

Republic of Chile

ANSWERS BY THE STATE OF CHILE
TO THE QUESTIONNAIRE ON THE FOLLOW-UP MECHANISM
FOR IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION
AGAINST CORRUPTION

FIRST ROUND

Prepared by the National Group of Experts

August 2003

**DESCRIPTION OF THE CHILEAN INSTITUTIONAL
AND LEGAL SYSTEM**

The State of Chile is a representative democracy and its government system is that of an essentially presidential republic. It is organized as a unitary State and its thirteen regions are administratively decentralized.

State agencies are primarily the Government, the Congress and the Judiciary. The Government and State administration correspond to the President of the Republic, who is the Head of the State and leads the Ministries, Government agencies, regional and provincial government.

The President may have political, international, military and financial powers. These are deemed as governmental powers since they are exercised in decision-making in new, peculiar situations, which are not foreseen in previous rules. The President's administrative powers include the power to appoint and dismiss Ministers, Undersecretaries, regional and provincial Governors, diplomatic officers and, generally, officials reporting only to him; to issue such regulations, decrees and instructions as he may deem advisable for the implementation of laws; and to exercise regulatory authorities in all such matters as are not proper to legal domain. These powers are aimed at satisfying the public's interests and needs and developing, in a coordinated, efficient way, governmental programs and policies.

The Congress is essentially the legislative body, sharing this task with the Executive. At the same time it controls government's acts and is entrusted with the task of political

criticism. It is a bicameral body constituted by an Upper and Lower Chamber.

The Judiciary is constituted by the courts of justice, the only body responsible for hearing civil and criminal actions, to determine them and enforce court decisions. Neither the President nor the Congress may, in any case, act as judicial officials, take ongoing cases over, review the grounds or contents of a decision or open dismissed cases. It is headed by the Supreme Court, a collegiate body formed by twenty-one justices, in charge of the economic, corrective and managing examination of all courts within the country.

The State of Chile also comprises other Government agencies, endowed with constitutional independence, as the Central Bank, on monetary policy matters, and the Republic's General Comptroller's Office in the control of legality of the Executive's acts. The same applies to the Constitutional Court, the Public Prosecutor Office, the National Security Council and Municipalities.

The State's activities are conducted through the bodies established in the Political Constitution of the State, respecting the principles of constitutional supremacy, of interpretation according to the Constitution, of prohibition of arbitrariness, of responsibility and distribution of the State power in separate bodies.

According to the foregoing, the acts of the State's bodies are subject to the express provisions of the Political Constitution of the State and public laws. The most significant regulations, after those established in the Constitution, are

those referring to the organization and functioning of the Government agencies, the National Congress, the Judiciary, the Regional Governments and Municipalities. Nevertheless, every agency is governed by organic laws specifically aimed at creating and organizing the institution.

The State enterprises, in turn, have their own statutes and as regards their economic, productive, commercial and labor relations are essentially governed by private laws applicable to any enterprise.

The control of the State's acts is basically exercised by distribution of power, which translates into the existence and operation of a series of controls, both among and within institutions. Thus, besides the control exerted by citizens, either individually or organized, and the pressure groups, there is a series of formal relations among and within the functions and institutions of the State of Chile.

In Chile, the Parliament, the Judiciary, the Republic's General Comptroller's Office, the citizenship and the mass media exert control over the Executive, including the Government and its agencies. This control, whatever its type, can be labeled as external, as opposed to that one operating within the Executive. The external control of the Executive can be classified as follows:

Political Control, i.e. that institutionally exercised by the Congress, making use of the constitutional powers exclusively vested in it. The Congress is composed by the Upper and Lower Chamber, both Chambers taking part in the legislative process. The Lower Chamber has also the exclusive power to

supervise governmental acts. The Upper Chamber tries impeachment actions filed by the Lower Chamber, approves or disapproves certain acts by the President of the Republic and may disqualify the President. Both Chambers approve or disapprove international treaties submitted by the President to the consideration of the Congress before their ratification.

Judiciary Control, i.e. that eventually exercised by courts of law and specifically when required under a legal action or a constitutional remedy; in the latter case for the protection of individual rights or for declaring a law unconstitutional. Under the criminal procedure system, only the Public Prosecutor's Office - an autonomous organization under the Constitution - is responsible for the investigation of criminal acts and the exercise of the criminal action. Additionally, the State Defense Council has the power and duty to exercise criminal and civil actions in the name of the State in bribery cases.

Legal-Administrative Control, i.e. that exercised by the Republic's General Comptroller's Office, as an independent and autonomous Government agency. The Republic's General Comptroller's Office is empowered to investigate and safeguard the rule of law on administrative matters, as well as to see to the public interest and personal rights that Government acts may jeopardize.

Citizen Control, i.e. that exercised by the citizenship and by intermediate bodies: labor unions, trade unions and especially the mass media.

The external dimension of Government acts' control has as

its counterpart the internal control. This is a system allowing the right use of means and the proper fulfillment of ends and goals of the Government. In the internal control system, in every Government agency, the Heads of Service take part as senior officers, as well as legal, personnel, administration and finance, internal control and audit divisions. Internal audits are permanently coordinated by the Executive through an advisory body of the President: the Government General Internal Audit Council.

CHAPTER ONE

MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE, AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS

(ARTICLE III, N° 1 AND 2, OF THE CONVENTION)

1.a. Standards of conduct

Legal and constitutional statutes of administrative nature

Our Political Constitution of the Republic (State Political Constitution¹) establishes in its article 1° that "the State is to serve human persons and its goal is to promote common weal". Thus, public functions proper to the State, be them legislative, administrative or judicial, must be developed for public service and to further common weal.

The Constitution establishes, moreover, that Government agencies, their leaders and members must subject their acts to the Constitution and rules enacted in accordance thereto. In order for acts by Government agencies to be binding, they must be performed by a regularly appointed official within his sphere of competence and in accordance with the law

(considering the formative enforcement procedure and the external form of the act). Otherwise sanctions and liability shall be derived, as provided for in articles 6° and 7° of the Constitution.

In 1999, Law N° 19,653 on Administrative Probity of Government Agencies was enacted in our country, which amended several legal bodies, expressly incorporated the concept of administrative probity as an essential principle in our Laws², and updated its definition.

The said Law on Administrative Probity raised this principle to a constitutional organic level, consisting in the observance of an exemplary official conduct and an honest and loyal performance of functions, with preeminence of the general interest over the private one. This principle is applied not only to Government agencies but also to the Legislative, the Judiciary and the constitutional organic bodies³.

Moreover, the Administrative Statute (Law N° 18,834) ruling the relationships between the State and the personnel of its agencies, establishes a series of obligations and prohibitions for public officials. Obligations include to fulfil their functions personally, in furtherance of the institution's purposes, and in a diligent and courteous manner; to obey their senior officials' orders and to strictly observe the principle of administrative probity, among others (article 55). Prohibitions include to refrain from exercising powers or authorities they have not been legally vested with or have not been delegated and from soliciting or accepting promises, donations, benefits or privileges of any kind for themselves or

for third parties (article 78).

Constitutional Statute on judges' liability.

Our State Political Constitution expressly states that judges are personally liable for bribery, lack of observance of procedural laws, denial and devious administration of justice and in general all breach of public duties in the fulfillment of their functions (art. 76). Additionally, the State Political Constitution delegates this matter to the Organic Law on Courts (Organic Court Code⁴), according to which cases are supervised and liability is enforced, without prejudice to the substantial criminal rules in the Criminal Code.

Moreover, the State Political Constitution establishes that the judges shall remain in their offices as long as their performance is correct. In order to enforce this rule, it stipulates that, at the request of the President of the Republic, and of an interested party, or ex officio, the Supreme Court may state that judges have not had a correct performance and resolve to remove him from office by a plurality vote (art.77).

Constitutional Statute of Representatives and Senators

Activities undertaken by Representatives and Senators are regulated under the Chilean Political Constitution, the Organic Constitutional Law on the National Congress (Law No. 18,918), the Regulations on the Lower Chamber and its Code of Parliamentary Conduct, as well as the Senate's Regulations.

The Constitution sets a number of inabilities for candidates for Representative and Senator, as well as a series of incompatibilities and grounds for termination of office.

Additionally, Law No. 18,918 sets the obligation to discharge their duties in accordance with probity and transparency principles, forbids them to promote or vote any issue in which they, their spouses and relatives may have an interest in, and urges them to submit a statement detailing both their professional and economic interests upon taking office.

The Constitutional Court shall make a decision on inabilities, incompatibilities and grounds for termination.

1.b. Mechanisms.

Constitutional and Legal Administrative Statute

There are in our country different mechanisms to enforce the foregoing regulations: some prevent entry of non-qualified officials to civil service and others sanction improper conduct, which vary according to the rank of the public official who has violated the rules and the seriousness of the act or omission he is accused of.

The following mechanisms are worthy of mention:

a. Entry into civil service and special requirements: the first mechanism that allows the enforcement of the regulations on probity is the procedure to be followed to be admitted to a public office, which is a technical and objective procedure. This procedure entails evaluation of different aspects, including a moral requirement for all public officials, whether or not elected: not being convicted for crimes punished with custodial sentences or for terrorist acts (losing the status as citizens with right to vote) or not being sentenced for a crime or misdemeanor⁵.

b.- Qualifications procedure: its purpose is to evaluate the

performance of duties and skills of every official according to the requirements and characteristics of his office and is a basis for promotion, incentives and dismissal. It considers the fulfillment of official functions, especially the regulations on administrative probity. If the qualifying board lists an official in roster N° 4, he shall be dismissed. If during two consecutive years he is listed in roster N° 3, his continuance in office shall be conditional⁶.

c.- Constitutional Impeachment: the purpose of this mechanism is to enforce the political liability of the State highest authorities, such as the President of the Republic, Cabinet Ministers, the Republic's General Comptroller, Regional and Provincial Governors and other authorities. The main cause is the infringement of the Constitution and the laws, reflecting an inadequate and incorrect conduct in the discharge of their duties. Both the Upper and Lower Chambers intervene in this proceeding. The Lower Chamber acts as prosecutor (grants or dismisses the complaint filed by a group of Deputies) and the Upper Chamber as a judge. If the accused is found guilty, he is removed from office and cannot exercise any public function, whether or not elected, for a five-year term⁷.

d.- Disciplinary proceedings and dismissal. In our laws there are two procedures: a summary investigation proceeding and an administrative proceeding. Prior to the imposition of a disciplinary measure (censure, fine, suspension or dismissal) a proceeding shall be carried out which respects the principles of legality and due process. Accordingly, these proceedings comprise a set of steps whose purpose is to verify the

existence of an infringement to the regulations establishing duties and prohibitions for officials and the administrative probity principle, as well as the identity of perpetrators and to establish their degree of involvement. The Republic's General Comptroller's Office sees to the correction of the proceedings, as a body guaranteeing a due administrative process.

e.- Administrative and State financial control proceedings:

There are general rules and legally and internally regulated proceedings on the set of administrative procedures for raising funds and allocating them so as to materialize the State's goals. Specifically there are procedures and mechanisms for budgeting, accounting, funds administration and financial control⁸.

f.- Existence of a criminal typology for corruption offenses and applicable criminal and procedural mechanisms.

- **Law 19,645 of December 11, 1999:** Prior to the description of the relevant criminal rules, it should be noted that the matter, - that is the complete chapter of offenses by *public officials* - has been recently amended and improved by Law 19,645 of December 1999. This law amended substantially all the rules of this chapter, updating the legal description of a crime and bridging the gaps or lacunae of the original text of our Code. Moreover, the Criminal Code has been amended⁹ in order to adjust it to the commitment undertaken under OECD Convention on the Combat of Bribery of Foreign Public Officials in International Business Transactions. The amendment of legal description of offenses by *public officials* in the Criminal

Code embody *the* principles of the prevailing criminal doctrine, as well as the techniques used in modern comparative law.

- **The concept of public official for criminal purposes:** For the purposes of the so-called offences by public officials, our legal code labels as officials or employees such persons as hold a position or fulfil a public function, either in the central administration or in semi-fiscal enterprises, municipal or autonomous entities or bodies created by the State or depending on it, even though they are not appointed by the President of the Republic or receive a State salary. This qualification is not hindered by the fact that the position is filled by election.

- **Generic aggravating circumstance:** Our legal Code establishes a generic aggravating circumstance of offense and penalty (that is to say, a circumstance applicable to any offense, except those in which it is inherent therein) consisting in the perpetrator making use of his capacity or position as public official to commit the offense (N° 8 or art.12 of Criminal Code).

- **Penalty of *disqualification* as accessory penalty to all major offenses:** our criminal laws provide - as an additional penalty to imprisonment - a penalty of perpetual absolute disqualification for holding a public office or fulfilling public functions, regardless of the offense committed. Thus, a person who is sentenced to a period in excess of 5 years (regardless of his offense) shall never be able to discharge duties as a public official (art. 28 Criminal Code). If administrative legal regulations are added which hinder the

access to public offices of persons sentenced by any offense or misdemeanor (art. 11 f) of Law 18,834), it can be concluded that our legal system aims at encouraging the ethical integrity of persons who belong to public agencies.

- **Relevant definitions of offenses:** Our Criminal Code establishes the following offenses for corruption:

- **Illegal assumption of authority**
 - a) Abuse of authority: article 221 of the Criminal Code.
 - b) Illegal assumption of authority: article 222 of the Criminal Code.
- **Breach of public duties:** articles 223 to 230 of the Criminal Code.
- **Illegal Exactions:** article 241 of Criminal Code.
- **Forgery of public documents:** articles 193, 199 and 203 of the Criminal Code.
- **Unfaithfulness of documents under custody:** articles 242, 243 and 244 of the Criminal Code.
- **Breach of secrecy:** articles 246 and 247 of the Criminal Code
- **Misuse of privileged information:** article 247 bis of Criminal Code.
- **Bribery:** articles 248, 248 bis, 249, 250, 250 bis A, 250 bis B and 251 of the Criminal Code.
- **Resistance and disobedience:** article 252 of the Criminal Code.
- **Refusal to aid and leaving of employment without cause:** articles 253 and 254 of the Criminal Code.
- **Abuse against private persons:** article 255 and 256 of

Criminal Code.

- **Illegal Appointments:** article 220 of Criminal Code
- **Incompatible negotiations:** articles 240 and 240 bis of the Criminal Code.
- **Misuse of privileged information:** article 247 bis of Criminal Code.
- **Embezzlement of public monies:** articles 233 and 234 of the Criminal Code.
 - a. Misappropriation: article 235 of the Criminal Code.
 - b. Deviation of funds: article 236 of the Criminal Code.
 - c. Negative to a payment or delivery: article 237 of the Criminal Code
- **Fiscal Fraud:** article 239 of the Criminal Code.

As regards the investigation and sanction of bribery, the Public Prosecutor's Office shall inquire into the facts and the courts shall punish proven offences. The State Defense Council has the power and the duty to act as plaintiff, bringing a criminal action in the name of the State, in case of bribery of public officials or where the State property is affected, as evidenced by the statistical annex on the Council's workload in criminal matters.¹⁰

Finally, to the foregoing offenses it can be added those established in paragraph 4, Title III, Book II, of the Criminal Code, "Offenses by public officials against rights guaranteed by the Constitution".

1.c The objective **results** obtained are broken down into different categories.

1.d Without prejudice to the prevailing rules and mechanisms, our country has discussed the incorporation of **new regulations and other measures** for a correct, honorable and adequate discharge of public functions. In the last few months, the below regulatory texts have been enacted:

Since May 2003, Law No. 19,880 on Administrative Procedure governs the acts of government bodies, acknowledges the rights of individuals as citizens and provides for the so-called administrative silence. Specifically, the new regulations streamline procedures, reduce terms for reply to requests filed by natural and legal persons, enhance transparency of public acts, improve and expedite services to public sector customers and identify the principles to be observed by government bodies in their daily activities. The said law is currently in force, presidential directives have been issued for its implementation - which task is coordinated by the State Reform and Modernization Bill - and dissemination efforts have recently concluded (more than 1,000 managers and high-level officials have been trained throughout the country).

Law No. 19,863 (Allowance to high-rank officials and for critical duties) which sets compensation payable to Government authorities, critical duties in several State agencies and regulations on the use of confidential expenses has also entered into force.

Also Law No. 19,882 on New Treatment and Establishment of High-Level Public Officers has been enacted to set up a comprehensive policy for improving, developing and modernizing the profession; promotion on a competitive/merits basis;

incentives for performance and retirement; a definition of screening, compensation and evaluation directives for high-level officers and a National Civil Service Directorate to implement the new personnel policies.

Finally, after years of discussion, Law No. 19,886 on Public Procurement has recently been enacted to make State procurement and bids more transparent and set regulations to comprehensively deal with the matter from the legal, administrative and managerial standpoints, and to establish an electronic intermediation system.

2. Conflict of interests

2.a. Traditionally in Chile there has been rules of conduct tending to prevent conflicts of interests in the fulfillment of official functions¹¹. In 1999 fundamental rules of high hierarchy were incorporated into the Constitutional Organic Law N° 18,575 of General Bases of the State Administration. As for the Judiciary, rules applicable to conflict of interests are found in the Organic Code of Courts (Organic Court Code) Law N° 7,421, 1943. In the case of the National Congress, the general rules are found in the Political Constitution of the State.

The Constitutional Organic Law N° 18,575 of General Bases of the State Administration, hereinafter LOCBGAE¹², establishes in its third and last chapter the development of the principle of administrative probity, which consists in keeping a flawless conduct as a public official and honorably and loyally discharging his duties or functions, prioritizing general over private interests¹³. Rules and mechanisms for its application are compulsory for all Government entities¹⁴, notwithstanding

the provisions found in the legal statutes of each institution, and are mainly aimed at preventing conflicts of interests. To this end, rules establish legal inabilities¹⁵ for entry into the civil service; incompatibilities for the performance of private activities by those fulfilling public functions¹⁶, prohibitions in the discharge of duties¹⁷, and the obligation to submit a public statement of professional and financial interests¹⁸. These rules are applicable, in general, to all Government authorities and officers, independently of their legal relation and the relevant statute governing them¹⁹.

In addition to the above, regulations were supplemented by Law No. 19,880 on Administrative Procedure dated May 2003, which sets the principle of abstention, i.e. that public officials shall refrain from acting in relation to requests, formalities and any kind of administrative step where they are affected by any situation that might make them lose objectivity in the terms established by law.²⁰

Rules for preventing conflicts of interests in the Judiciary are also applied, which are contained in the Organic Code of Courts (Organic Court Code), and relate to inabilities²¹, incompatibilities²², prohibitions²³, and statement of interests. Moreover, the Judiciary relies on a Commission of Official Ethics Control, which makes inquiries and issues reports to the Supreme Court *en banc*, as regards complaints filed by any individual. Additionally, the Judiciary, through a ruling by the Supreme Court *en banc*, has issued a text on Court Ethical Principles, a systematization of rules of conduct contained in the Organic Court Code and other legal bodies.²⁴

In the National Congress constitutional rules are also applied, mainly to provide transparency to the Deputies and Senators' decisions, and prevent conflicts of interest²⁵. Regarding the latter, our Political Constitution establishes a series of rules that, - through inabilities and incompatibilities - are aimed at preventing conflicts of interests. These rules are mainly addressed to members of parliament: Deputies and Senators of the Republic. Some inabilities refer also to the members of the Constitutional Court and Electoral Court²⁶. Some constitutional rules establish incompatibilities²⁷, and in many cases, dismissal²⁸. Finally, the State Political Constitution sets specific prohibitions for these authorities²⁹.

In the case of the Central Bank, this institution is governed by a set of legal regulations and a Code of Ethical Principles.³⁰

2.b. In the State of Chile there exist mechanisms to implement conduct standards referred to in N° 1, article III, of the CICC. In each case the specific mechanism and entities responsible for its implementation shall be previously described:

The divisions entrusted with the internal control in Government agencies are responsible for seeing to compliance with the rules of conduct considered in LOCBGAE, previously described in point 2.a. These divisions are internal bodies within Government agencies, part of the internal control system of each of the entities reporting to the Head of Service. Basically, they are legal control, human resources management,

administration and finance, planning and internal audit divisions. These act on the basis of procedures, instructions, reports and technical criteria issued, according to the subject, by the Head of Service himself, the Budget Directorate of the Finance Ministry, the Republic's General Comptroller's Office and the Ministry General Secretariat of the Presidency, the Ministry of the Interior, and the Government General Internal Audit Council.

The means for taking cognizance of a conflict of interests within the Government are basically the following: accusation by any person of the Republic, a public official, a former official or a member of a trade union, the review of documents by the Personnel Office and the discovery of evidences by internal audit. Moreover, it can be taken cognizance of by means of the mass media, an accusation by Deputies or Senators, or by the inspection of the General Comptroller's Office.

Upon taking cognizance by any of the mentioned means, the Head of Service may demand an internal audit or, if the information is specific, instruct internal or external investigation proceedings. These investigation proceedings are designated as Summary Investigation and Administrative Summary Investigation, their purpose being to determine the existence of circumstances resulting in specific liability of public officials. The external control body, owing to an accusation or ex officio, may also initiate a summary investigation, as a result of which sanctions may be proposed against officials found guilty. Sanctions³¹, almost on all matters, are decided and applied by the Head of Service administrative proceedings.

Investigation proceedings are broadly regulated by Law N° 18,884 (Administrative Statute) and strictly applied in each case, making use of the administrative jurisprudence by the General Comptroller's Office.

Entities and bodies participating in each mechanism:

Inabilities to be admitted to the civil service: the **Personnel Office** of every public agency plays an important role in verifying credentials of each person wishing to enter the civil service, and the absence of general or special inabilities. A person entering the civil service is compelled to submit a sworn statement evidencing that he is not subject to any inability. This sworn statement is a public instrument, so any misrepresentation contained therein can be sanctioned as an administrative fault and as a felony. Likewise, the Personnel division must have access to information from the **Republic's General Comptroller's Office**, which keeps a record of every public official, to verify the existence of some of the grounds. The Personnel division may also carry out specific verification or require that it be carried by the **internal audit division** of the institution. As regards inability owing to conviction for a crime or misdemeanor, this situation is verified by the institution through the delivery of a Certificate of Criminal Records, issued by the **Civil Registration and Identification Service**, a state body reporting to the Ministry of Justice, responsible for keeping a confidential register of sentences for crimes or misdemeanors issued against each inhabitant of the country. Any official affected by a supervening inability³², i.e. an inability

occurring while in office, shall inform his hierarchical superior and submit a resignation within a certain period, under penalty of dismissal.

Incompatibility between public office and private activities: the means for enforcement of this prohibition involves mainly the **personnel, legal and internal audit divisions** of Government agencies, as well as the **Republic's General Comptroller's Office**, an external control body. The Personnel divisions are entrusted with requiring within the legal term³³ the Public Statement of Professional and Economic Interests by public officials of a certain hierarchical level, and also with keeping such documents under custody and remitting a copy thereto to the external control body, which must publish the statements so as to allow unrestricted access thereto by the citizens. Moreover, public officials may consult the Legal Division of the agency to which they belong, or the Republic's General Comptroller's Office about the existence of any incompatibility between the duties discharged and some professional or economic activity developed outside the institution and working hours.

Prohibitions: the infringement of prohibitions, as well as any conduct infringing the principle of administrative probity, may be reported by **any individual or official**. In the event that this violation also implies an offense, it is the duty of an official to report it to the **courts of justice**³⁴. The Head of Service must secure information on this matter, which is usually obtained through **internal audits**, if dealing with preventive and general examinations, or through administrative

summaries and summary investigations, when specific situations have already occurred. Once the violation to a prohibition is confirmed, the **Head of Service** decides on the sanction applicable to the officials found guilty.

Statement of Interests³⁵: it must be submitted by the authorities and officials appointed in the law, within thirty days as from the date on which they took office. It must be drawn up according to the format furnished by the Legislative and Legal Division of the **Ministry General Secretariat of the Presidency**. Said statement must be submitted in three counterparts, one of which shall be submitted to the official, another kept by the Personnel division and a third one remitted to the Republic's General Comptroller's Office for publication purposes. The statement must be updated every four years and each time an important modifying fact occurs. The inexcusable omission of relevant information as well as the inclusion of inaccurate important data shall entail the official's dismissal³⁶. Statements are public without exception and may be requested, without cause, by **any interested party**. The relevant procedures are found in the Regulations (enclosed).

Citizens' right to access Government agencies' information³⁷.

Since 1999, in Chile any inhabitant of the Republic (Chilean or foreigner) may request, without cause and without prior assessment, a document from any entity or Government agency. This is a novel mechanism, essential for preventing conflicts of interests. Its regulations are described in the reply to Chapter IV of the Questionnaire. In addition to the foregoing mechanism, he is entitled to demand detailed, updated

information on the status of the requests filed before State agencies, thus making it necessary to implement information and record systems in substantially all government agencies, which task is being implemented with the support of the State Reform and Modernization Bill.

2.c. Results of regulations and mechanisms described are included in major statistical data. The statistics of the State of Chile normally refer to elements proper to the negotiation and the qualitative and quantitative measurement of specific phenomena or effects of corruption are not normally separate. However, there are statistical data contributing to understanding the status of activities preventing conflicts of interest.

According to statistical samples from CAIGG³⁸, 8.69% of the Legal divisions in Government agencies have received applications for access to information under article 13 of the LOCBGAE during 2002. Likewise, 47.82% of said divisions have received applications for information from Congress authorities within the same period. According to the same source, during 2002, 21.73% of personnel divisions have verified reliability of sworn statements on inabilities delivered by public officials, and 51.17% of them has reviewed sworn statements of interests.

As regards training on administrative probity and transparency in Government agencies, since the enactment of the Law on Administrative Probity, the following information is available³⁹:

Year	Type of official trained	Number of officials
2000	Directors and professionals	1.800
2001	Professionals and technicians	735
2002 ⁴⁰	Professionals and technicians	647
Total officials trained		3.182

Moreover, training on administrative liability and rules in general⁴¹, has been provided by the external control body:

Year	Number of qualified officials
2000	400
2001	370
2002	70
Total	840

Annual average of administrative summary investigations and summary investigations instructed by the General Comptroller's Office⁴²: 53.3 (they correspond to summary investigations of all kinds, not only for corruption). The annual average of reports to the courts of justice is of 9.6.

2.d Among **other measures**, a bill on the ethics of lawyers and solicitors, prepared by a special commission appointed by the Supreme Court Chief Justice's Office and composed of

representatives from the Bar Association and Deans of the major Law Schools within the country has been finalized and delivered to the Ministry of Justice. Said draft project is an additional measure fostered by the Supreme Court of Justice, which shall be submitted to the study and discussion of the Government.

Additionally, a set of legal reforms is being studied by the Executive to strengthen probity and transparency, including a discussion and analysis of two initiatives: the possible enactment of a Code of Ethics for Public Service Officials and a legal regulation of Lobby as an activity. The statement of interests mechanism is also being evaluated in order to determine the need to expand or streamline it.

3. Conservation and proper use of resources entrusted to public officials in the performance of their functions.

3.a. The State of Chile has legal and constitutional rules forming a strong and complex structure for the conservation and proper use of resources entrusted to public officials in the performance of their functions. This legal structure includes mainly the following rules:

1. Constitutional provisions establishing external and reciprocal controls among the State powers, mainly:

a. Articles 48 N° 1, 49 N° 1, 81 and 87 of the Political Constitution establishing external and reciprocal control of acts by the several State powers.

b. Article 62 of the Constitution establishes the law bills to be exclusively submitted by the President of the Republic, and among them, those originating fiscal expenditures.

c. Article 64 of the Political Constitution regulates the Budget Law and instructs that the National Congress cannot approve any expenditure to be paid out of the Nation's funds without indicating, at the same time, the sources of funds necessary to honor said expenditure⁴³.

2. **Rules of Law N° 18,575 of General Bases of the State Administration:**

It contains provisions on probity, liability, efficiency, efficacy, transparency and administrative disclosure, control of a competent administration of public assets, equality of bidders in public contracts and equality in their bidding conditions⁴⁴.

3. Provisions of Law N° 19,653 on **administrative probity** regulate not only the probity of the Central Government but also of officials and authorities of the Regional Governments, Municipalities, members of Parliament, judges, directors of stock companies appointed by the State and members of the Chilean Central Bank Board⁴⁵.

4. Provisions of Organic Constitutional Law N° 10,336 of the **Republic's General Comptroller's Office:** articles 87 and 88 of the Political Constitution decree that the General Comptroller's Office is a Government external control body. Law No. 10,336, among others, includes its internal organization and supervision powers; establishes rules on collection and payment of public funds, officials' liability, guaranties, rendering of accounts, examination and judgment of accounts, investigations and summary investigations and reports⁴⁶.

5. **Administrative Statutes:** They govern the conduct of public

officials, and establish obligations, prohibitions and incompatibilities that ensure the correct use of public resources⁴⁷.

6. Regulations on Financial Control, contained in **Decree-Law N° 1,263, 1975, Law on Financial Administration of the State**: They refer to services and institutions of decentralized and centralized State administration (article 2°), excluding public companies, which are subject to special control regulations.

Regarding control of Government enterprises, article 11 of Law N° 18,196 establishes that said enterprises and all those in which the State, its entities and enterprises have contributed capital in a percentage equal to or higher than 50%, are bound to publish duly audited general balance sheets and other annual financial statements. Besides, their financial activities must conform to a budgetary system including an operational, investment and contracting budget, disbursements and charge-offs, which will operate through an Annual Cash Budget of Cash to run concurrently with the calendar year⁴⁸.

Regulations on administrative decentralization also contain internal control systems regarding senior officers of regional and local public bodies, performed by the collegiate bodies forming part of these institutions⁴⁹.

Regulations on financial control have recently been modified by Law No. 19,896 of August 2003. The main objective of this law is to modify Decree-Law No. 1263 by incorporating regulations that for many years have been part of the Budget Law and supplement State financial laws.

As a first objective, provisions included year after year

in the Budget Law are incorporated into permanent regulations, which have been enlarged in the past 13 years as a result of political agreements and the search for solutions to financial management issues for which the permanent text failed to suffice. The other objective is to strengthen management control and transparency. This initiative is ahead of the new requirements of the State Reform on financial administration, particularly as regards the strengthening of management control systems and fiscal transparency. In these matters, the Government has developed new systems and instruments that - in spite of relying on provisions of the Budget Law, substantially rely on administrative processes, including management indicators, program evaluations, management improvement programs and comprehensive management balances. Additionally, since 2001, with the support of the World Bank, a Comprehensive State System on Financial Management (SIGFE in Spanish) - a project jointly undertaken by the Comptroller's General Office and the Budget Directorate - has developed to generate a system capable of setting up, through electronic means, a number of transactions and operations associated with financial management in institutions forming part of the central administration. This bill contains provisions to incorporate these systems to the laws on administration. The initiative, together with the provisions in Law No. 19,862, on recording of legal persons receiving public monies, contributes - in Law No. 19,863 whose Title II regulates confidential expenses, and in the recently enacted law which turns the Joint Special Budget Commission into a standing body - to conforming laws on the

matter to efficacy, efficiency and transparency requirements for the management of public funds.

7. **The Public Sector Budget Law** for 2002, N° 19,774. This law contains:

- The 2002 Public Sector National Budget;
- Some items establishing restrictions to the powers of public authorities regarding the use of public funds and the administration of human resources (e.g. maximum number of employees);
- Regulations which require the authorization of the Finance Minister (e.g. article 13 of the law) and regulate information (e.g. articles 2 to 20 of the law), which are repeated in every annual budget to properly control public expenditure and its efficacy, efficiency and viability regarding the activities to be financed⁵⁰.

8. Law No. 19,886 (Law on Basis for Procurement Agreements and Services rendered to the Public Sector, also known as "**Law on Procurement of Goods**"), which has been recently enacted (Official Gazette dated July 30, 2003) incorporates major progress made in technology, efficiency, transparency, probity and savings in public procurement.

This law involves a significant step towards State modernization as rules on transparency and access are set that make public procurement and contracting more efficient. It is highly important for vendors and customers, as criteria are established for the posting of guarantees, the obligation to timely serve information and perform public calls for bids, as well as the obligation to call for bids for any contract

amounting to 1,000 UTM or more and the establishment of deadlines for submitting offers, *inter alia*.

It should be noted that all Ministries, public agencies and municipalities shall be subject to the new regulations and, in some specific matters, the Armed Forces also. This is of importance if considered that in 2002, public procurement of goods and services by the Central Administration amounted to MM 713,348, while procurement by municipalities reached MM 295,310 MM. With the introduction of said regulations in Chile the "e-procurement" system began, the whole procurement cycle becoming digital. This would enable us to make most of the Internet and information technology and is a step towards the implementation of e-commerce in public procurement, placing Chile at the beginning of the system used by developed countries on the matter.

It should be noted that the new Public Procurement Law establishes a Public Procurement and Contracting Information System and hence an obligation to inform, applicable to all State bodies and agencies. This system requires information on calls for bids and their result, associated with procurement of goods and services; performance of the goods and services procured and a general evaluation of the contracts entered into. Any purchase and contract may be timely disclosed to vendors, free of charge.

It also establishes a decentralized public service known as "Public Procurement and Contracting Directorate", which shall be under the supervision of the Chilean President through the Ministry of Finance. This entity shall be the legal

successor of the State Procurement Directorate, which is replaced with the new body already known as "Chilecompra", named after the nickname of the previous entity in the web. It shall call for bids and administer the Electronic Platform of Public Procurement, Vendors Register and other systems facilitating public procurement; assist public agencies in management and procurement planning matters; subscribe framework agreements on goods and services for public agencies; and promote competition in public procurement.

Finally, major advances in the law include the establishment of a Public Procurement Court, a special court of justice which is composed of three attorneys specially appointed from the President among a three-member roster proposed by the Supreme Court. This Court may try complaints filed by vendors against illegal or arbitrary acts or omissions affecting the course of biddings, in a summary, expedited proceeding ensuring transparency and equality in bids. This Court shall decide on challenged acts or omissions and decree such measures as may allow to restore the rule of law. This instance may also enable Chile to faithfully comply with the obligations on the matter under international treaties.

It should also be noted that the State of Chile is formed by 600 agencies, 200 of which correspond to the Central Administration, 340 to municipalities and 60 are public enterprises and other State institutions. "Chilecompra" main users are the Central Administration bodies. Currently 285 bodies are registered. The potential market for 2003, accessible through www.chilecompra.cl, is 200,000 transactions

with the Central Administration, totaling US\$ 2.5 billion.

9. **Special Regulations:** There are other special regulations on specific issues⁵¹.

10. **Criminal Rules:** The Criminal Code, in its book II, Title V, entitled "Crimes and Misdemeanors by public officials in the discharge of their duties", articles 220 to 260, sets a series of offenses applicable to public employees⁵².

3.b The means used to comply with the rules described are the following:

a. Control of administrative liability: The administrative statutes comprise summary investigations and sanctions ranges for officials that fail to discharge their obligations and duties, and which can reach even the official's dismissal.

b. Planning, approval and performance of the Nation's Annual Budget

This process follows a strict calendar, so as to adequately conserve public resources and ensure their best possible use, in which task different authorities and public entities take part.

The first signs for budget planning are issued by the President of the Republic in the Annual Account he must submit to the country regarding the political and administrative status of the Nation, which takes place every May 21 at the National Congress, before the highest authorities of all State powers, which is traditionally broadcast to the citizenship through national television and radio networks.

Subsequently, the Ministry of Finance prepares, in June, the instructions for budgetary planning, which are submitted to all Ministries, attaching also documents with general outlines, forms and instructions.

Thereafter, during the month of July, all public entities and Government agencies prepare their budget at an institutional level.

Between July and August, discussions are held by the Directorate of Budget of the Ministry of Finance in which work groups participate (the aforementioned Directorate with the presence of the Ministry of Planning and Cooperation, regarding investments) and Technical Commissions (Directorate of Budget, Ministry of Planning and Cooperation, and representatives of Ministries and relevant Services).

Then in the month of September the bill is discussed at the highest Government levels, the presidential decision being communicated to Ministries and the Minister of Finance meeting with the several Ministers.

The final preparation stage includes the final drafting of the Public Sector Budget Law for the following year, with figures and supplemental provisions. The Minister of Finance prepares the documents for the message of the respective law and submits them to the Ministry General Secretariat of the Presidency. No later than every September 30 the President of the Republic submits to the National Congress the message accompanying the Budget bill for the following year. Sometimes said

message has been submitted prior to that date.

According to article 64 of the Political Constitution, the bill is submitted by the President of the Republic to the National Congress at least three months in advance of its date of enforcement. If the Congress fails to dispatch it within sixty days as from the date of submission, the draft submitted by the President of the Republic becomes effective.

The National Congress cannot increase or decrease the incomes estimate. It can only reduce the expenses contained in the Budget bill, except for those established in the permanent laws.

In December of year prior to the effectiveness of the Budget Law, the Minister of Finance approves a budget performance program, as well as expenses programs called Cash Schedule, in which expenses' level and priority are established.

The Law on State Finance Administration, in its title II, "Budget System", establishes detailed and precise standards on this issue, which are strictly fulfilled.

Regarding budget performance control, it is worth mentioning that once the budget law is enacted, expenses must be controlled according to the different permanent articles of the same. The detailed control of these expenses is found in a Circular Official Letter issued by the Ministry of Finance every year.

Enactment of Law 19,875 on Joint Special Budget Commission strengthened the control and follow-up by the

Congress of Governmental application of resources. Upon conclusion of the task by the joint commission convened for analyzing and reporting on the budget for each year, the commission may continue to function only for follow-up of the Budgeting Law during the respective fiscal year, until the ensuing joint commission is convened to report on a new Budget Law bill. For follow-up purposes, the commission may solicit, receive, systematize and examine the information on budgetary performance provided by the Executive in accordance with the law; place said information at the disposal of the Lower and Upper Chambers or of the joint special commission responsible for reporting on the next ensuing Budget Bill. To such effect, both Chambers shall be assisted by a budgetary advisory unit. In no case shall this task entail executive duties, affect the powers proper to the Executive or lead to control acts.

c. Protocols to improve transparency and efficacy of State activities

Through articles of the Budget Law and agreements with members of Parliament, known as "protocols", the Executive has implemented mechanisms to:

- provide periodical information to the National Congress on budget performance, the use of authorized debts and provisions contained in the budget;
- achieve independent evaluation of programs and projects, use of management indicators and

management improvement programs, institutional operations diagnosis and preparation of a report by all Government agencies regarding their operation and finance management during the previous year;

- identify and restrict some expenses and their operating units, in which the National Congress has shown a specific interest; and
- restrict, through the establishment of yearly maximum amounts, commitments for future fiscal years involving the studies and investment projects contracted during the relevant year.

These measures⁵³ tend to improve resource allocation process at a budgetary level and its performance and provide the National Congress with better information on the use of budgetary authorizations in general and, in this case specially, on certain expenses, those referred to the ongoing fiscal year and to the next preceding one.

d. Account examination and analysis: "Every official, as well as any person or entity which receives, keeps, manages or pays funds mentioned in article 1° (public resources in general, irrespective of the entity receiving them) shall provide the Comptroller's Office with verified accounts, in the manner and within the terms determined by this law" ⁵⁴.

The "juicio de cuentas" is a contentious-administrative proceeding initiated by the Republic's General Comptroller's Office whose purpose is to see to the interests of the State, that is the National Treasury and other public-law

administrative persons. Its goal is to prosecute non-contractual civil liability of officials or former officials, having or having had the possession, use, custody or administration of funds or properties of the State, with the purpose of keeping the integrity of public wealth.

This task is performed in a double-instance jurisdictional entity called Government Accounting Office, whose first instance judge is the General Assistant Comptroller and the Court of Appeals is constituted by the General Comptroller and two attorneys at law, appointed by the President of the Republic from a list of three candidates proposed by the General Comptroller.

e. Government Internal Audit. In order to strengthen internal controls of the bodies of Government bodies, the President of the Republic set up the Government General Internal Audit Council⁵⁵, an advisory body of the President in this subject, to strengthen the management of the Government agencies and the lawful use of public resources allocated for the fulfillment of their programs and institutional duties. Said Council supports Government agencies by rendering technical coordination services to 189 Internal Audit units existing in Government bodies, thus discharging its duties to assist the Executive Power in developing an adequate internal control system.

f. Application of criminal provisions to public officials.

The proceedings established in the new Code of Criminal Procedure and old Criminal Procedure Code, in such cases and regions where the former is not applied yet, are applicable to public officials. According to the new Criminal Procedure Code,

criminal actions shall be filed by the Public Prosecutor's Office. However, under both Codes, the State Defense Council is empowered to file actions.

3.c. Results and collection mechanisms of objective data.

As for results, they are found in the performance of the relevant budgets, which information is available at Dipres website (www.dipres.cl).

Concerning collection mechanisms of statistical data, there is an annual report on Public Finance Statistics containing data on expenses made between the years 1992 and 2001, obtained through internationally accepted methods. Said data, the Budget Law and instructions for its performance since 1999, the Law on State Financial Administration and the regulations on Management Improvement Programs, among others, are available at DIPRES website (www.dipres.cl). The Report on State Financial Management⁵⁶ corresponding to the same period is attached. Other important data on results refer to the fact that within the year 2000, the Republic's General Comptroller's Office has recovered for the public treasury a total of \$191,438,264, equivalent approximately to US\$273,483.00⁵⁷ .-

As for prevention endeavors by the Government internal audit units, in accordance with CAIGG's statistical samples, internal audits consist mainly in management audits, financial audits and process audit. Less important in the total volume are computer audits, projects audits and those especially intended to verify frauds, irregularities or corruption⁵⁸. According to the same statistical sources, Government agencies grouped by Ministry have performed an average of 88.0 internal audits

during 2001. During 2002, a slightly higher number of audits has been planned, with an annual average of 93.66 internal audits within every Ministry.

3.d. Other rules and mechanisms. Besides the aforementioned control mechanisms proper to budgetary and legal matters, it should be noted that the Executive permanently evaluates the creation of upgrades, as the SIGFE Project (State Financial Management System), which works together with the Republic's General Comptroller's Office, for which purpose a Unit has been established in the Directorate of Budgets of the Ministry of Finance. This system seeks the availability of a budget that permanently considers accrued revenues. The relevant information is at the Project's website (www.sigfe.cl).

4. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

4.a. In Chile there are standards of conduct and legal provisions intended to require public officials to inform the relevant authorities of criminal acts they may become aware of in the fulfillment of public functions⁵⁹. As for specific rules on accusation of corruption acts, our laws consider them as included in the generic obligation contained in the following regulations⁶⁰: article 84, N° 3, of the Criminal Procedure Code (CdePP); article 175, letter b), of the Criminal Procedure Code (Criminal Procedure Code); articles 55, letter k), of Law N° 18,834, or Administrative Statute, and 58, letter k), of Law N° 18,833, or Administrative Statute of Municipal Officials, and regarding the General Comptroller's Office, articles 117 and

139 of Law N° 10,336.

In connection with the Congress, article 48, N° 1, of the Political Constitution grants the Lower Chamber the power to supervise government acts. In the exercise of this political criticism, the members of Parliament enjoy immunity. This immunity is the privilege enjoyed by Deputies and Senators as from the date on which they were elected, appointed or incorporated, as applicable, by virtue of which they cannot be prosecuted or deprived of freedom without the relevant Court of Appeals stating that there are legal grounds therefor. The only exception is that a Member of Parliament is discovered in flagrante, in which case he can be immediately arrested. It must also be considered within the Parliamentary Immunity the fact that Deputies and Senators have absolute right against prosecution for votes issued in the discharge of their functions in Chamber or Commission Meetings⁶¹.

Moreover, in the Judiciary, the competent judge must, without waiting for any accusation or lawsuit, "cause, ex officio, that a summary investigation be carried out, either because of personal knowledge, for confidential reports, notoriety or for any other means, he has become aware of the perpetration of a crime or misdemeanor which may only be prosecuted by the Government⁶²".

Finally, it should be noted that there are no precise legal regulations establishing exceptions to the legal duty to report a crime or misdemeanor.

4.b. Non-compliance with the provisions establishing the obligation of public officials to timely report⁶³ offenses they

might be aware of, is an administrative infringement liable to be sanctioned.

In Government agencies, once an accusation has been filed that a public official has failed to comply with the duty to timely report offenses, including those established in Title V of the Criminal Code (Criminal Code)⁶⁴ related to corruption, it is possible to initiate an administrative investigation called Administrative Summary Investigation, whose purpose is to determine the faithfulness of the accusation and the liability of the persons involved. Administrative summary investigations are regulated in the Administrative Statute⁶⁵ and in the Administrative Statute of Municipal Officers⁶⁶. The specific sanction is applied by Resolution of the Head of Service. This sanction may amount to a dismissal, without prejudice to the official being also punished with the fine indicated in article 494 of Criminal Code, applied by the Court trying the offenses which were not reported in due time. In case a criminal action shall be prosecuted, the Public Prosecutor's Office shall lead the investigation, the State Defense Council being empowered to bring in criminal charges.

In the case of the Judiciary, the procedures to determine liability for breach of the duty to report is regulated and described in the Organic Court Code, and sanctions are applied by bodies or authorities therein established⁶⁷. As for the National Congress, it is vested with the general power to establish liability and apply measures or sanctions to the personnel reporting thereto⁶⁸, even though a proposal is currently being studied for the creation an Ethics Committee in

the Senate.

4.c. The conducts involving corruption are normally the object of accusations, even though their origin not always lie in public officials⁶⁹. The accusations of corruption generally come from officials themselves, the press, and members of Parliament.

There are some emblematic⁷⁰ cases showing this zeal for fighting corruption from accusations by Government agencies themselves or from persons linked with them, e.g. the futures operations in CODELCO⁷¹ and severance payments at the Chilean Post Offices⁷².

In any case, an important number of corruption cases have been reported by former officials, the press, ONGs and members of Parliament in the exercise of their control duties. In this last case, the work of some members of Parliament has been outstanding, since they have made charges of major corruption regarding the purchase of supplies⁷³ by the Chilean Air Force, weeding out at RPC⁷⁴, and ESVAL's drainage ditch⁷⁵. All the aforementioned cases have made the headlines in the Chilean press⁷⁶.

Regarding minor corruption, there are no precise statistics on accusations for corruption activities by officials, probably due to the complexities involved in their registration⁷⁷. In any case, it is frequent that administrative summary investigations performed by Government agencies themselves and the Republic's General Comptroller's Office, as appropriate, in specific matters of corruption, end in the courts of justice. There are some Government agencies that can

count on more specific information, which they use for internal purposes, as it is the case of the Chilean Investigations Police, which in 1998 received 199 complaints on irregular activities by their officials, and in 1999, 242. The Investigations Police has a special unit devoted, *inter alia*, to investigate corruption among its officials, called Department V Internal Affairs formed by 90 highly-qualified professionals.

This Public Service presently counts up with 3,590 officials, and an annual budget of US \$84,659,025.00.- (figures from 2001, according to the dollar prevailing in July 2002 = \$700).

Notwithstanding the foregoing, it should be emphasized that state interest in the struggle against corruption, especially major corruption, developed by the State Defense Council, the Parliament through its investigating commissions, the Public agencies themselves, the Republic's General Comptroller's Office and the Judiciary through its Ethics Commission^{78 79}. Thus, notwithstanding the origin of the accusations, the role of the State in the struggle against corruption after the restoration of democracy, and especially after the CODELCO scandal, is significant.

Even if accusations do not always originate from public officials, the State, through its Defense Council, becomes a party to the main legal actions against corruption existing in Chile, irrespective of the accusation's origin, as well as to the prosecution of all minor corruption cases referred to in the foregoing paragraph. Moreover, the State - including not

only the Executive, but also the Legislative and the Judiciary - has been a leading actor in the struggle against corruption by reporting and prosecuting offenses.

The State Defense Council is an independent institution under the direct supervision of the President of the Republic seeing to the State's interests⁸⁰. Currently, it is acting on behalf of the Chilean State in 21,651 criminal cases, 1.69% of which correspond to eventual corruption offenses. From the statistics of the State Defense Council it is inferred that 47% of the criminal cases against corruption relate to fraud against the National Treasury, the remaining 53% corresponding to other criminal offenses, including embezzlement, misappropriation of funds and others (bribes, illegal exactions, incompatible negotiations).

4.d Notwithstanding actions by State powers and Government agencies in the struggle against corruption, it should be noted the State's concern for improving the mechanism to fight against crimes in general and especially abuse of authority. Regarding the former, a deep **reform of the criminal justice administration system** is being developed in Chile, including modifications not only courts and their procedures, but also of their ancillary services and collaborators. In connection with the latter, mechanisms has been proposed to report abusive acts of authority through the creation of specialized entities, such as the Presidential Advisory Commission for People Protection, now in operation, which is the base of the future Ombudsman, which is currently being discussed at National Congress. In addition, other legislative initiatives have been submitted on

corruption matters, such as the aimed at establishing a **Financial Analysis and Intelligence Unit**⁸¹, and the one aimed at sanctioning bribes of foreign public officials, in international business transactions, according to the OECD's provisions, subscribed by Chile, the latter having already become a Chilean law.

CHAPTER TWO

STATEMENT OF INTEREST, ASSETS AND LIABILITIES

(ARTICLE III, NUMBER 4)

a. Yes, there are specific rules which establish a Statement of Net Worth, from persons discharging public functions in certain public entities. There are also general rules about Statement of Interests, applicable to all State officials holding a senior rank. The latter is explained below, it being the rule and mechanism most widely applied in the State of Chile.

Statement of Interests: One of the elements favoring the transparency of public functions is the obligation by some officials of the Government services, to submit a statement of professional and economic activities, according to articles 57 et seq. of Law N° 18.575⁸². The creation of an expeditious system of specific inabilities and incompatibilities as well as prohibitions is supplemented with the requirement to state interests, for it is considered necessary to include therein activities performed within the time of taking office and while in office, thus allowing public agencies and the civil society to supervise compliance therewith.

The Statement of Interests is regulated by Law N° 18,575 and by Regulations contained in Decree N° 99 of 2000 from the

Ministry General Secretariat of the Presidency ^{83 84.}

The authorities of the governmental bodies as well as their officials, au to the level of head of department or its equivalent, are bound to submit said Statement or its equivalent, i.e. those officials a certain hierarchical level. These authorities and officials must update their Statement every four years, and every time a relevant fact occurs which modifies its content, that is to say, every time a fact affects or alters the professional and economic activities of the official or authority. The Statement is a public document held under the custody of Personal Unit of every institution and the Republic's General Comptroller's Office, to whom every person can consult.

Untimely submittal of this statement is punished with an administrative fine. If, after imposition of the fine and after ten days as from service thereof, an official fails to comply with the obligation to submit the Statement, he shall be dismissed. In case the Statement is timely submitted, the fine will be reduced by half.

The inclusion of inaccurate relevant data in said Statement will be also punished with dismissal, as well as the inexcusable omission of relevant information. "Relevant data or information" shall mean data or information whose inaccuracy or omission shall lead to an erroneous or false appreciation of the scope of professional and economic activities performed by the official or authority, hiding or distorting the nature of the relations which those activities imply. Moreover, it is considered that the omission of information is inexcusable when

it could not have been ignored by the deponent. In all cases where an official's liability should be established and a sanction applied, the institution to which he belongs must follow an investigative proceeding called Administrative Summary Investigation. The Head of Service imposes sanctions through a formal administrative act.

There are special rules on the Statement of Interests

The Public Prosecutor Office has special rules which regulate the statement of interests, which are contained in Organic Law N° 19.640⁸⁵, according to which the National Prosecutor, Regional Prosecutors and Assistant Prosecutors should, within 30 days as from the date they took office, make a sworn statement of interests. Untimely submission of this Statement of Interests or non-compliance with the obligation to update it shall be sanctioned with a fine, administratively imposed by the relevant National Prosecutor or the Regional Prosecutor. Besides, the Head of Unit is held administratively when, by reason of his duties, he should have been aware of the omission to submit or update the statement. In turn, Prosecutors' staff regulations of that entity⁸⁶ establish the form and contents of the sworn statement of interests which must be submitted by Assistant Prosecutors, Regional Prosecutors and the National Prosecutor. A statement of interests shall include among others, the corporate or other rights held by the deponent and his teaching activities. It should be updated each time the deponent is appointed to a new position or within a thirty-day term following the fourth anniversary of the statement. Failure to timely submit the statement of interests by the Regional or

Assistant Prosecutors shall be punished with a fine imposed by the National Prosecutor or by the relevant Regional Prosecutor. The inclusion of inaccurate relevant data and the inexcusable omission of relevant information by an Assistant Prosecutor will be punished with his dismissal.

Regarding Members of the Board and the General Manager of the Central Bank, the Organic Constitutional Law N° 18.840 of this entity⁸⁷ establishes a Sworn Statement they must execute before taking office and upon vacating it, which shall indicate their professional and economic activities in which they take part and the fact they are not subject to incompatibilities for the discharge of their duties. In this case, the Members shall submit a statement of interests and of net worth before a Notary Public, which copies shall be submitted to the General Comptroller's Office.

The Organic Court Code⁸⁸ compels members of the first-rank list and of the second-rank list of the Judiciary to submit, within thirty days as from their taking office, a sworn Statement of Interests with characteristics being similar to those relating to officials and authorities of Government bodies. A copy thereof is kept at the Supreme Court and Court of Appeals' Clerk's Offices public consultation. Any person can obtain a copy of the authenticated document. This statement must be updated when the official is appointed to a new position or within thirty days following the expiration of the fourth anniversary of the statement, if no new appointment is made.

Finally, Constitutional Organic Law N° 18.918, on the

National Congress, in its article 5°C⁸⁹, imposes upon Deputies and Senators the obligation to execute, within thirty days as from their taking office, a Sworn Statement of Interests, whose characteristics are similar to those applicable to the authorities and officials of Government bodies. A copy thereof must be submitted to the Secretariat of the relevant Chamber, where it shall be kept for public consultation. It is worth mentioning that after expiration of the term appointed to submit the Statement, the secretary of each Chamber shall publish the name of such members as have not submitted it.

Statement of Net Worth: although the Statement of Interests is a common rule for authorities and senior officials of within the Powers of the Chilean State, as well as autonomous public agencies, in some special cases, there exists the obligation to submit a Statement of Net Worth, as stated in article 41 of Statutory Decree N° 7 of 1980 from the Ministry of Finance, Organic Law on **the Internal Revenue Service**⁹⁰, which imposes upon the persons entering said body the obligation to submit, before their appointment, a sworn statement of their net worth and that of their spouses, even if they are married under separation of property. The said statement shall be annually renewed. As regards this requirement, the Republic's General Comptroller's Office has issued several rules on its scope. A similar obligation is provided for in article 18 of statutory decree N° 1, 1994 from the Ministry of Finance, Organic Statute of the **Treasury Service**⁹¹ for persons entering into said entity. Besides, as already mentioned, the Members of the Central Bank Board must state, among others, their net worth before taking

office and at the time of vacating it.

b. In order to discharge the obligation set by law to the Republic's General Comptroller's Office regarding consultation of statements of interest received by this entity, this external control body implemented a computerized system allowing to control said documents and digitally display them, which on July 15 of this year amounted to 27,003 records⁹².

This system enables to compare the position and the institution where deponent performs his activities with legal entities, either for profit or non-profit in which he himself participates or to which he contributes so, as to establish possible situations that contravene the administrative probity principle.

The following tables are based on the statistics kept by the Republic's General Comptrollership:

Sworn Statements submitted according Regions and Santiago

REGIONS	SANTIAGO	TOTAL
14.134	12.869	27.003
52,3%	47,7%	100%

Presentations and updating achieved, after the First Statement (2000

UPDATING BY RELEVANT FACT	FIRST STATEMENT
3.732	23.271
13,8%	86,2%

Moreover, the Judiciary can submit the following:

Sworn Statements according to Regions and Santiago until 2002

REGIONS	SANTIAGO	TOTAL
117	86	203
58%	42%	100%

II.c. In respect of other measures, as provided for in answer to the question 2.d., the statement of interests mechanism is being reviewed to verify whether it should be extended or enhanced. It should also be noted that unjust enrichment is not a criminal offence under Chilean legal system. Accordingly, statements of interests and any kind of property statements are only aimed at making decisions by authorities and officials more transparent, preventing any conflicts of interests or facilitating their settlement in accordance with general interests.

CHAPTER THREE

OVERSIGHT BODIES

a. In Chile there are oversight bodies. Only to reply to Chapter III of the Questionnaire, a broad description will be provided of oversight bodies, ie. Government agencies having responsibilities for control activities higher than those proper to entities, authorities or officials forming part of secondary systems or specific control mechanisms. Additionally, this broad concept may apply to systems, secondary systems or control mechanisms of an administrative, jurisdictional, political, internal and external, legality, merit, convenience, opportunity nature or otherwise.

Thus, it can be pointed out that in Chile there are high-

level control bodies responsible for the discharge of duties associated to compliance with the provisions in numbers 1,2,4 and 11 of article III of the Convention.

In the case of numbers 1, 2 and 4 of article III, high-level control bodies shall be: the **Supreme Court of Justice**, regarding the judiciary function; the **Upper and Lower Chambers**, regarding Parliamentary functions; and the **President of the Republic**, in the case of Government agencies. Their control duties functions are discharged directly and also through cooperation of internal control bodies of every Government agency. These are mainly the Personnel, Internal Audit, Administration and Finance divisions or units, which are also assisted by the **Government General Internal Audit Council**. Within the active Administration, the **Budget Directorate** of the Ministry of Finance controls budgetary matters. Likewise, the **Republic's General Comptroller's Office** plays an important role as an external control body in the active Administration. According to the law, the Comptroller's Office is vested with the control of legality and with specific responsibilities to see to the enforcement of regulations governing the relation between Government agencies and their staff. It is also worth mentioning the control of the constitutionality of laws, statutory decrees and some administrative acts exercised by the **Constitutional Court**. Entities such as the **Committee of Social Security**, the **Committee of Administrators of Pensions Funds**, the **Committee of Banks and Financial Institutions**, and the **Committee of Securities and Insurance**; the **Committee of Health Insurance**, the **Committee of Electricity and Fuels**, the

Committee of Public Health; the National Economic Prosecutor's Office, the Internal Revenue Service, the Labor Directorate and the Central Bank, where appropriate, also control Government agencies.

In case of number 11, Article III, several oversight bodies participate in each specific mechanism, there being no single or central entity worthy of receiving such denomination. In addition to this type of characteristic of the Chilean juridical system, the Presidential Advisory Commission for the Protection of People's Rights is an important basis for the creation of the Ombudsman in Chile, who could assume responsibilities in this matter, if his appointment is approved.

The description of the nature and characteristics of each control body as well as the relations between them are embodied in explanations provided for each mechanism described in the other Chapters of this Questionnaire and in the laws attached.

b. Moreover, the results obtained by said bodies in compliance with the aforementioned duties are incorporated into the statistical data in every Chapter of this Questionnaire. Thus we refer thereto. Additional information can be found at or through the website of the institutions referred to herein⁹³.

c. Currently, the Executive is promoting a Constitutional Reform aimed at creating a Citizen's Defense Committee, a constitutional agency to protect the collective rights and interests of citizens. If approved, the next step would be the submission of a Bill organizing and empowering the new agency. In this regard, documentation supporting the said Bill exi

Ministry General Secretariat of the Government sts⁹⁴.

CHAPTER FOUR

PARTICIPATION BY CIVIL SOCIETY

1. General questions on the mechanisms for participation

1.a. Several legal bodies exist in our country which consecrates the citizens' participation at different levels, including:

Law No. 16,688 on Neighbors' Associations and other Community Organizations is perhaps the most important and ancient law in force on the matter. Implemented 35 years ago, currently its restated and systematized text is contained in Law No. 19,418 of January 1997⁹⁵ which regulates the establishment, organization, objectives, powers, control and dissolution of said associations. They are territorial community units representing individuals residing within a same district, whose aim is to promote community development, defend the interests and see to the rights of neighbors, as well as assist State authorities and municipalities. Membership is free. Currently, there are thousands of community organizations within the country, from the altiplano and the desert in the north to the most remote localities in the Southern end.⁹⁶

Law N° 19,300 of Environmental Bases and its Regulations. The Law on Environmental Bases establishes community participation in environmental impact evaluations, the enactment of environmental rules and the approval of pollution control plans⁹⁷. The enforcement of this legal body is doubtlessly one of those issues which affect important economic interests. Accordingly, law-makers have established citizen's

participation in the protection of the environment and the prevention of corruption in Government agencies.

The President's instruction on citizens participation. These Presidential Instructions demand from the Central Administration the implementation of participation mechanisms by the civil society. Attached to the Presidential Instructions are also regional and ministerial participation commitments. The Ministry General Secretariat of the Government is also entrusted with following up their implementation and evaluating their compliance, as well as supporting and offering the necessary training to the different public institutions which should implement the Instructions⁹⁸.

The Presidential Advisory Commission for the Protection of People's Rights⁹⁹. In 2001 an body was created to advise the President of the Republic in the protection and promotion of peoples' rights and interests before acts or omissions of Government agencies, the satisfaction of public needs and in the observation and study of the activities developed by said agencies towards citizens, and to submit a quarterly report to the President of the Republic. In the light of the foregoing, the Presidential Advisory Commission is a body whose purpose is to hear citizen's complaints or consultations as regards their relation to Government agencies¹⁰⁰.

1.b. Information is provided below on citizen's involvement under the 2000 Presidential Directives on Citizen's Participation. For further information, please examine the 2002 Comprehensive Management Balance issued by the Ministry General Secretariat of the Government¹⁰¹ and visit www.segegob.cl and

www.participemos.cl.

(1) Information on training for leaders and members of Civil Society bodies (OSC) - DOS¹⁰² training program: By means of several training activities (lectures, workshops, seminars, schools), the Program designs, schedules, systematizes, performs and evaluates such events. It also offers upgrading courses for government and municipal officials, as well as civil society monitors, in order to enable them to carry out further training with the program's support and follow-up.

- DOS traditional training issues: Law No. 19,418 on Neighbors' Associations and other Community Organizations; Law No. 18,695 (Organic Law on Municipalities, Project Design and Formulation, funds allocated to OSC on a competitive basis, Effective Leadership, Effective Communication, Accounting Management for Community Organizations, Internet and Email, Citizenship and Community Management.

- During 2002, a survey was made to identify OSC interests and priorities for training (Survey on Training Supply and Demand, "Centro de Estudios para el Desarrollo (CED)", 2002. The main issues for training leaders and members of civil society organizations included organizational management, leadership, project preparation, social communication, public and social affairs.

- The training System (First Call for Bids) is one of the first initiatives undertaken by the Fund for the Development of Civil Society, jointly with the Social Organizations Division, Ministry General Secretariat of the Government. Community organizations (territorial, functional and indigenous) are

urged to appoint their candidates to leaders and members and to screen, from a wide array of training courses, those that better respond to the needs and requirements of the organization.

The implementation of the Program seeks to develop and strengthen the social capabilities of non-profit, public-interest civil society organizations, including those which need to be strengthened or supplemented in every organization to develop both specific and social activities. To such effect, three large thematic areas are foreseen: a.- Management and organizational development; b.- Citizenship development, and c.- Social integration and cultural development.

This Program has already completed the first call for bids (August 2003). 7,373 leaders and members of civil society organizations throughout the country have taken programs and courses, with a total investment of \$618,223,727 or US\$883,176.00^{103 104}

(2) Implementation and development of information, complaints and suggestions offices (OIRs):

OIRs are fora for the interaction between citizens and public agencies contributing to form a modern administration at the service of citizens.

OIRS system is afforded priority in 156 public agencies. Through their incorporation into Management Improvement Programs, public agencies undertake to make progress in the development and integration of customer service¹⁰⁵.

The establishment and functioning of Information, Complaints and Suggestions Offices is governed by Decree No.

680 of September 21, 1990, promoted by Patricio Aylwin, President of the first Concertación administration. This decree states that several authorities shall establish OIRs, including Ministries, public agencies, provincial and regional Governor's offices and public enterprises created by law.

OIRs allow:

i. Dissemination of programs, social benefits and formalities proper to public agencies.

ii. Communication of government priorities like "Chile Solidario", "Plan Auge", Presidential instructions for citizens' participation, Bases for Tolerance and Non-discrimination, Administrative Processes Law.

iii. An interaction forum between citizens and the Executive.

OIRs shall facilitate service to any person carrying out formalities in public agencies, whether exercising his rights or in the discharge of his duties, and guarantee equality of opportunity, access and non-discrimination. For this purpose, Bills of Rights and Obligations of Citizens are established, public agencies being bound to inform customers of the procedures, processing terms and information mechanisms available to citizens. During 2004 (in agreement with DIPRES, a public agency reporting to the Ministry of Finance), it is expected to establish service points under Law No. 19,880 on Administrative Procedure.

Additionally, during 2003, the OIRs system incorporated "a comprehensive customer service model", whose objective is to link, inside agencies, customer attention (both in person and

by Internet), as information telephones, Internet, mobile offices, documentation centers, mailboxes for citizens' questions, etc. To such end, a "Methodological Guide - OIRs System"¹⁰⁶ was prepared, the OIR validation and follow-up system was implemented at www.preguntachileno.cl and training workshops were performed for OIRs and citizens' communication and participation leaders throughout the country, including regional and provincial governors, services (regional authorities of the OIR system) and public agencies (which have established OIRs reporting to the PMG-OIRS central authorities). In August 2003, training activities have been implemented in Santiago, Puerto Montt, Rancagua, Valparaíso, Talca, Temuco, La Serena, Punta Arenas, Coyhaique and Antofagasta, attended by a total of 1,345 officials. Additionally, OIRS institutional authorities have held over 100 briefing meetings on methodological matters.

According to the "2002-2003 DOS Survey", government agencies have at their disposal 1,500 OIRS, 800 information phones, 400 governmental websites and 21 mobile offices.

1.b. Objective results: There are yet no indicators allowing to obtain objective results.

1.c. Measures to encourage participation by the civil society:
Bill on Bases for Citizens Participation in the Public Management:

The Bill on Bases for Citizens Participation is a bill devised as an amendment to the Law on General Bases of the State Administration, which intends to guarantee the right of civil society to participate in the public management of its

agencies. This right is applicable to natural persons, groups of organized and non organized citizens, either having or not corporate existence and domiciled in the national territory. "Public management" means a set of State policies, actions and programs to satisfy public needs. The bill defines concepts and establishes the principles on which citizen's participation is based.

This bill also establishes general rules and citizen participation mechanisms, recognizing civil society's right to access information on public policies, save for exceptions established by law, as well as mechanisms to keep civil society informed (websites, public annual account, seminars, workshops and assemblies). Also established are mechanisms for civil consultation and proposals, the right of citizens to make remarks and offer advice to Government agencies, and surveys, as well as the possibility of Government agencies to set up working committees, call upon municipal councils, assemblies or public hearings for generating a permanent dialogue with civil society¹⁰⁸.

2. Mechanisms for access to information

2.a. The following laws regulate and establish mechanisms for civil society to access public information:

Law N° 19,653 of December 14, 1999 on administrative probity applicable to Government agencies: This law introduces important amendments to Constitutional Organic Law N°18,575 on General Bases for the State Administration¹⁰⁹. One of the most significant reforms consisted in establishing for the first time the organic principle of Transparency. It rules that

public functions shall be fulfilled with transparency, so as to allow and encourage knowledge of the procedures, contents and foundations of the decisions adopted. Besides establishing the principle of transparency, the State itself is compelled to further it, demanding positive action by Government agencies in its enforcement.

In addition to this principle, it incorporates the right of any interested party to access Government agencies' information and the administrative and judicial mechanisms to implement it¹¹⁰.

The administrative mechanism foresees that when the requirement refers to documents or background information containing data that may affect the rights or interests of third parties, the Head of the requested agency, within the term of 48 hours, shall send a certified letter to the person or persons affected or mentioned in the relevant information communicating him/her/them the right they have to oppose to the disclosure of the requested documents and enclosing a copy of the relevant request. Interested third parties may exercise their right to opposition within the term of three business days, which opposition shall be submitted in writing without need for stating the reasons thereof. Once opposition is filed, the requested entity shall be prevented from disclosing the documents or background requested, unless a court decision to the contrary is adopted. The same situation may happen in the event the requested documents are labeled as classified or reserved, for the protection of public or private interests. All persons may impugn the decision not to surrender a document

and file a complaint before courts of justice, which, through a special and summary investigation, shall definitely decide its surrendering.

Law N° 19,300 on Environmental Bases: Paragraph 3°, title 2°, of this law¹¹¹ provides for community participation in the Environmental Impact Evaluation procedure. The civil society may take cognizance of environmental impact surveys; make remarks before the relevant body, which must be weighed in the respective administrative resolutions. If these remarks are not properly weighed, a remedy before the superior authority can be submitted.

The Bill on the Bases for Citizens Participation in Public Management. In this bill the State recognizes citizens' right to be informed of public policies. Thus, it shall include the obligation by Government agencies to provide information on its programs, policies, actions and budget, ensuring that it is adequate, timely, complete and broadly accessible to citizens.

Government agencies shall publish at a website or a similar means the whole programs, policies and actions which shall be developed in each relevant annual period. They shall also public the budget and annual account. Provision of information shall not restrict to foregoing instruments, but can also be performed by means of seminars, workshops or assemblies.

Government agencies shall render an annual public account of its activities and of the budget performance. To this end, they shall summon the citizenship to attend a public act through the mass media of national coverage and the respective

websites.

2.b. Presently 200 Government agencies rely on web pages where they provide information about their institutional mandate, budget, management balance, and those issues in which they take part¹¹². Moreover, there are around 119 State interactive proceedings with citizens. Customers can have on-line access to 219 forms¹¹³. Web pages are daily visited by a large number of users. The Judiciary and the Congress also rely on web pages and broad information.

3. Mechanisms for consultation

3.a. In local administration matters, the General Law on Urbanism and Construction and its Ordinances stipulates that the Communal Regulating Plan (which provides the use of soil and therefore affects its value) shall be drawn up, modified and updated by the relevant Municipality, according to the General Law on Urbanism and Construction, and must be published twice in a newspaper of broad circulation in the district, indicating the term during which this Preliminary Plan shall be available for public knowledge. Interested parties may make remarks to the Preliminary Communal Regulating Plan within the terms appointed by law. Said remarks should be founded and submitted in writing to the Municipality: Remarks must be timely communicated to the respective Council¹¹⁴.

Our environmental legislation expressly stipulates the existence of advisory councils constituted, among others, by workers' representatives, non governmental organizations, representatives of workers, non-governmental organizations, academic centers, entrepreneurs and scientists, who must

express their opinion on Preliminary the Bills and Executive Decrees establishing environmental quality standards, prevention and decontamination plans, preservation of nature and conservation of natural resource endowment. These matters affect important economic interests. Accordingly, opinion on these matters by the civil society is essential.

Finally, it should be noted that the **Bill on Bases for Citizens Participation** provides the obligation of Government agencies to required the citizens opinion before adopting decisions on matters having an impact on or a general interest to citizens, these being understood as those affecting the citizens' rights and obligations. To this end, they shall seek the opinion of the organizations from the civil society that are experienced on the relevant matters. The opinion of the civil society shall be known through citizens' consultation and proposals.

3.b. There is yet no background documentation to obtain objective results.

4. Mechanisms to encourage active participation in public administration

4.a. Since the nineties there exists in our country a strong political will to further participation by the civil society in several public administration areas, which translates in several laws previously described in this document. In December, 2000, the President of the Republic issued some Instructions laying out guidelines for this participation as well as the obligation of the Regional Governments to prepare a Regional Citizens Participation Plan, which should be

incorporated into the regional development strategy¹¹⁵.

4.b. There is yet no background documentation enabling to reach conclusions on the objective results obtained by the implementation of this Presidential Instructions. Moreover, in the same document it is indicated that as of January 1, 2003, the instructions on citizen's participation should be fully implemented; therefore, only at that moment the relevant information can be known.

5. Participation mechanisms for the follow-up of public administration

5.a. Presently the Budget Directorate holds at its website information pertaining to management balances and goal fulfillment, enabling the civil society to follow up the public management of Ministries and Government agencies. All citizens can verify that the planned goals and aims have been effectively achieved by each institution. Moreover, the Bill on the Bases of Citizens Participation in Public Management stipulates that Government agencies should render public account of their management and of budget performance. To this end, they should call upon the citizens to attend a public act through mass media of with national coverage and through the relevant websites.

5.b. There are yet no means enabling to show objective results in the application of financial control mentioned in point a) of this number, since, as it was explained, the Bill on Bases for Citizens Participation is an instrument allowing civil society to broadly supervise public management, has not yet materialized.

CHAPTER V

ASSISTANCE AND COOPERATION

1. Mutual Assistance

1.a The following point provides the legal framework, established in different legal bodies, allowing national authorities (administrative and judicial) to expedite petitions of mutual assistance not only to request but to submit information, from/to bodies or authorities of other States which, according to their internal laws, are empowered to investigate or prosecute corruption acts.

Chapter VI A of the State Political Constitution provides that the authority responsible for the investigation of criminal offenses is the Public Prosecutor Office and that the relevant authority to enter into mutual assistance agreements is the National Prosecutor, the head and highest authority of the Public Prosecutor Office¹¹⁶. In Organic Constitutional Law N° 19,640 on the Public Prosecutor Office, these authorities and the specific channels for petitions are developed¹¹⁷.

The Criminal Procedure Code also contains rules contributing to the relevant legal framework and allowing the Public Prosecutor Office to send or receive communications of similar bodies for the prosecution of corruption. Besides, it contains rules concerning active or passive extradition, which can also be requested in said cases¹¹⁸.

Moreover, the Civil Procedure Code also regulates mechanism, establishing that the petitions are processed by the Ministry of Foreign Affairs, the Supreme Court of Justice and then the court of jurisdiction in criminal matters (Court of

guarantees or Oral Court) of the Prosecutor of the Public Prosecutor Office, as the case may be (article 76 of the Criminal Procedure Code)

It is noted that presently in our country two different criminal procedure systems are in force, due to the ongoing criminal procedure reform.

Relations at the court level

At the court level, relation and assistance is established for letters rogatory in article 76 of the Criminal Procedure Code, as already mentioned. Likewise, there is a permanent exchange of information at police level, which is channeled through the Police Organization of the Chilean International Police (INTERPOL) ¹¹⁹.

Other Procedures

Finally, at the Executive and Government levels administrative requests for information are common, generally related to money laundering operations, criminal organizations and terrorism financing, all of which channeled through the Ministries of Foreign Affairs and of Justice, as well as the State Defense Council and the Chilean Central Bank.

1.b. In effect, the State of Chile has required information and received similar petitions from other States. These petitions are handled at court level, with the participation of the Ministry of Foreign Affairs, the Supreme Court of Justice and by the Court of jurisdiction in criminal matters (Court of guarantee or Oral Court) or the prosecutor of the Public Prosecutor Office, as the case may be.

It must be pointed out that statistics and registers are

not broken down by each criminal offense. So, there is no specific data about requests for mutual assistance linked to criminal offenses foreseen in Title V, Book II, of the Criminal Code, i.e. offenses associated to corruption. Requests for all kinds of information have been filed, which have been satisfactorily answered - almost with no exception - within a period of 3 to 6 months, which has been deemed as satisfactory.

Data on letters rogatory and extraditions whose reports were submitted by the Prosecutor of the Supreme Court of Justice during the years 2000, 2001, and 2002 are as follows:

Year 2000

Letters Rogatory	516
Extraditions	<u>57</u>

Year 2001

Letters Rogatory	570
Extraditions	<u>32</u>

Year 2002 (until August 12)

Letters Rogatory	250
Extraditions	28

1.c. Not applicable

2. Mutual Technical Cooperation

2.a. In Chile there exist general mechanisms pertaining to the State as a whole to allow a broad mutual technical cooperation with other Party States about the most effective ways and methods to prevent, detect, investigate and sanction corruption by public officials. The conduction of foreign affairs in the State of Chile constitutionally belongs¹²⁰ to the President of the Republic. Therefore, he has among other duties to carry out

negotiations for the execution of treaties and, after approval by the Congress, for their ratification. In the discharge of these duties, the President of the Republic is assisted by the Ministry of Foreign Affairs, which is responsible for planning, coordinating, executing, controlling and providing information about foreign policies specified by the Head of State. Thus, there are constitutional and legal provisions, as well as financial resources annually considered in the Budget Law, and also personnel prepared for international cooperation relations. Although there are many examples, it is worth mentioning the Directorate of Legal Affairs and the Directorate of Special Policies, reporting to the General Directorate of Foreign Policy of the Ministry of Foreign Affairs, which acts as an advisory body on the matter and specifically facilitates mutual cooperation in the struggle against corruption. The Ministry of Foreign Affairs, then, constitutes the prime assistant to the Executive and its procedures are fulfilled by all Government agencies when aiming to enter into Treaties and Agreements binding the State of Chile.

Likewise, Chilean Government agencies, as public-law entities, generally are empowered to enter into mutual technical cooperation for a better fulfillment of the functions they have been vested with by law. In this case, it involves inter-institutional agreements establishing procedures adapted to the specific needs of the parties concerned.

2.b. Agreements: Within the State Administration, the CAIGG¹²¹ has entered into the following agreements on mutual technical assistance, exchange and cooperation for the prevention and

detection of corruption practices:

**MEMORANDUM OF UNDERSTANDING ON THE ESTABLISHMENT OF A
GOVERNMENT INSTITUTIONS NETWORK FOR PUBLIC ETHICS IN THE
AMERICAS**

Party to said Memorandum, together with the Government General Internal Audit Council of the Republic of Chile, are the following foreign institutions:

- a) The US Office of Government Ethics;
- b) The Canadian Office of the Ethics Counsellor;
- c) The Puerto Rican Office of Government Ethics;
- d) The Anti-Corruption Office of the Ministry of Justice of the Republic of Argentina;
- e) The Advisory Board in State Economic and Financial Matters of Uruguay;

This Memorandum is at an early stage of execution.

**MEMORANDUM OF UNDERSTANDING ON INTERNAL AUDITING RULES AND
POLICIES BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

Representing the signatory States, respectively, are the Office of the General Supervisor of the State Department of the Government of the United States of America, and the Government General Internal Audit Council of the Republic of Chile. Presently its execution has been adjourned for reasons submitted in due time by the North American Government.

Meetings: Preparatory working meetings have been held to formalize and execute mutual cooperation and assistance activities with representatives of the following international foreign bodies:

- a) The Anti-Corruption Office of the Ministry of Justice of the Republic of Argentina, with the purpose of signing an agreement on technical cooperation and exchange between this Office and the Government General Internal Audit Council of the Republic of Chile, on matters related to the prevention of corruption.
- b) The Puerto Rican Governmental Office of Ethics, with the aim of obtaining cooperation from said institution in the training of official members of the first National Network of Trainers in Ethics and Transparency in Chile. The first meetings have started and didactical material has been received, so that the project is already in progress.
- c) International Transparency for Latin America and the Caribbean, and Chilean Assembly of International Transparency, organizations which have organized activities in the last three years, aimed at promoting civics, official probity and transparency in public management. One of the results thereof was the Seminar called "Inter-American Convention against Corruption and the Chilean Legal Framework", inaugurated by the OAS General Secretary in October, 2000, in which experts analyzed the OAS Report on Adjustment of Chilean Laws to the Convention. Previously, in 1999, a workshop for the description of State corruption was also set up.
- d) Formerly, in 1998, the CAIGG organized a SYMPOSIUM ON THE STRENGTHENING OF PROBITY IN THE HEMISPHERE, in which most of the signatory countries of the Inter-American Convention against Corruption took part.

Moreover, the Republic's General Comptroller's Office has been included within the international organizations reuniting oversight bodies: INTOSAI (International Organization of Supreme Audit Institutions) and OLACEFS (Caribbean and Latin American Organization of Oversight Bodies). At the XVI INCOSAI (International Congress of Supreme Audit Institutions) held in Montevideo, the said Comptroller's Office was entrusted with the report of the subject: "Methods and Techniques to detect fraud and corruption". In the case of OLACEFS it is worth mentioning that in the XI Assembly, held in August 2001 in Panama, a paper entitled "Corruption: to Prevent, Identify and Sanction: The Chilean Model" was submitted, a copy of which is attached. Besides, the Republic's General Comptroller's Office of Chile was appointed as a member of the said Organization Managing Council.

Likewise, the Republic's General Comptroller's Office of Chile, since 1987 is the secondary headquarters of the OLACEFS on computer audits, for which a course is annually developed on Audit on Software Systems, for all Latin America and the Caribbean, as a result of which this last area has shown a permanent concern for updating the contents of said course and incorporating modern tools and technology for the support of this Audit. Finally, the General Comptroller's Office became a member of the Controlling Entities of the Mercosur, performing controlling endeavors in some common areas with Argentina and Bolivia.

2.c. Not applicable

2.d. Owing to different reasons, included the external view on

corruption in Chile, our country has **not** developed technical cooperation programs with the support of cooperation agencies or international bodies, except in isolated cases. Nevertheless, it is expected and desired that in 2004 we are afforded greater support for projects that are still at a design stage and some which whose execution has already begun.

CHAPTER SIX

CENTRAL AUTHORITIES

(ARTICLE XVIII)

VI.1. Designation of central authorities.

1.a. and 1.b. OAS has been informed that Chile, generally, makes use of the Central Authorities appointed in agreements in force, and, in the absence thereof, or where such authorities have not been designated, the said role is played by the Ministry of Foreign Affairs.

Regarding the Inter-American Convention against Corruption, and in connection with the foregoing paragraph, the Ministry of Foreign Affairs is acting as Central Authority, without prejudice to the Central Authority being subsequently designated and communicated.

1.c.

On cooperation matters (investigation and prosecution)

Name of Institution	: Ministry of Foreign Affairs
Responsible Official	: Claudio Troncoso Repetto
Official's position	: Ambassador - Director of Legal Affairs, Ministry of Foreign Affairs
Telephone	: 679 4237
Fax	: 699 5517

Electronic mail : dijurl@minrel.cl

On mutual technical assistance matters:

Name of the Institution : Ministry of Foreign Affairs

Responsible Official : Luis Winter Igualt

Official's position : Ambassador - Director of Special
Policies, Ministry of Foreign Affairs

Telephone : 679 4374

Fax : 672 5071

Electronic mail : dipespl@minrel.cl

1.d. Not applicable

2. Operation of Central authorities

2.a. The Ministry of Foreign Affairs has the authority and competence, both constitutional and legal, to act as Central Authority, in the same way as Ministries and political institutions that, by virtue of international treaties on assistance and cooperation, are responsible for such activities. Secondly, the Ministry of Foreign Affairs is annually allocated resources in the Budget Law every year, which are approved the next preceding year by the National Congress. The Ministry's Budget for 2003 is approximately MM\$18,400. (about US\$26,285,714.00) Broken down information on the budget can be consulted at the Budget Directorate's website (www.dipres.cl). It has also units and personnel for discharging such, as it also counts on a Directorate of Legal Affairs, directly reporting to the Under-Secretariat of Foreign Affairs, and on a Directorate of Special Policies, reporting to the General Directorate of Foreign Policy.

2.b. Not applicable, since the Central Authority has been

communicated to the OAS during the drawing up of this reply to the questionnaire.

INFORMATION REGARDING THE AUTHORITY RESPONSIBLE FOR THIS QUESTIONNAIRE.

Party State : Chile

Official to be consulted : Patricio Maturana Maturana

Position : Coordination and Administration
Director, Special Policies
Directorate

Body : Special Policies Directorate,
Ministry of Foreign Affairs

Address : Catedral N° 1143, Santiago.

Telephone : (56-2) 679 4374

Fax : (56-2) 672 5071

Electronic mail : dipesp2@minrel.cl

¹ See State Political Constitution (enclosed)

² In any case, there already existed rules, constitutional and legal, aiming directly or indirectly at the right, honorable and adequate fulfillment of public functions by members of Government agencies.

³ Article 13 of the LOCBGAE, articles 34 and 36 of Law 18,695 on Municipalities, article 35 A of the Organic Constitutional Law on Government and Regional Administration, article 5A of the Organic Constitutional Law on the National Congress, and Organic Code of Courts. See annex.

⁴ See Organic Court Code (enclosed)

⁵ See articles 15 et seq. of Law 18,834; articles 25, 34, 44 and

113 of State Political Constitution and article 31 of LOCGAR; article 54 of the LOCBGAE and 11 of Law 18.834.

⁶ See articles 27 et seq. of Law 18,834(enclosed)

⁷See articles 48 and 49 of State Political Constitution (enclosed)

⁸ For further details see reply to Chapter I, N°3, of the questionnaire

⁹ The Criminal Code was amended under Law No. 19,829

¹⁰ See on Explanatory Summary on Chilean Criminal Procedure Reform (enclosed).

¹¹ Within the Executive Power they were to be found until 1999 in the general statute regulating the rights and duties of the Government agencies' staff, Law N° 18,834, 1989, which incorporated similar rules issued from the previous Statute, DFL N° 338, 1960.

¹² See complete legal text (enclosed). Spanish, English and French versions

¹³See article 52 LOCBGAE(enclosed).

¹⁴See article 1° LOCBGAE(enclosed).

¹⁵ **Inability** is a hindrance to discharge a duty, employment or function for lack of some requirement specified in the law. See article 54 LOCBGAE (enclosed).

¹⁶ **Incompatibilities** consist in prohibitions affecting the authorities and officials to develop, concurrently with public offices, specific private activities (occupation, profession, trade or industry).

¹⁷ **Prohibitions** refer to conducts considered totally in contravention of the principle of administrative probity, and

include sanctions for the participation of a public official in decisions that, for any reason, deprive him of impartiality (see N° 6, article 62, LOCBGAE(enclosed)).

¹⁸ Officials are bound to submit a **statement of interests**. Moreover, according to the statutes of some public bodies, as the Internal Revenue Service, the Republic's General Comptroller's Office and the Chilean Central Bank, they are bound to submit a statement of net worth. This part is dealt with in Chapter II of the Questionnaire.

¹⁹ According to Chilean administrative rules, based on the French model, a public office is characterized by employment conditions not being determined through direct negotiation or direct engagement with variable conditions, but subject to detailed objective rules that cannot be easily altered.

²⁰ Article 12. Abstention principle. Government authorities and officials satisfying any of the below conditions shall refrain from intervening in a procedure and inform his superior officer, who shall make a decision on the matter. Grounds for abstention include:

1. Having a personal interest in the matter dealt with or in any other matter that may have a bearing on it; managing an interested company or corporation or having a pending lawsuit with any person concerned.
2. Being bound by consanguinity, up to fourth degree, or affinity, up to second degree, with any of the persons concerned, managers of interested companies or corporations and advisors, legal representatives or attorneys playing a role in the procedure, and being associated with them as advisors,

legal representatives or attorneys.

3. Having a close/antagonistic relationship with any of the above persons.

4. Having acted as expert or witness in the said procedure.

5. Having a professional relation with an individual or legal entity directly interested in the matter, or having rendered - within the next preceding two years - professional services of any kind, in any place or under any circumstances.

Involvement by authorities and government officials in actions where any of the above grounds is present shall not necessarily entail the nullity of acts where they have played a role. Should they fail to refrain from acting, they may be held liable.

In the events foreseen in the two paragraphs above, a request for disqualification may be filed by the person concerned at any time during the procedure.

Disqualification shall be informed to the authority or official in question, and shall express the grounds therefor.

²¹ See articles 256, 257, 258, 259 and 260, Organic Court Code (enclosed).

²² See articles 261 and 199, Organic Court Code (enclosed)

²³ In the Judiciary, judges in general are subject to a series of prohibitions primarily seeking that a judge's impartiality is not affected when making a determination (articles 316, 317, 320, 321, 322 and 323, Organic Court Code(enclosed)).

²⁴ For the text, see www.poderjudicial.cl or the annex.

²⁵ See articles 54 to 57 of the State's Political Constitution;

and articles 5A, 5B and 5C of the Constitutional Organic Law N° 18,918 of the National Congress.

²⁶ In the case of inabilities the following persons cannot be candidates for Deputies or Senators: 1) Cabinet Ministers; 2) Regional and Provincial Governors, Mayors, members of Regional and Municipal Councils; 3) Members of the Chilean Central Bank Board; 4) Magistrates of the High Courts of Justice and professionally-qualified judges; 5) Members of the Constitutional and the Electoral Court and regional electoral courts; 6) the Republic's General Comptroller; 7) Persons holding a managerial office in trade unions or neighbors associations; 8) individuals managing bodies corporate having entered into or guaranteed contracts with the State, and 9) The General Attorney, the regional prosecutors and assistant prosecutors of the Public Prosecutor Office, (art.54 State Political Constitution). The foregoing inabilities shall be applicable, as a general rule, to those having had the capacities or discharged the duties aforementioned within the year next preceding the election.

²⁷ The offices of Deputies, Senators and members of the Constitutional or Electoral Court are incompatible among themselves and with all gainful employment or commission paid out with the funds of the Treasury, Municipalities, independent fiscal or semi-fiscal entities, Government enterprises or companies to which the Treasury has made capital contributions. Likewise, the positions of Deputy, Senator and member of the Constitutional or Electoral Court are incompatible that of directors or advisors, even if they are ad honorem, in

independent fiscal or semi-fiscal entities, or in Government enterprises to which the State has contributed capital. Exception is made of teaching positions and duties or commissions of a similar character at special or high schools and tertiary education institutions. Incompatibility extends also to a term after termination of duties (articles 55, 56, 81 and 84 State Political Constitution).

²⁸ See article 57, State Political Constitution (enclosed). Finally, the State Political Constitution establishes, as an additional sanction, incapacity to be a candidate to any public office for a two-year period.

²⁹ a) Prohibition to simultaneously discharge a public function, whether paid or not out of public funds, with the exception of teaching positions (article 80 Law 18,834 and 55 and 56 of the State Political Constitution), b) Prohibition to take part in the decisions affecting their interests or those of persons bound by kinship. For example, senators and deputies cannot further or vote any matter in which they have a direct or personal interest, or in which their spouse, ascendants, descendants, among others, have a direct or personal interest. The same prohibition applies to regional advisors in matters in which they or their relatives are interested (article 5° B of the Organic Constitutional Law on the National Congress and article 35 of the LOCGAR).

³⁰ See www.bcentral.cl

³¹ According to the Administrative Statute, Law N° 18,834, sanctions to public officials may consist in: a) censure; b) fine; c) suspension from duties; and d) dismissal.

³² See article 64 LOCBGAE (enclosed).

³³ The Statement of Interests must be updated every 4 years and each time an important modifying fact occurs.

³⁴ See reply to Chapter I, N° 4, on accusation of corruption activities.

³⁵ Established in article 57 LOCBGAE and regulated through Executive Decree N° 99, of June 28, 2000 from the Ministry General Secretariat of the Presidency. Spanish, English and French texts are enclosed.

³⁶ Dismissal is the maximum administrative sanction and entails the permanent impossibility of being readmitted to civil service, unless a period of 5 years has elapsed and as authorized by Decree from the President of the Republic.

³⁷ See article 13 LOCBGAE (enclosed)

³⁸ Government General Internal Audit Council.

³⁹ Source: CAIGG Report. These figures do not include training activities executed and engaged by Government agencies themselves for their staff.

⁴⁰ Figures up to July, 2002. As from the second semester of 2001 the number of officials trained by CAIGG deliberately dropped, since a better method of training was adopted tending to create a National Network of Instructors on Probity and Transparency. As at July, 2002, 102 officials have been selected from all trained members to take part in the national network.

⁴¹ Source: Report from the Republic's General Comptroller's Office.

⁴² Source: Annual Report from the Republic's General

Comptroller's Office. There are no unified statistical data on ongoing summary investigations and administrative summary investigations in Government agencies.

⁴³ See the enclosed 1980 Political Constitution of the State. The previous one, issued in 1925, also contained strict regulations of reciprocal control of the State powers (functions).

⁴⁴ See annex.

⁴⁵ See annex. Rules on administrative probity and transparency were incorporated into Law N° 18.575, LOCBGAE. Nevertheless, Law N° 19,653 on administrative probity introduced similar regulations into legal statutes of other State powers and autonomous organs.

⁴⁶ See law (enclosed).

⁴⁷ Basically they are found in Law N°18,834 on Administrative Statutes, in Law N° 18,833 Statute on Municipal Officials, Law N° 19,070, Statute on Education Professionals and Law N° 19,378, Statue on Municipal Primary Health Care.

⁴⁸ See Annex.

⁴⁹ See Law N° 19.175, Organic Constitutional Law No. 19,175 on Regional Governments, and Organic Constitutional Law No. 18,695 on Municipalities (enclosed).

⁵⁰ They are contained in the book about "Instructions for the application of the Budget Law". Many of its laws and instructions have been enclosed.

⁵¹ Decree Law N° 799 of 1974, regulating the use and traffic of fiscal vehicles; Decree N° 1.312, of 1997 from the Ministry of Finance on Systems of Purchase Information and Public Hiring; ;

Statutory Decree N° 262 of 1977 and Decree No. 1, of 1991, both from the Ministry of Finance regarding travel allowances for secondments within and without the national territory; Decree N° 698 of 1997, from the Ministry of Finance establishing the procedure for the public sector to negotiate, authorize and contract credits; Law N° 18,803 on hiring supporting labor force; Decree N° 98 of 1991 from the Ministry of Finance regulating the entry into agreements involving the rendering of personal services; Decree No. 151, of February 2003, which regulates the way in which studies and investment projects are awarded; and Laws N° 18,196 (article 11), N° 18,382 (article 11) and N° 18,591, (article 68), regulating the budget system by which certain enterprises with public participation must abide.

⁵² Breach of public duties, leaving of employment without cause and omission of the duties to persecute crimes, disobedience and refusal to aid, unfaithfulness in the custody of documents, breach of secrecy, bribery, influence peddling, embezzlement, fraud and illegal exactions, negotiations and activities prohibited to public officials and abuse of office. Article 260 of the Criminal Code defines the term "public official" for criminal purposes.

⁵³ See Protocol to 2003 Budget Law (enclosed).

⁵⁴ Articles 85 et seq. of Organic Constitutional Law N° 10,336. on the Republic's General Comptroller's Office (enclosed).

⁵⁵ See Executive Decree No. 12 (enclosed) establishing the CAIGG.

⁵⁶ See report (enclosed)

⁵⁷ According to the exchange rate prevailing in July 2002

⁵⁸ The policy of internal audit initiated in 1994, and applied until this date, is characterized by preventive activities and management support. Thus, the internal audits tend to support institutional management and act on risk areas, being able to detect frauds and irregularities.

⁵⁹ See reply to Questionnaire, in Chapter 1b.vi

⁶⁰ The rules below constitute the main provisions establishing the generic obligation on public officials to report offenses that they might be aware of. Notwithstanding the foregoing, it is possible to find in specific legal bodies other provisions which consider, among disciplinary duties, similar obligations. In this regard, it is suggested to review, by way of example, Disciplinary Rules of the Chilean Investigations Police staff.

⁶¹ See article 58 of State Political Constitution (enclosed).

⁶² See article 105 Criminal Procedure Code (enclosed).

⁶³ Within the 24 hours following the date on which they have become aware of the criminal case.

⁶⁴ Entitled "Crimes and misdemeanors perpetrated by public officials in the discharge of their duties".

⁶⁵ See Law N° 18.834(enclosed).

⁶⁶ See Law N° 18.883(enclosed).

⁶⁷ Title XIV of Organic Court Code, disciplinary powers and visits. See annex.

⁶⁸ Senate Regulations. See at <http://www.congreso.cl>

⁶⁹ Among the facts having a negative impact on filing of accusations for corruption on the part of public officials, in addition to the evidence problem, there exists a kind of

misunderstood "loyalty" and a lack of protection to the reporting party, besides any possible liability that may derive against him for the facts in question.

⁷⁰ It is worth mentioning that all cases referred to in this questionnaire are only described for the purposes of illustrating accusations and the legal activity generated, and do not imply a prejudgment of liability in cases where a final judgment is not yet rendered.

⁷¹ On January 26, 1994, CODELCO's Executive President submitted the losses suffered by CODELCO because of failed operations in the futures market, resulting in the so called "CODELCO case", in which an executive is finally sentenced as perpetrator of fraud to the National Treasury for an amount of money exceeding 217 million dollars.

⁷² In the middle of September 2000, the trade union of the state enterprise "Correos de Chile" informed that senior executives had collected millionaire severance payments thanks to profitable contracts that included major all-event severance payment clauses substantially higher than the minimum stipulated by the law.

⁷³ In June and then in September 1998 a Deputy denounced the alleged import, supposedly illegal, by the Air Force of Chile of rattan furniture and 541 tons of meat for the amount of one million 350 thousand dollars respectively, as reserved equipment.

⁷⁴ In March 1993 a scandal took place affecting "Refinería de Concón" (Concón Oil Refinery (RPC)) because of an accusation by of a Deputy against those who may be found liable for an

possible extra payment of \$ 381 million pesos in a contract for pulling out weeds of 320 hectares in the State enterprise.

⁷⁵ The ESVAL case relates with eventual irregularities at the construction phase of a drainage ditch between the cities of Viña del Mar and Valparaiso for a total investment of 10 million dollars, which in time more than doubled the original value.

⁷⁶ Press information can be obtained through the mass media's web searchers.

⁷⁷ To such extent that many times there is no formal evidence of the accusation in the summary investigation files.

⁷⁸ There is an important commitment from the Judiciary to struggle against corruption among its members. To this end, the Supreme Court, within its disciplinary jurisdiction, has created a Judiciary Ethics Commission, which has investigated and sanctioned different corruption cases.

⁷⁹ The Public Prosecutor's Office is an organization whose main purpose is to fight corruption; nevertheless, due to its recent creation and the partial implementation of the criminal procedure reform, it has not been possible to evaluate its work thoroughly.

⁸⁰ See DFL N° 1 of June 28, 1993, from Ministry of Finance (enclosed).

⁸¹ The Bill which creates the Financial Analysis and Intelligence Unit and amends the Criminal Code in money laundering is contained in Bulletin N° 2975-07 published by the Congress.

⁸² See Annex.

⁸³ See Annex.

⁸⁴ See Statement of Interests Form (enclosed).

⁸⁵ See annex

⁸⁶ See annex. Resolution by the National Prosecutor.

⁸⁷ See annex.

⁸⁸ See article 323 bis of the Organic Court Code(enclosed).

⁸⁹ See annex

⁹⁰ See annex

⁹¹ See annex

⁹² See Statement of Interest Form (enclosed)

⁹³ www.poderjudicial.cl, www.congreso.cl,
www.gobiernodechile.cl, www.modernizacion.cl, www.dipres.cl,
www.contraloria.cl; www.bcentral.cl.

⁹⁴ See text of the Bill on Constitutional Reform (enclosed).

⁹⁵ See text of Law No. 19,418 (enclosed)

⁹⁶ Given the importance of this kind of organizations, in 1998 August 7 was appointed as the "National Day of Neighbors Associations Leaders and other Community Organizations".

⁹⁷ See message and articles 26 et seq. of law 19,300

⁹⁸ See instructions and annex in Official Letter N° 30, of December 2000(enclosed).

⁹⁹ Executive Decree N°65, which creates the Committee for Individuals Protection (enclosed).

¹⁰⁰ See presidential instructions N° 30 of December 2000.

¹⁰¹ See annex BGI Segegob and http://www.segegob.cl/archivos/BGI2002_msgg.pdf

¹⁰² DOS: Social Organization Division, Ministerio Secretaría General de Gobierno

¹⁰³ As per August 2003 exchange rate (1:700).

¹⁰⁴ For further data and details, see Applications Result for 2003 OSC Training (enclosed).

¹⁰⁵ List of institutions having undertaken management commitments is enclosed.

¹⁰⁶ Material enclosed.

¹⁰⁷ Published at www.preguntachileno.cl

¹⁰⁸ See Bill of the Law on Bases for Citizen Participation in Public Management(enclosed).

¹⁰⁹ See articles 3° and 13, LOCBGAE (enclosed).

¹¹⁰ See Regulations (enclosed).

¹¹¹ See article 26 of Law 19,300 (enclosed).

¹¹² Only 7 Government agencies have no on-line information

¹¹³ See www.tramitefacil.cl

¹¹⁴ See article 43 of the General Law on Urbanism and Construction

¹¹⁵ See Instructions by the President on Citizen's Participation (enclosed).

¹¹⁶ See Organic Law on the Public Prosecutor Office (enclosed)

¹¹⁷ See articles 6, 13 and 17 of Law 19,640 (enclosed)

¹¹⁸ See articles 13, 192, 431, 434, 436, 437, 440, 441 and 443 of the Criminal Procedure Code(enclosed)

¹¹⁹ The procedure to be followed in each case is described below:

- Regarding communications which should be transmitted abroad:

In this case the communication must be addressed to "to whom it may concern", channeled through the Supreme Court. The Supreme Court shall address this communication to the Ministry of

Foreign Affairs for it to process it in accordance with treaties or general rules. In case of an active extradition, the channel is the Judge of Guarantee, the Court of Appeals and the Ministry of Foreign Affairs, upon petition by the plaintiff's or the Public Prosecutor Office.

- Regarding the communications received from abroad:

In this case, the general channel is the same as established in article 76 (issuing official, Ministry of Foreign Affairs of Chile, Supreme Court, judicial official that must comply with the order). Regarding an active extradition, the foreign country addresses the Ministry of Foreign Affairs, which submits the documents to the Supreme Court, in order to designate a justice.

Proceedings by law-enforcement officers:

The Chilean Investigations Police has links with INTERPOL's International Organization of Criminal Police "O.I.P.C.". It should be noted that said Police agency represents Chile as a member of this Organization. This relation is made through INTERPOL National Central Bureau, depending on the General Directorate.

¹²⁰ Article 32, N° 17, State Political Constitution, see annex.

¹²¹ Government General Internal Audit Council, created by virtue of Executive Decree N° 12 (enclosed).