COUNTRY COMPARATIVE GUIDES 2023

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## Chile

# WHITE COLLAR CRIME


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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Chile.

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# CHILE
# WHITE COLLAR CRIME

## 1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

Regarding the criminal liability of individuals linked to a company, the main offenses contemplated by the Criminal Code are fraud, i.e., the harmful disposition of assets caused by deception, and disloyal management. The Code also punishes other conducts related to business activity, such as bribery of public officials, forgery of public and private instruments, simulation of contracts, commercial bribery, unlawful negotiation, misappropriation, punishable insolvencies, and extortion.

Other conducts are punished within special regulations, for example, money laundering (Law No. 19,913), tax crimes (Tax Code), stock market manipulation (Law No. 18,045), abuse of insider information (Law No. 18,045), computer crimes (Law No. 21,459), customs crimes (Law No. 20,780) and collusion (Law Decree No. 211).

On the other hand, with respect to the criminal liability of legal entities, Law No. 20,393 establishes a list of crimes for which a company can be held criminally liable, which has been extended several times. To date, companies are criminally liable for the following crimes: bribery, money laundering, financing of terrorism, receipt of stolen goods, disloyal management, commercial bribery, unlawful negotiation, misappropriation, instructing a worker to attend the workplace during quarantine, and certain conducts that are related to arms trafficking, water pollution and illegal fishing activities. Nonetheless, this list is permanently under review, and it tends to increase.

As a good example of that, Bill No. 13205-07 on economic crimes is about to be approved by the Constitutional Court and it will introduce profound changes into Law No. 20,393, generating effects with respect to the responsibility of legal entities. According to this Bill companies will be criminally liable for every "economic crime" listed in it, which translates into more than 200 offenses, exponentially expanding the list of imputable offenses. Amongst them, we highlight fraud, collusion, corruption between individuals, crimes related to insolvency, and environmental crimes created by the same Bill.

According to Law No. 20,393, the Public Prosecutor's Office may seek both the individual liability of the persons who performed the conduct and the criminal liability of the company. In any case, managers are not necessarily criminally liable for the mere fact that the company is convicted of the crime.

## 2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Since the enactment of Law No. 20,393, legal entities may be investigated by the Public Prosecutor's Office and be criminally sanctioned in cases where:

- the illegal conduct consists of the specific crimes defined by law,
- the illegal act is carried out by an owner, controller, representative, key officer or any person conducting managerial or supervisory functions in the company or by individuals working under the direct supervision of any of the aforementioned person,
- the act has been performed for the direct benefit or interests of the company, and
- the behavior of the agent or representative occurred because of a defect or failure in the company's mechanisms of control and supervision.

As we mentioned above, once Bill No. 13205-07 is approved, responsibility of legal entities will change. In this regard, the responsibility of legal entities will be expanded to cases where:

- the illegal conduct consists of the specific crimes defined by law, which are relevantly

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expanded,
- the illegal act is carried out by a person who holds a charge, function or position in the legal entity; a person who provides services to the company managing their affairs before third parties, with or without representation; a person related in the previous terms with a different legal entity, that provides services to the company managing their affairs before third parties, with or without representation or that lacks operational autonomy with regard to it, when there are ownership or participation relationships between them,
- the act has not been exclusively committed against the legal entity, and
- the perpetration of the criminal act was favored or facilitated by the lack of effective implementation of a suitable crime prevention model by the legal entity.

## 3. What are the commonly prosecuted offences personally applicable to company directors and officers?

In the last few years company directors and officers have been prosecuted, mostly, for fraud, misappropriation, disloyal management, crimes related to bribery of public officials and tax evasion related crimes.

## 4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

There are no specialized prosecuting organs for white-collar crimes. However, the Public Prosecutor's Office has attorneys specialized in the prosecution of certain types of crimes, including prosecutors dedicated to investigating economic crimes. In addition, the Public Prosecutor's Office has certain specialized units, which advise the National Public Prosecutor's Office, the different Regional Public Prosecutor's Offices, and collaborate with specialized prosecutors who handle the investigation of crimes within their jurisdiction. One of these units is the Specialized Unit on Money Laundering, Economic Crime and Organized Crime ("Unidad Especializada en Lavado de Dinero, Delitos Económicos y Crimen Organizado", ULDDECO for its Spanish acronym). Moreover, there are specialized police squads in charge of carrying out the investigations requested by the Public Prosecutor's Office, such as the Economic Crimes Brigade (Brigada Investigadora de Delitos Económicos; "BRIDEC") and the Money Laundering Investigative Brigade (Brigada Investigadora de Lavado de Activos; "BRILAC").

## 5. Which courts hear cases of financial crime? Are trials held by jury?

There are no specialized courts for white-collar crimes either. This type of crime is subjected to the ordinary criminal system, which does not contemplate trials by jury.

Our criminal system considers the potential intervention of two judicial authorities, which are in charge of ruling the case: "Juzgado de Garantía", which safeguards the rights of the interveners during the investigation and rules on some specific procedures, and the "Tribunal de Juicio Oral en lo Penal", a collegiate tribunal made up of three judges in charge of ruling on oral trials.

## 6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

There are three ways in which an investigation can be initiated: a report, a criminal complaint or ex officio. Once the investigation is ongoing, it is common for the Public Prosecutor's Office to order the Investigative Police, through its Economic Crime Brigade, to investigate, through specific or generic orders regarding the proceedings, which include requesting information from public organs or private entities or individuals, taking statements, asking for experts' reports, etc.

When the proceedings entail the affectation of the rights of the defendant or a third party, the prosecutor needs a judge's approval to carry it out, as is the case of raids, wiretapping or the compulsory production of some private documents, amongst others. In the exceptional case that the knowledge of the defendant about the implementation of the diligence endangers its execution, the prosecution can ask for it to be decreed without informing the defendant.

In cases of in flagrante delicto, the police is authorized, under certain circumstances, to conduct raids, seize documents, etc. without the need of a judicial clearance.

## 7. What powers do the authorities have to conduct interviews?

The Criminal Procedure Code authorizes the Public Prosecutor's Office to subpoena any person who they may deem necessary to take their statement. However, there are some circumstances that require the authorization of the judge, such as compulsory subpoenas and the subpoena of some public and army

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authorities, diplomats, and people in grave health conditions.

The prosecutor can delegate the faculty to take the statement on the Investigative Police, which is the most common situation during the development of the investigation.

### 8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

The defendant in a criminal investigation is entitled to have access to the file and to be represented by an attorney since the first step in the proceedings. Therefore, with very few exceptions, in practice the interview of a defendant represented by a competent attorney will have knowledge of the content of the file prior to being interviewed.

The Public Prosecutor's Office or the Investigative Police official that issues the subpoena must indicate whether the individual is called as defendant or as a witness. In either case, there is an obligation to appear and provide the information requested. In the scenario that the subpoenaed individual does not appear, the prosecutor can request a compulsory judicial order.

If the Investigative Police issues a subpoena not by express order of the prosecutor, there is no obligation to attend nor give a statement upon attendance. In this case the subpoena is considered as an "invitation".

All interviews are transcribed, and the interviewee must sign the transcription. Interviewees have the right to request as many corrections as they deem necessary before signing.

In the case of the defendant, there is an absolute right to remain silent. In the case of witnesses, there is a right to remain silent when answering the question asked exposes them, or one of the relatives that the law indicates, to criminal prosecution. There are also some individuals outside the legal field that, because of their profession or role, can invoke their duty to secrecy as an excuse to answer the question asked, e.g., medical professionals and confessors.

In the case of the defendant there is a right to be informed about the fact underlying the investigation and attend to the interview with their attorney.

Finally, even though it exceeds the topic discussed in this presentation, it is important to consider Law No. 21,523, which enshrines new rights for victims in cases of crimes involving violence against women. Amongst them, we find the right to have their interview take place as soon as possible by trained staff from "Carabineros de Chile", Chilean Investigative Police ("Policía de Investigaciones de Chile") or the Public Prosecutor's Office.

### 9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

There are no special regulations regarding financial crimes in this aspect. In principle, only crimes committed in Chile can be prosecuted before Chilean courts. There are only a few exceptions to this. The extra-territorial reach of Chilean criminal law is specifically regulated in the Code of Organization of Courts ("Código Orgánico de Tribunales"). Instances include crimes committed abroad by Chileans against Chileans if the offender returns to Chile without having been prosecuted abroad; cases where bribes are accepted by Chilean public officials abroad or the bribery of a foreign public official committed by a Chilean.

In addition, most of Chilean legal literature and jurisprudence understands that the Chilean state can prosecute crimes if the execution of a criminal act begins in Chile, even though its effects are felt in another country, or if the execution of a crime begins abroad, but the consequences are felt in Chile.

Transnational co-operation is carried out by the National Prosecutor and the competent courts, which request and provide information to foreign prosecutors, through various international treaties and co-operation agreements.

Within the Public Prosecutor's Office, the International Cooperation and Extraditions Unit ("Unidad de Cooperación Internacional y Extradiciones"; "UCIEX") is the unit in charge of international relations. UCIEX supports investigations and prosecutions of crimes whose scope extends beyond the national territory and all those in which prosecutors require the co-operation of other states, of an international organisation or that require an extradition procedure. UCIEX is responsible for carrying out the various international co-operation agreements signed by Chile, such as the Convention against Organized Crime of the United Nations and extradition treaties with several countries, including the

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United States and the United Kingdom. Most recently, Chile and Brazil signed an inter-institutional co-operation agreement on issues of transparency, integrity and anti-corruption experiences.

## 10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

UCIEX is the Public Prosecutor's Office specialized unit to execute requests for international cooperation. The arrangements will depend on the international treaties of which the countries are signatories, some of which turn international proceedings more expeditious. For example, Chile ratified the Inter-American Convention on Mutual Assistance in Criminal Matters ("Convención Interamericana Sobre Asistencia Mutua en Materia Penal"), which consecrates ways in which signatories can collaborate with investigations, trials, and proceedings when another state asks.

There are also initiatives being taken directly by the Prosecutors Office, such as the active participation in the Iberoamerican Association of Public Prosecutors Offices ("Asociación Iberoamericana de Ministerios Públicos", "AIAMP"), which entails the Agreement of Interinstitutional Cooperation between Public Prosecution Offices and Public Prosecutors members of the AIAMP.

## 11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

The Criminal Procedure Code protects attorney-client confidentiality, which includes the right to secrecy and the protection of attorney-client communications. The only exception to this well-established statute is the case in which the attorney is also being prosecuted, as author or accomplice of some sort.

## 12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

Unless there is a judicial order, companies and individuals can withhold the documents being requested by the prosecution. Also, there are certain limits to the exhibition of accounting books or bank statements: there must always be a justified period for which the information is requested.

On the other hand, Bill No. 15975-25, seeks to strengthen the financial intelligence system and intersectoral coordination. To do so, it gives greater powers to certain institutions, enabling the National Customs Service ("Servicio Nacional de Aduanas"), the Internal Revenue Service ("Servicio de Impuestos Internos"), the Superintendency of Casinos ("Superintendencia de Casinos y Juegos"), the Financial Market Commission ("Comisión para el Mercado Financiero") and the General Treasury of the Republic ("Tesorería General de la República") to exchange any information that is necessary and conducive to the fulfilment of their functions, even when that information is secret or reserved. In this later case, that information will maintain said character without prejudice to its transfer or exchange. This Bill is currently under discussion at the congress.

## 13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

In the case of a reorganization, merger, acquisition, division, or dissolution of a company where one of the sanctioned crimes was committed, Law No. 20,393 provides that the responsibility for such acts is transmitted to the successor.

## 14. What factors must prosecuting authorities consider when deciding whether to charge?

There is no legal standard or requirement that the prosecutor must meet to charge or indict when formally communicating the defendant, in front of a judge, that there is an ongoing investigation against him ("formalización de la investigación").

In practice, the decision mostly depends on the need to produce certain effects on the procedure, such as the suspension of the time of the statute of limitation, or the need to request ulterior acts, such as reparatory agreements, deferred prosecution agreements or precautionary measures.

In the case of precautionary measures there is a legal standard to be met: the existence of background information that justifies the existence of the investigated crime and the existence of background information that allows to justifiably presume that the defendant has had participation in the crime as an author or an accessory.

With respect to the accusation, i.e. the decision to go to

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the trial stage, it depends, pragmatically, on whether the prosecution considers to be able to obtain a conviction beyond reasonable doubt and the prognosis of whether it is likely that a conviction to an effective prison sanction will be reached.

## 15. What is the evidential standard required to secure conviction?

The standard required by the court to convict corresponds to beyond reasonable doubt.

## 16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

Under Chilean criminal law, limitation periods are established in consideration of the nature of the criminal offence. Crimes ("crímenes") have a limitation period of 15 years in cases where the law imposes a penalty of life imprisonment, or ten years in the other cases; misdemeanours ("simples delitos") are limited to five years; and in the case of offences ("faltas"), six months. The limitation period is suspended once a criminal procedure is directed against the defendant.

This term is counted from the day on which the criminal offence was committed. If the offence consists of a continuing act, the limitation period starts to run once the defendant performs the last action.

If the defendant commits another offence in the intermediate time, the limitation period interrupts, and the term is counted from the later crime or misdemeanour.

If the accused leaves the country at any time during the limitation period, the limitation period runs at half the speed, i.e. two days abroad count as one for the purposes of calculating the limitation period.

There are some crimes that, as an exception, are not subjected to the statute of limitations. Such is the case, for example, of sexual crimes against minors.

## 17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

There are two main mechanisms used to resolve financial crimes avoiding a trial: deferred prosecution arrangements and reparatory arrangements.

Deferred prosecution agreements are a usual way to finalize a criminal investigation avoiding trial. Usually, the prosecution will impose conditions to repair or compensate the crime committed, which can be varied in their nature, for example, compensation for the victim, a fine greater than the amount of the prosecuted tax evasion, the implementation of a compliance regime within the company, the implementation of programmes in benefit of a community, etc. In any case, it will depend on the nature of the case and the Public Prosecutor's Office criteria.

In the case of reparatory arrangements, they entail an agreement between the plaintiff and the defendant consisting of the payment of a sum of money by the defendant to the plaintiff to end the case without the need for a trial. As a result, the defendant will not be found guilty of the crime. In this scenario, if an agreement is reached, the action is dropped, and the procedure is finalized with the verification of its compliance. However, reparatory arrangements are available only in cases in which patrimonial damage was produced as a consequence of the illegal action.

## 18. Is there a mechanism for plea bargaining?

In the case of an abbreviated procedure ("procedimiento abreviado") defendants may voluntarily acknowledge charges in exchange for a conviction on reduced charges or penalties, or in exchange for an agreed-upon sentence. This is the Chilean equivalent to a plea bargain, although with some distinctions.

To this end, the accused must accept the facts of the charges and the background information on which they are based. In that sense, this is not a guilty plea, but rather a plea accepting the facts as true. This is only possible if the penalty requested by the Public Prosecutor's Office does not exceed five years of imprisonment, although there are certain crimes in which an abbreviated procedure is allowed even though the penalty requested is higher.

## 19. Is there any requirement or benefit to a corporate for voluntary disclosure to a prosecuting authority? Is there any

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## guidance?

The Criminal Code considers as a mitigating circumstance for individuals the substantial collaboration with the clarification of the facts, which is reiterated by Law No. 20,393 in article 6 for legal entities. This mitigating circumstance can also be found as a special circumstance with heightened effect in article 260 quáter of the Criminal Code, which applies to individuals in the case of crimes such as embezzlement of public funds, frauds, and bribery, with the added requisite of having to be explicitly recognized by the prosecutor of the case. The benefit it provides will consist in a lesser sentence, with different effectiveness depending on the circumstances.

In the case of collusion, Law Decree No. 211 consecrates another manifestation of this figure known as 'compensated disclosure' ("delación compensada"), which can operate as a mitigating and/or an exonerating circumstance, when, having participated in a collusion cartel, the defendant provides information that leads to the accreditation of the facts or of those liable. In this context there are high incentives for a rapid cooperation. Law Decree No. 211 only allows the collaboration to act as an exonerating circumstance for the first defendant to disclose relevant information, and as a mitigating circumstance for the second one to disclose relevant information, that must be additional to that provided by de first one.

Bill No. 13205-07 considers the replacement of substantial collaboration with the clarification of the facts for the effective cooperation as mitigating circumstance, which is stricter. The latter requires the provision of precise, truthful, and verifiable data or information, which contributes to the clarification of the facts investigated or allows the identification of those responsible or serves to prevent the perpetration or consummation of these crimes or facilitates the confiscation of the assets, instruments, effects or products of the crime. The benefit this circumstance will provide also consists in a lesser sentence, since it will determine the greatly diminished guilt of the convicted, being able to lower the criminal framework to an additional degree.

## 20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

There are no sentencing guidelines in Chile. Sentencing will depend on the concurrence of modifying circumstances of criminal liability, which is determined by law. They can either mitigate it or aggravate it. In fact, sentencing is one of the most critical knots in the criminal procedure system, because the interplay of mitigating and/or aggravating circumstances allows the judge to move away from the time of incarceration threatened by the law. It is commonly said in Chile that the "legal sanction" is normally very distinct to the "real sanction".

In the context of economic crimes, regarding individuals, recurrence is particularly important as an aggravating circumstance, even though punishment is usually graduated in accordance with the amount of the damages produced.

With respect to mitigating circumstances, the irreproachable prior conduct, the zealous reparation of the inflicted wrong and the collaboration with the clarification of the facts are the most important ones. Furthermore, the collaboration that the defendant can provide to the investigation has even been promoted by special laws that have increased the mitigating power of this circumstance in specific crimes, particularly in cases where their nature makes their inquiry more difficult, e.g., bribery, computer crimes and drug trafficking. Although, in these special cases, the Prosecutors Office must agree and recognize explicitly the concurrence of the circumstance.

However, this scenario is about to change once Bill No. 13205-17 is approved. Based on a diagnosis of general inadequacy of the current system for economic and corporate crimes, it creates a differentiated set of rules for sentencing, with aggravating and mitigating factors more appropriate to business crime, based on two elements: (i) Culpability, according to the position held by the person in the organization (the higher the hierarchy, the greater the penalty; the lower the hierarchy, the lesser the penalty) and the way in which that position is acted (greater intervention, greater penalty; less intervention, lesser penalty); and (ii) Magnitude of Harm, specifically the generation of harm or damage and the efforts to mitigate them.

## 21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

Law 20,393 includes the burden to prevent certain offenses that relate to the criminal liability of legal entities, establishing the obligation to comply with their duties of management and supervision, without forcing companies to maintain compliance programs. Law No 20,393 acknowledges the importance of compliance

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programs, as it assumes that management and supervisory duties of the legal entity have been met if, prior to the commission of the offence, the legal entity has implemented a crime prevention model. A well-functioning compliance program may be an exculpatory factor for the legal entity.

Nevertheless, as mentioned in Q1 and Q2, Bill No. 13205-17 introduces important modifications with respect to criminal liability of legal entities. Among them, it introduces the figure of the supervisor of the legal person, which can be applied both as a precautionary measure and as a condition for a deferred prosecution agreement or penalty, when determining the lack or insufficient implementation of a crime prevention model.

Also, there are additional requirements expressly added to the crime prevention model. In order for the model to operate as an exemption from liability, the Bill adds new requirements such as the existence of secure reporting channels, training of collaborators, and periodic evaluations by independent third parties.

## 22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

The effective imposition of a sanction depends on its extension, since sentences that impose five years or less of prison time can be substituted by penalties that don't entail imprisonment if the defendant does not have prior convictions.

Since financial crimes usually have legal sanctions of less than a 5-year maximum of prison time and this kind of crimes are usually committed by first time offenders – which means that sentencing is most likely to be reduced by at least one mitigating circumstance-, usually the effectively imposed sanction will not entail deprivation of liberty. Exceptionally, if the sanction supersedes the five years of prison time, then imprisonment will be effective. Jointly, the most common sanction for these types of crimes are fines.

In the case of corporations there have not been many procedures ended by sentence. Up until this point the most common sanction has been fines (which was the case of Salmones Colbún, Universidad del Mar, Constructora Pehuenche and CORPESCA), as well as the loss of some percentage of fiscal benefits or the prohibition of accessing any kind of them, and the general prohibition of contracting with the State (which was the case of Áridos Maggi).

Nonetheless, and once again, after the approval of Bill No. 13205-17 the scenario will be very different. As mentioned in Q20, based on a diagnosis of general inadequacy of the current sentencing rules for economic and corporate crimes, it creates a differentiated system to determine penalties, with aggravating and mitigating factors more appropriate to business crime, and restricting the possibility of opting for substitute sentences that does not entail deprivation of liberty. In this way, for "major" sentences, the substitute sentence of probation is eliminated, and the requirements to opt to other substitutes are increased.

## 23. What rights of appeal are there?

The general recourse system contemplates the possibility to file for annulment against the sentence of an oral trial. Appeal on the fact finding is not allowed, unless the judgment does not fulfil the standards required by law. Otherwise, the annulment will be related to the correct or incorrect application of substantive law.

In the case of the sentence of the abbreviated procedure, exceptionally, there is a right to appeal. This will be heard by the competent Court of Appeals.

## 24. How active are the authorities in tackling financial crime?

Between 2013 and 2014 there were several cases that involved tax fraud, the illegal financing of politics, corruption practices and big frauds in the stock market, which have generated several legal reforms, mostly introducing new crimes and aggravating penalties, as well as the increase of investigations in these matters.

The fact that claimants can also request for proceedings to be ordered has also contributed to the intensification of these investigations. Particularly, institutional claimants have had an important role in this sense. A central institution is the State Defense Council (Consejo de Defensa del Estado), the public agency in charge of defending the interests of the government and its bodies, especially when they are not allowed by law to do so independently. In cases related to public interest it is usual for said agency to intervene as an independent claimant.

Other special agencies may prosecute a range of criminal infringements under their faculties, if the law specifically allows them to do so. Such is the case for the Internal Revenue Service, the national tax authority (Servicio de Impuestos Internos; "SII").

Recently, authorities have focused their efforts on the processing and approval of Bill No. 13205-17, which

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intends to paradigmatically modify the regulation in this matter, as will be explained in Q27.

## 25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

In the last five years the key landmark was the enactment of law No.21,121, which is commonly known as the "anti-corruption law". The introduction of this legal body modified substantially our legal system in this regard. Some of the changes were: the introduction of a sanction consisting of the prohibition, absolute or temporal, to contract with the State; the aggravation of corporal sanctions for crimes committed by public officials, bribery, the embezzlement of public funds and frauds; and the incorporation of new crimes such as bribery between private individuals and disloyal management, amongst other reforms.

Amongst the phenomena regulated by this law, recently, crimes related to bribery of public officials and corruption have been the focus of public concerns.

## 26. Have there been any landmark or notable cases, investigations or developments in the past year?

As far as notable cases go, in 2021 CORPESCA ended leaving many lessons. The case was about illegal financing of politics and ended with convictions in public trial for bribery of public officials and tax fraud.

CORPESCA was a landmark case because it changed the way in which we understand bribery, so much that because of this case there was a legal reform to adjust the conduct sanctioned by this crime; and also because it changed the way in which we understand compliance policies, since there was a conviction to a legal entity (CORPESCA) precisely for the lack of commitment to the prevention of crimes within its structure, which was determined by a deficient compliance policy. This latter circumstance was found to be determinant in the analysis of the crimes for which the executives were convicted, such as its former general manager, who entered into a plea agreement and did not face jail time.

Regarding important recent investigations, on one hand, the ITELECOM case has generated expectation regarding the investigation of bribery of several public servants by the executives of a legal entity, involving various municipalities. In this case the mitigating circumstance of article 240 quáter of the Criminal Code was recognized for the first time since the enactment of the anti-corruption law. As it was previously explained, this circumstance is a qualified version of the general mitigating circumstance consisting in the collaboration with the clarification of the facts, which must be explicitly recognized by the prosecutor, becoming a model case for the recognition of this circumstance for future cases.

On the other hand, the Australis Seafoods case, which involves the investigation of disloyal management and fraud against the company's ex-controllers, for concealing information about environmental infractions and breaches of production limits during the due diligence process, has recently aroused great attention. This is expected to be a long legal battle, with judicial and arbitration conflicts in different parts of the world, due, among other things, to the Chinese nationality of the victim company. It has been said that this is the largest fraud case in the history of Chile, so it is extremely important to pay attention to its development and results.

## 27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

As mentioned above, Bill No. 13205-17 on economic crimes is on the verge of being approved, after being discussed in Congress since January 2020, which systematizes economic crimes and incorporates new rules regarding corporate and legal entities criminality.

This Bill entails several changes, some of them already mentioned in the previous questions: introduces modifications to the criminal liability of legal entities and updates Chilean criminal law to current corporate criminality. On this regard, introduces the category of "economic crimes" and establishes new general rules for it, such as modification in the determination of penalties and the alternatives to imprisonment, and modifications to the pecuniary consequences of the crime.

Regarding alternative penalties, this Bill increases probability of imprisonment, limiting the applicable penalties to partial home confinement, partial confinement in a public establishment and effective imprisonment.

Lastly, regarding pecuniary consequences, and as an exception to the general system, this Bill introduces the income of a person as a criterion to determine the amount of the fine. In this way, the fine is intended to be adapted to the economic capacity of the defendant, which, in cases of high-income persons, implies a considerable increase in the amount of the fines by

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comparison.

### 28. Are there any gaps or areas for improvement in the financial crime legal framework?

The Chilean Criminal Legal System consists, up until this day, of criminal figures that are severely outdated in the face of new criminality. In this sense, there is a constant effort from our judges and experts to provide interpretations that allow the law to be comprehensive of behaviours that were not on the legislator's mind when most of our legal system was implemented. This idea has directed most of our recent legal modifications, which have been done mainly through special laws, and recently by the discussion of Bill No. 13205-17, repeatedly mentioned in previous answers.

Although this Bill will be a significant improvement in this matter, solving some of the gaps in our regulation by introducing new crimes that are up to date with current phenomena (for example, crimes against the environment and the illicit disclosure of business secrets, amongst others) and by improving various offences currently in force, solving the difficulties of interpretation and application that have arisen in practice (for example, fraud, unfair administration, and private corruption), these modifications are not enough.

Furthermore, the need for a new criminal code has been acknowledged by different governments in recent years. The current Criminal Code was enacted in 1875 and although it has undergone constant modification and has had to be complemented by multiple laws that incorporate new crimes, there is consensus among all actors on the need for a modern code, that systematizes all the efforts carried out through the last years. Consequently, since 2013 three drafts of a new criminal code have been worked out by commissions of academics, by request of the Ministry of Justice, in which our founding partner, Jorge Bofill, fulfilled the role of chairman, the latest of which was submitted to the Ministry of Justice in October 2018 and to Congress in January 2022.

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