstacle to execute a MLA nor as a cause for denying the assistance required. Also, it must be noted that it has not been the practice of the Chilean authorities involved in International Legal Cooperation to deny MLA's on such basis and there are no records of cases of denial of MLA due to bank secrecy.

If a State party needs to obtain evidence that requires bank secrecy to be lifted, the same rules and procedures apply equally to domestic investigations and MLAs. Thus, if a MLA request provides sufficient evidence for claiming lifting bank secrecy, the Judge has not legal reason to deny the request and the said assistance should be granted.

During the reporting period (2014-2015), no MLAs were received requesting bank secrecy to be lifted in bribery cases. However, on September 2014 an MLA was received, from the authorities of the United States of America requesting, among others, the bank records of several individuals and entities. The request for lifting bank secrecy was granted by the Guarantee Judge (*Juez de Garantía*), on 27th October 2014, on the basis of the MLA, the Inter-American Convention on Mutual Assistance in Criminal Matters and domestic legislation.

In sum, if a foreign authority files a MLA request for evidence that requires bank secrecy to be lifted,

assistance will be given in the terms that stipulate our domestic law (Arts. 9 and 20 bis CPC, Art.154 final par. General Banking Law, Art.331.a Law N°19,913, Art.47.2 Law N°20,000).

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 10(b)

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

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

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

As mentioned before, if a MLA requests for confiscation of property and the proceeds of foreign bribery, the request should be executed according to domestic legislation.

However, there are no current foreign bribery cases on which value based seizing or confiscation has been applied.

It must be noted that on the 18th February 2015, an amendment was enacted on Law N° 19,913 (which created the Financial Analysis Unit and regulates Assets Laundry), that modified, among several provisions, Article 37 by establishing the possibility of seizing or decreeing other precautionary measures on property, up to the value of the proceeds of crime, in the terms and cases the said amendment establishes, including cases where the assets (proceeds or property) originate in an act or crime that took place abroad. Though indirectly, the said provision can be applicable to foreign bribery cases (which jointly involve money laundering, tax crimes or others listed).

Nevertheless, there are no current foreign bribery cases on which value-based seizing or confiscation has been applied.

During 2015, the Republic of Honduras requested the extradition of a Chilean citizen for alleged fraud and money laundering from bribery committed in Honduras, where some assets were acquired in Chile with the proceeds of money laundering. The Supreme Court granted the extradition; however, the Supreme Court judge ordered that the person be tried by a Chilean Court.

The Chilean Court convicted the individual on fraud and money laundering offences and ordered the confiscation of the properties acquired in Chile and Honduras with the proceeds of money laundering, up to the value of the said proceeds. Also, the court ordered the transferring of the relevant amount to the requesting State. This is an on-going court case and the transferring of proceeds is currently pending execution. Yet, this indicates that value-based seizing and confiscation is starting to be used by the Public Prosecutor's Office and that it is expected to be a growing jurisprudence on the matter.

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 11(a)

11. With regards to awareness-raising and reporting, the Working Group recommends that Chile:

- (a) Continue to raise awareness in a more co-ordinated manner, involving all relevant government bodies that interact with Chilean companies which are active in foreign markets, and make greater efforts to raise awareness among enterprises, particularly SMEs (2009 Recommendation III. i)

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

As indicated before, in the context of the work of the UNCAC, a sub-group of institutions carried out a series of workshops titled “Offence Prevention Systems, From Theory to Good Practice” in four cities of the country in late 2015: Valparaíso (October 22nd), Rancagua (November 12th), Puerto Montt (November 19th) and Arica (December 10th). Besides the CGR and UNDP, the sub-group of institutions included Consejo de Defensa del Estado (State Defense Council), Ministerio Público (Public Prosecutor’s Office), the Judiciary –represented by judges from criminal courts- and the Financial Analysis Unit.

Participants included government officials (central and local), and representatives from private companies, trade unions and civil society organizations. The workshops aimed at raising awareness and disseminating knowledge and best practice on integrity in the private sector and more specifically on the implementation of the offence prevention models of Law No. 20,393. Each workshop consisted of a full one-day session.

The Chilean NCP is composed of an Executive Secretary and two Advisory Committees (Civil Society Committee and the Governmental Advisory Committee).

The Executive Secretary assists the NCP in the specific instances and their function is to coordinate activities with the Committees. They also collaborate in promoting the OECD Guidelines for Multinational Enterprises in different events that the NCP organizes with Trade Unions, Enterprises or Academia.

With regards to the Advisory Committees, the Civil Society Committee is composed of: Trade Unions, Non-Governmental Organizations, Enterprises, the National Human Rights Institute and experts in Corporate Social Responsibility. The Governmental Advisory Committee provides expertise and assists substantive and procedural issues regarding the Guidelines. It is composed of governmental agencies, specifically the agencies that have a relationship with the Guidelines. Particularly, in the case of Anti-Bribery Principle, the NCP works directly with the National Prosecutor Office.

In this sense, if the NCP receives a specific instance related to the Anti Bribery Principle, then the NCP will inform the National Prosecutor Office to evaluate a possible existence of a national or international bribery case.

In 2015 the NCP carried out different outreach activities related to the different principles that compose the OECD Guidelines for Multinational Enterprises, one of which is the Anti- Bribery Principle.

Please see awareness-raising actions listed under recommendations 1(a) and 11(b).

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 II(b)(i)

11. With regards to awareness-raising and reporting, the Working Group recommends that Chile:

(b) Regarding reporting, (i) analyse why Chilean overseas missions failed to report foreign bribery allegations and take appropriate remedial action

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

Since the adoption of Chile's report on Phase III, the Ministry of Foreign Affairs establishes that all personnel soon to be positioned in other countries should be trained on the OECD Anti-Bribery Convention and their legal obligation to report this offence in line with the dispositions of the Penal Code and the Administrative Code (legal body that regulates public servants). Two trainings were conducted in the 2014-2015 period.

Additionally, the Ministry of Foreign Affairs establishes that all Chilean Embassies and Consulates should periodically receive an official message from Capital raising awareness about the Convention and all public servants obligation to report this offence. These messages are accompanied with instructions for the Chief of Mission to circulate this document to all the personnel. The official message is accompanied by the Convention; a "How to Report" Manual and the power point presentation used in trainings in Santiago.

Please see attached the list of participants to these trainings (2014-2015), the official instruction message and the material circulated with it.

Further, since Chile's 2014 report the DIRECON's OECD Department has undertaken the following diffusion activities:

Date: July 28, 2014

Venue: General Directorate for International Economic Relations

Attendees Organizations: President and Head of Corporate Affairs

Purpose of Meeting: Discussion about the role of the Chilean National Contact Point for the OECD Guidelines for Multinational Enterprises, Chapter VII: "Fight against corruption, requests for bribery and other forms of extortion" and the OECD Convention on Combating Bribery to Public Officials in International Business Transactions.

Date: August 1, 2014

Venue: Dependencies "Pacto Global Chile"

Attendees Organizations: Associated Business Directory "Pacto Global Chile"

Purpose of Meeting: Presentations on the OECD Guidelines for Multinational Enterprises; the role and functioning of Chile's National Contact Point, and the OECD Convention on Combating Bribery of Public Officials in International Business Transactions.

Date: October 17, 2014

Venue: Acción RSE Foundation

Attendees Organizations: Executives of Multinational Enterprises associated with Acción RSE Foundation

(ACHS, AENORCHILE, Aguas Andinas, AngloAmerican, AquaChile, Aramark, among others)

Purpose of Meeting: Training on the OECD Guidelines for Multinational Enterprises and the role and functioning of Chile's National Contact Point to Action CSR Directory - OECD Convention on Combating Bribery of Public Officials in International Business Transactions.

Date: November 20, 2014

Venue: Confederación de la Producción y el Comercio" (CPC)

Attendees Organizations: Companies associated with the CPC

Purpose of Meeting: Training on the OECD Guidelines for Multinational Enterprises and the role and functioning of Chile's National Contact Point - OECD Convention on Combating Bribery of Public Officials in International Business Transactions.

Date: November 26, 2014

Venue: "Corporación de Fomento a la Producción" (CORFO)

Attendees Organizations: Chilean SMEs

Purpose of Meeting: Training on the OECD Guidelines for Multinational Enterprises and specifically Chapter VII "Fight against corruption, requests for bribery and other forms of extortion" and the OECD Convention on Combating Bribery of Public Officials in Business Transactions international.

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 11(b)(ii)

11. With regards to awareness-raising and reporting, the Working Group recommends that Chile:

(b) Regarding reporting, [...] (ii) enforce the obligation on public officials to report suspicions of crimes (2009 Recommendation IX. ii)

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

Since February 2015, an important amendment to Law 19.913 (regarding the "Establishment of the Financial Analysis Unit and Amendment of Several Provisions on Money Laundering") came in force. One of the main issues was the inclusion of public officials as reporting entities. Thus, public officials are now legally compelled to report suspicious transactions regarding money laundering and terrorism financing to the Financial Analysis Unit.

Furthermore, the Ministry of Finance issued in May 2015, a general instruction in order to implement such obligation amongst public officials. For further information please see actions under Recommendation 4(e) above.

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 II(c)

11. With regards to awareness-raising and reporting, the Working Group recommends that Chile:

- (c) Enhance and promote the protection from discriminatory or disciplinary action of public and private sector employees who report in good faith and on reasonable grounds to competent authorities suspected acts of foreign bribery (2009 Recommendation IX. iii)

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

Amendments to whistleblower protection provisions

As a part of the Presidential Anti-corruption Agenda, a bill of law was sent to National Congress for preventing and sanctioning conflicts of interests and amending rules on inabilities and incompatibilities for the exercise of public functions (bulletin No. 10.140-07, entered Congress on July 25, 2015). The proposed legislation amends the current provisions on whistleblower protection of the Administrative Statute and the Administrative Statute for Municipal Officials. In line with the Office of the General Comptroller of the Republic suggestions, these amendments seeks to include various categories of officials that were not covered by the protections, including those hired by fee contracts or under the Labor Code (as opposed to the Administrative Statute), officials hired on the basis of trust (political appointees) and officials of the police force (Carabineros). On the other hand, there is currently no protection for the reporting official if the report is considered as not being supported by sufficient grounds or if it has not been made immediately, among other hypotheses.

The proposed legislation amends Article 61 k) of the Administrative Statute in order to keep confidentiality on the identity of the reporting person even in the case where he/she has not requested such confidentiality. Additionally, Article 90 A is amended so that a) the reporting person is no longer unprotected if he/she reports to other authorities and b) the scope of persons that can make the reports is broadened, covering any person that performs a public function, regardless of the legal nature of his/her affiliation with the Administration.

The proposed legislation can be found at the following url:

<https://www.camara.cl/pley/pdfpley.aspx?prmID=10361&prmTIPO=INICIATIVA>

The Executive has subjected this Bill of Law to urgent discussion before National Congress. Thus, the Bill should be approved during 2016.

Further to these efforts, the CGR has implemented an online platform named “Comptroller and Citizen”, in which any person can submit reports or suggestions for oversight of the activity of state administration bodies. Through this platform citizens may confidentially submit a “report” to inform the Comptroller General of specific acts related to a possible irregular situations committed by public officials or an agency subject to oversight by the Comptroller. As of its launching in September 2012 and until December 2014, 6,724 citizen requests had been received and led to 3,712 control activities.

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 12(a)

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

- (a) Ensure that all government procuring agencies verify whether an individual or company has been convicted of foreign bribery before granting a procurement contract, and consider routinely checking debarment lists of multilateral development banks in relation to public procurement contracting (Convention Art. 3(4); 2009 Recommendation XI. i)

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

The only procedure that concerns ChileCompra, in regards to the application of sanctions to companies that are convicted for the crime of bribery of foreign officials, is related to the registration of the penalty of "temporary or perpetual prohibition to celebrate acts and contracts with state bodies" (Articles 8, No. 2, and 10 of Law N° 20,393, about criminal liability of legal persons). Additionally, to achieve the established in Article 10 of Law N° 20,393, ChileCompra manages a special register of convicted companies, allowing each public service to find if the supplier is convicted for a crime deserving the punishment referred (including bribery of foreign officials). At the date of this document, there are two companies convicted of the penalty of art. 10 law N° 20,393, for the transgression of its duties of direction and supervision of art. 1, 3 and 4 Law 20,393 (Sociedad Áridos Maggi Limitada) and a second one for committed the offense of bribery accomplished in their mode of bribery, under prescribed by Articles 10 and 30 Law N° 20,393, both with regard to Article 250 of the Penal Code and also related to Article 248 bis of the same law. (Constructora Pehuenche Limitada).

The aforementioned special register is available at <http://www.chileproveedores.cl/chprovdnn/Portals/0/Documentos/Registro%20Proveedores%20con%20Sentencias%20Ley%2020393.xlsx>

However, it is stated that the aforementioned providers have not been convicted by reason of the provisions of paragraph 9a of Title V of Book II of the Penal Code concerning bribery of foreign public official.

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 12(b)

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

- (b) Adhere to the 2006 Recommendation on Bribery and Officially Supported Export Credits if and when it provides officially supported export credits (2009 Recommendation III.i, IX.i, XII; 2006 Export Credit Recommendation)

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

Although Chile has not adhered to the “Council Recommendation on Bribery and Officially Supported Export Credits” of 2006, considering that CORFO does not grant export credits, work has been developed to make progress in the following matters:

1) In November 2014, a workshop, directed at exporters, took place, in collaboration with DIRECON, in terms of explaining the "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", the legal consequences of bribery, the responsibility of the so called legal person and the penalties resulting from failure to comply with the Convention.

2) Additionally CORFO is working on a modification of its foreign trade guarantees program (COBEX) in order to incorporate a statement from exporters who wish to access the program, which states that neither they nor anyone acting on their behalf, such as agents, have been engaged or will engage in actions or omissions that involve bribery in the transaction.

3) On the other hand, financial intermediaries operating in the COBEX program will be prompted to verify if exporters are listed on the publicly available debarment lists of the following international financial institutions: World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank (available at <http://www.oecd.org/trade/xcred/debarment-list.htm>).

4) Finally, the Investment and Financing Division of CORFO has incorporated and will continue to do so, in its different programs, regulations and procedures related to the prevention of money laundering, drug trafficking, financing of terrorism and bribery.

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: FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up 13(a)

13. The Working Group will follow up the issues below as case law and practice develop:

(a) The foreign bribery offence, particularly (i) coverage of bribes to induce an official to perform his/her duty; (ii) coverage of bribery by a company that was the best qualified bidder or otherwise could properly have been awarded the business; (iii) whether the definition of a foreign public official is interpreted as autonomous; and (iv) whether the prevalence of bribery in a foreign jurisdiction can constitute a defence or mitigating factor (Convention, Art. 1, Commentaries 3, 4 and 7; 2009 Recommendation III.ii)

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

There are no developments to report.

Text of issue for follow-up 13(b)

13. The Working Group will follow-up the issues below as case law and practice develops:

(b) Law 20 393, particularly (i) the interpretation of the term “directly and immediately” in the interest or for the benefit of the legal person and (ii) the application of the offence prevention model defence by Chilean courts, including the burden of proof (Convention, Art. 2; 2009 Recommendation Annex I.B and I.C, and Annex II)

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

There are no developments to report.

Text of issue for follow-up 13(c)

13. The Working Group will follow-up the issues below as case law and practice develops:

(c) Sanctions against natural and legal persons (Convention, Art. 3(1))

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:

In relation to foreign bribery, one case have resulted in sanctions:

17. 1) The *Cement Bolivian Case* was resolved through a “conditional suspension of proceedings”. The defendant agreed to two conditions in relation to the legal entities, including a donation of computer equipment value CLP 10 million (approximately USD 13,500) to an educational centre, and the implementation of an offence prevention model.
18. In regard to the natural person, the defendant agreed to two conditions, including a donation of CLP 1 million (approximately USD 1,300) to “Fundación Santa Clara”, and the obligation to set up fixed place of residence and inform of any changes thereof before the Public Prosecutors Office.

Additionally, four cases, related to DOMESTIC bribery have resulted in sanctions upon legal entities:

19. 2) In *Salmones Colbún Case* two companies were each sentenced to fines of 500 UTM (CLP 20 million or USD 37 000) and publication of the judgment. The companies also lost 40% of fiscal benefits for three years and their water use permit. The convictions also resulted in automatic debarment from public procurement contracts.
20. 3) *Ceresita Case* was resolved through a “conditional suspension of proceedings”. The defendant agreed to ten conditions, including a donation of land to the government, construction of a recreational park and implementation of an offence prevention model. The economic value of settlement reaches approximately USD 2.5 million.
21. 4) In *Aridos Maggi Case* a legal entity was sentenced to a two-year temporary debarment from entering into contracts with State agencies and to a two-year loss of fiscal benefits. In addition, the publication of the judgment was ordered.
22. 5) In *Pehuenche Case* a legal entity was sentenced to fines of 680 UTM (CLP 30 million or USD 41,000) and publication of the judgment. The company also was sentenced to a four-year temporary debarment from entering into contracts with State agencies.

Text of issue for follow-up 13(d)

13. The Working Group will follow-up the issues below as case law and practice develops:

(d) Application of conditional suspensions and expedited procedures (Convention, Art. 5; 2009 Recommendation V)

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:

Please see answer 13 (c) above.

Text of issue for follow-up 13(e)

13. The Working Group will follow-up the issues below as case law and practice develops:

(e) The Convention as a basis for MLA for confiscation (Convention, Arts. 3(3) and 9)

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:

Over the years, six MLA requests using the Convention as legal basis have been addressed by Chilean authorities to foreign counterparts. These requests have been addressed to Argentina (2), Korea (1), Cuba (1), the U.S. (1) and the Netherlands (1). They have been issued on the Travel Company, Airlines and Military Equipment Cases, referred bellow.

Also see answer 10(b).

For the reporting period, there are no records of in—coming MLA requests for confiscation filed on the basis of the Convention.

The assistance requested in the few in-coming MLAs from bribery recorded, for the period, by the PPO regarding service and summons.

Nevertheless, as confiscation is a measure that has been successfully executed by Chilean authorities in MLA requests related to money or assets laundry, it is expected that practice will derived in the use of the Convention as basis for confiscation.

Text of issue for follow-up 13(f)

13. The Working Group will follow-up the issues below as case law and practice develops:

(f) AGCI engagement with the private sector in future development projects, and its measures relating to prevention, detection, reporting and debarment (2009 Recommendation XI. ii)

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

In order to fulfill this recommendation, in 2008 AGCID introduce a new clause to all of its contracts, with private or public's counterparts. This clause state that:

“Without prejudice to rules contained in annexes and other documents that are a part of this instrument, the parties declare that any action that qualifies as bribery or constitutes passive or active corruption, whether its internal or carried out outside the country, committed by any official or employee entrusted or involved in the execution or materialization of the present agreement or contract, performed in regard to foreign or national public officials, will therefore put an end to the present agreement or contract, forfeiting the right to settlement of any kind and impeding the signature of new agreements or contracts that represent or materialize future cooperation with the parties involved. In relation to this, the “Anticorruption proposals for Bilateral Aid Procurement”, adopted by the Development Assistance Committee of the OECD, in the 6th and 7th of May sessions, 1996, will be applicable.

With this contract clause, the Agency improves their capacity to prevent foreign bribery and establishes debarment. However, in the reporting period AGCID has not entered into contract with private sector entities regarding development projects.

PART III: FOREIGN BRIBERY INVESTIGATIONS AND PROSECUTIONS

a) Cases Referred to in the Phase 3 Report

<i>Case #1 – Government Vehicles (Peru) Case</i>
<i>Status of investigation/prosecution</i> There has not been further action to inform.

<i>Case #2 – Travel Company (Cuba) Case</i>
<i>Status of investigation/prosecution</i> There has not been further action to inform.

<i>Case #3 – Pasta Company (Peru) Case</i>
<i>Status of investigation/prosecution</i> There has not been further action to inform.

<i>Case #4 – Airlines (Argentina) Case</i>
<i>Status of investigation/prosecution</i> The case is currently on going and under investigation. Various investigative measures were instructed during 2014 and 2015 by the Regional Prosecutor, Andres Montes. Statements were made by all former members of the board of directors of the company and by almost all its managers related to the case. One MLA request was sent to the USA requesting for information regarding this case, whose answer was received, which contained important information (such as e-mails) Another MLA request was sent to Argentina, which has not been answered yet.

Case #5 – Cement (Bolivia) Case

Status of investigation/prosecution

During 2014 and 2015, the Regional Prosecutor in charge of the case, Andres Montes, instructed numerous investigative measures. Statements were made by all former members of the board of directors of the company, by all its managers related to the case, and also by other members of the company, E-mails of the subject under investigation were reviewed.

Also, Chile received the Bolivian answer to the prior MLA request.

With this information, the prosecutor could formalize the investigation in regards to one manager of the company and also in regards to the company, as a legal entity.

After that, the defendants were offered a “Suspensión condicional del procedimiento” (“conditional suspension of proceedings”), that was executed public in hearings during October and November 2015. See more details in 13 (c).

Case #6 – Military Equipment (Korea) Case

Status of investigation/prosecution

The case is currently on going, the investigation was formalized, and, the PPO closed the investigation stage, by indictment of the natural persons. On January 22, 2016, starts a sort of preliminary hearing will take place whose purpose is preparing the oral trial.

The following stage should be the oral trial hearing, unless the defendant accept the facts of the indictment or accusation in order to proceed under the abbreviate procedure.

Case #7 – Airport (Venezuela) Case

Status of investigation/prosecution

b) Cases Referred to in the WGB Matrix

University (Panama) Case

Status of investigation/prosecution

This case emerged in a domestic bribery investigation trough a report produced by Financial Intelligence Unit. The case is currently on going and under investigation.

One MLA to Panamá is in process.

c) Additional Foreign Bribery Enforcement Actions

[Case Name]

Status of investigation/prosecution

LIST OF ANNEXES

1. Prosecutor Instruction No. 699/2014: “General Performance Criteria for Corruption Crimes”
2. Guidelines for Legal Support and Analysis for Investigations related to Foreign Bribery (October 2014)
3. Guidelines for Best Practices on Investigation of Criminal Liability of Legal Persons (December 2014)
4. Public Prosecutor’s Office, Official Letter FN No. 440/2010: “Act No. 20,393, establishing criminal liability of legal entities in crimes of money laundering, financing of terrorism and bribery as indicated”
5. Ministry of Foreign Affairs Email No. 2520 of 9 December 2014: “International Anti-Corruption Day”
6. Ministry of Foreign Affairs Email No. 2659 of 7 December 2015: “International Anti-Corruption Day”
7. Ministry of Foreign Affairs, Orden de Servicio Digad No. 430 of 8 July 2014
8. Internal Revenue Service (*Servicio de Impuestos Internos*, SII), Official Order No. 303 of 5 February 2016 “OECD Phase 3 Evaluation of Chile Monitoring Report”
9. Securities and Insurance Superintendence (SVS) Official Order 2456 dated 6 November 2015
10. Law 20 382/2009 on “Improvements to Regulations Governing Corporate Governance”
11. Securities and Insurance Superintendence (SVS) Official Order 275/2010 on External Auditors
12. Securities and Insurance Superintendence (SVS) Official Order 275/2015 on Dissemination of Information on Corporate Governance Practices