

Republic of Chile

**RESPONSE FROM THE STATE OF CHILE
TO THE QUESTIONNAIRE ON THE FOLLOW-UP
MECHANISM FOR THE IMPLEMENTATION OF
THE INTER-AMERICAN CONVENTION
AGAINST CORRUPTION**

FIRST ROUND

Prepared by the National Group of Experts

August 2002

DESCRIPTIVE SUMMARY OF THE LEGAL AND INSTITUTIONAL SYSTEM OF THE STATE OF CHILE

Chile is a representative democracy and its system of government is that of a republic headed by a President. It is organized as a unitarian state and the administration of its thirteen regions is territorially decentralized.

The organs of the state are basically the Executive, the National Congress and the Judicial Branch. The government and its administration are the responsibility of the President of the Republic. As Head of State, the President is responsible for the administration of the Ministries, Government Services, Superintendencies and Governors' Offices.

Chile also has other government bodies endowed with constitutional autonomy such as the Central Bank in the area of monetary policy and the Office of the General Comptroller of the Republic in the area of oversight regarding the legality of actions taken by the Executive. The Constitutional Court, the Office of the Attorney General, the National Security Council and the Municipalities are also autonomous in nature.

The Congress is the legislative body par excellence, sharing that task with the Executive. It is also the entity that oversees the actions of government, charged with the task of political criticism. It is bicameral, comprised of the Senate and the Chamber of Deputies.

The Judicial Branch is made up of the courts of justice. The Supreme Court, a collegial body comprised of twenty-one ministers of the Court and responsible for the management, correction and economic oversight of all the nation's courts, heads the Judicial Branch.

The activity of the State is carried out through the bodies established in the Political Constitution of the State and in observance of the principles of constitutional supremacy, interpretation consistent with the Constitution, prohibition on arbitrariness, responsibility, and the separation of governmental powers.

Based on the above, the actions of the agencies of the State are subject to what is expressly established in the Political Constitution of the State and in provisions of public law. The most important provisions, after those established in the Constitution, are those that refer to the organization and operations of the Government Administration, the National Congress, the Judicial Branch, the Regional Governments and the Municipal Governments. However, each government agency is also governed by organic laws specifically designed to create and organize it.

State-owned companies have their own by-laws and their economic, productive, commercial and labor relations are governed essentially by the provisions of private law that apply to any company.

Oversight of actions taken by the State is basically effected through the separation of powers and reflected in the existence and operation of a series of inter-institutional and intra-institutional checks. Thus, in addition to the oversight exercised by the citizenry, individually or in an organized way, and by pressure groups, there is a series of formal relationships among and within the functions and institutions of the Government of Chile.

In Chile, oversight of the Executive, understood as both government and administration, is exercised primarily by the National Congress, the Courts of Justice, the Office of the General Comptroller of the Republic, the citizenry and the media. This oversight, such as it is, can be called external as opposed to the oversight operating within the Executive. External oversight of the Executive can be classified as follows:

Political Oversight: oversight exercised institutionally by the Congress pursuant to the constitutional powers that have been exclusively entrusted to it, to which it is characterized for its political critique and public demand in this area.

Judicial Oversight: oversight that potentially and specifically in cases where it is required may be exercised by the courts of justice when their intervention is sought by virtue of a legal action or constitutional appeal, in the latter case in order to protect individual guarantees or declare that a law is unconstitutional.

Administrative-Legal Oversight: oversight exercised by the Office of the General Comptroller of the Republic, as an autonomous and functionally independent agency of Government Administration. The Office of the Comptroller has the power to supervise and to safeguard the effect of the rule of law in the administrative sphere, as well as to protect public interests and personal rights that may be compromised by administrative action.

Citizen Oversight: oversight carried out by the citizenry and by intermediaries: guilds, unions and particularly the media.

The external oversight of governmental actions has its counterpart in a system of internal oversight. This system ensures the proper utilization of resources and due compliance with the goals and objectives of Government Administration. Within each agency of the Administration, the Department Heads participate in the oversight system as the first line of responsibility, along with legal, personnel, administrative and finance, internal comptroller and internal audit units. Internal audits are coordinated on an ongoing basis with the Executive, whose General Government Internal Audit Council, an advisory organ to the President, was established.

CHAPTER ONE
MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT
FOR THE CORRECT, HONORABLE AND PROPER FULFILLMENT OF
PUBLIC FUNCTIONS (ARTICLE III, 1 AND 2 OF THE CONVENTION)

1.a. Standards of Conduct

Constitutional and Legal Status

The Political Constitution of the Republic (CPE¹) provides in Article 1 that “the State is in the service of humanity and its purpose is to promote the common good.” Thus, government functions that fall to the State, whether legislative, administrative or judicial, must be carried out based on the role of service and the purpose of promoting the common good.

The Constitution also stipulates that the agencies of the State, as well as officeholders and members of government agencies, must act in accordance with the Constitution and provisions issued pursuant to it. In order for an action taken by a government agency to be valid it must have proper prior authorization, the matter must be within its competence and the action must be carried out in the manner prescribed by law (considering both procedure and the external expression of the action). If this is not true, responsibilities and penalties accrue, as provided by Articles 6 and 7 of the Constitution.

Law No. 19,653 on the Administrative Probity of government administrative agencies was promulgated in Chile in 1999. This law amends various laws, expressly incorporates the concept of administrative probity as an essential principle in our law² and updates the definition of administrative probity.

The referenced Administrative Probity Law reserved an organic constitutional level for that principle, consisting of the observance of irreproachable official conduct and honest and faithful performance of ones function or position, with the general interest taking precedence over individual interest. This principle applies not only to government administrative agencies but also to the Legislative Branch, the Judicial Branch and the constitutional agencies.³

In addition, the Administrative Statute (Law No. 18,834) governing the relations between the State and administrative agency personnel provides a series of obligations and prohibitions with respect to public officials. Among the obligations, we find, *inter alia*, the duty to personally carrying out ones position, to direct the development of ones functions to fulfilling the institution’s objectives, to do ones work carefully and

¹ See CPE attached.

² In any case, there were already constitutional and legal provisions that addressed, directly or indirectly, the correct, honorable and proper fulfillment of public functions on the part of those called upon to serve in government agencies.

³ Article 13 of the LOCBGAE, Article 34 and 36 of Law No. 18,695 LOC on Municipalities, Article 35A of the LOC on Regional Government and Administration, Article 5A of the LOC of the National Congress and the Organic Law of Courts. See attached.

courteously, to obey orders given by a superior, and to strictly observe the principle of administrative probity (Article 55). Notable among the prohibitions we find the prohibition on exercising powers, attributions or representation not legally invested or delegated and the prohibition on seeking or having someone promise, or accepting donations, advantages or privileges of any type for oneself or third parties (Article 78).

Constitutional Status of the Responsibility of Judges:

Our CPE expressly establishes that judges are personally responsible for the offenses of bribery, substantial failure to observe laws governing proceedings, denial and distorted administration of justice and generally any prevarication committed in the performance of their functions (Article 76). Further, the CPE assigns regulation in this area to the Organic Law on Courts (COT⁴), which has jurisdiction over providing for cases and the manner in which this responsibility is carried out. All this is without prejudice to the substantial criminal provisions established in the Criminal Code (CP).

In addition, the CPE establishes that judges shall hold their seats on their good behavior. In order to enforce this standard, it then provides that the Supreme Court, as ordered by the President of the Republic at the request of the interested party, or *de officio*, may declare that judges have not demonstrated good behavior and a majority of its members may agree on their removal (Article 77).

1.b. Mechanisms

Constitutional and Legal Status

Our country has various mechanisms for enforcing the provisions described above. Some provisions prevent unsuitable officials from entering public service and others penalize improper conduct. The penalties vary according to the rank of the public official who has violated the standard and the gravity of the action or omission attributed to him or her.

The following mechanisms merit mention:

a.- Procedure for assuming public office and special requirements. The first mechanism that provides for enforcing the standards of probity is the **entry** procedure. It takes effect prior to one's entry into public office and meets the requirements for being an objective and technical procedure. As part of this procedure, various aspects must be evaluated and there is a requirement on moral suitability applicable to any public official, whether popularly elected or not. One must not have been prosecuted or convicted of offenses that warrant serious punishment or for terrorist conduct (citizenship and voting rights are lost). In other cases, one must not have been convicted for a crime or simple offense.⁵

⁴ See COT attached.

⁵ See Article 15 et seq., Law 18,834; Articles 25, 34, 44 and 113 of the CPE and Article 31 of the LOCGAR; Article 54 of the LOCBGAE and Article 11 of Law 18,834.

b.- Qualifications procedure: The purpose is to evaluate the performance and aptitudes of each official in view of the requirements and characteristics of the position. This is used as the basis for promotion, incentives and removal from office. Qualification takes into account the performance of official duties, particularly provisions on administrative probity. If the qualifications board gives an official a List No. 4 rating, removal from office proceeds. This also happens if an official receives a List No. 3 or conditional rating for two consecutive years.⁶

c.- Constitutional accusation. The purpose of this mechanism is to enforce the political responsibility of those in high office, such as the President of the Republic, the Ministers of State, the General Comptroller of the Republic, Superintendents, Governors and other authorities. The usual reason is violation of the Constitution and the laws, which takes account of incorrect or inadequate performance in the duties they carry out. Both the Chamber of Deputies and the Senate participate in this process, the lower house as accuser (allowing or rejecting the accusation formulated by a group of deputies) and the upper house as the deliberative body. Based on a declaration of guilt, the accused is removed from office and may not carry out any public office, whether by popular election or not, for a period of five years.⁷

d.- Disciplinary proceedings and removal from office. Our legislation provides two procedures of this type: the summary investigation and the administrative inquiry. Before imposing a disciplinary measure (censure, fine, suspension or removal), a procedure must take place that observes the principles of legality and due process. Thus, these procedures consist of a series of formalities the purpose of which is to verify the existence of the violation of provisions establishing the duties and prohibitions applicable to officials and the principle of administrative probity, to confirm the identity of the offenders and to establish their degree of participation. The Office of the General Comptroller of the Republic, as the body guaranteeing administrative due process, helps to ensure that the procedures are conducted properly.

e.- Administrative and financial oversight procedures of the state. There are general rules and procedures established by law, as governed internally, relating to the series of administrative processes that make it possible to obtain resources and apply them to achieving government objectives. Specifically, there are procedures and mechanisms relating to budgetary, accounting, fund management, and financial oversight processes.⁸

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

- **Law No. 19,645 of December 11, 1999:** Before describing the pertinent criminal legislation, we should note that the full chapter on *official offenses* in the Criminal Code has been the subject of very recent amendment and improvement under Law No. 19,645 of December 1999. That law revised practically all the provisions in that chapter,

⁶ See Articles 27 et seq. of Law 18,834 attached.

⁷ See Articles 48 and 49 of the CPE attached.

⁸ For more detail, see response to Chapter I, No. 3 of the questionnaire.

modernizing the description of criminal offenses and removing gaps or inconsistencies in the original language of our Code. Added to this is the amendment of the Criminal Code⁹ so as to adapt it to the commitment assumed under the OECD Convention on Combating Bribery of Foreign Public Officials in international business transactions. This revision of the criminal types of *official offenses* incorporated the principles of criminal doctrine now prevalent in this area, as well as the techniques used in modern comparative law.

- **The concept of a public official for criminal purposes.** For purposes of so-called official offenses, our criminal system considers an *official* or *employee* to be anyone who carries out a public position or function, whether in the central administration or in semifiscal, municipal, or autonomous institutions or companies or agencies created by the State or answering to it, even if not appointed by the Head of State and not receiving a government salary. The fact that a position is held due to popular election is not a bar to this definition.

- **A generic aggravating circumstance.** Our criminal system provides a generic aggravating circumstance for the offense and the penalty (i.e., applicable with respect to any offense, except for those in which the circumstance is inherent), which consists of the circumstance of the offender having taken advantage of his or her capacity as a public employee or official (Article 12, No. 8 of the CP).

- **The penalty of disqualification as a penalty accessory to that of any major offense.** Our criminal system establishes—as a penalty accessory to that of imprisonment—the admissibility of a penalty of permanent and absolute disqualification for the exercise of public positions or offices, regardless of the offense a person has committed. In this way, a person who is sentenced to imprisonment of more than 5 years (regardless of the offense for which he or she was convicted) *may never again* serve as a public official (CP, Article 28). If to this is added the administrative and legal rules that bar access to public office for those who have been convicted of any crime or simple offense (Article 11 (f) of Law 18,834), the conclusion is that our legal system seeks to foster the moral suitability of those who serve in public office.

- **Pertinent legal definitions.** Our CP establishes the following corruption offenses:

- **Usurpation of powers:**
 - a) Abuse of authority: Article 221 of the CP.
 - b) Arrogation of powers: Article 222 of the CP.
- **Prevarication:** Articles 223 to 230 of the CP.
- **Extortion:** Article 241 of the CP.
- **Falsification of public documents:** Articles 193, 199 and 203 of the CP.
- **Unfaithfulness in the custody of documents:** Articles 242, 243 and 244 of the CP.
- **Violation of secrets:** Articles 246 and 247 of the CP.
- **Bribery:** Articles 248, 248 bis, 249, 250 and 251 of the CP. Also, Articles 250 bis A and 250 bis B.
- **Obstruction and disobedience:** Article 252 of the CP.

⁹ *The CP was amended by Law No. 19,829.*

- **Refusal to provide assistance and being absent without leave:** Articles 253 and 254 of the CP.
- **Abuse of individuals:** Articles 255 and 256 of the CP.
- **Illegal appointments:** Article 220 of the CP.
- **Dealings incompatible with public office:** Articles 240 and 240 bis of the CP.
- **Improper use of privileged information:** Article 247 bis of the CP.
- **Misappropriation of public assets:** Articles 233 and 234 of the CP.
 - a) Diversion of funds: Article 235 of the CP.
 - b) Unauthorized allocation: Article 236 of the CP.
 - c) Refusal to pay or deliver. Article 237 of the CP.
- **Tax Fraud:** Article 239 of the CP.

Finally, the criminal definitions established in Book II, Title III, paragraph 4 of the CP on “Injuries committed by public officials against the rights guaranteed by the Constitution” can be added to the definitions indicated above.

2. Conflicts of Interest

2.a. Chile has traditionally had **standards of conduct** designed to prevent conflicts of interest in the performance of public functions,¹⁰ and since 1999 basic standards and senior level standards are contained in Law No. 18,575 containing the Organic Constitutional Act on the General Bases for the Administration of the State, hereinafter the LOCBGAE.¹¹ The third and final chapter of this law develops the principle of administrative probity, which consists of observing impeccable official behavior and honest and faithful performance of ones duty or position, with the general interest taking precedence over individual interest.¹² The standards, and the mechanisms for applying them, are mandatory for all government agencies,¹³ without prejudice to the provisions of specific legal statutes relating to each institution, and they are basically intended to prevent conflicts of interest. The standards seek to achieve that end by establishing disqualifications¹⁴ for entering government administration; conflicts of interests for engaging in specific activities applicable to those who carry out public functions;¹⁵ prohibitions in the exercise of a position;¹⁶ and the duty to make a public statement of

¹⁰ *In the sphere of the Executive Branch, until 1999 these standards were contained in the general statute governing the rights and duties of public administration personnel, Law No. 18,834 of 1989, which brought together similar standards taken from the previous statute, DFL No. 338 of 1960.*

¹¹ *See complete text of the law attached. Spanish, English and French versions.*

¹² *See Article 52 of the LOCBGAE attached.*

¹³ *See Article 1 of the LOCBGAE attached.*

¹⁴ *A disqualification is an impediment to performing a function, job or position due to the lack of some requirement indicated in the law. See Article 54 of the LOCBGAE attached.*

¹⁵ *Conflicts of interest consist of prohibitions affecting authorities and officials with respect to carrying out, along with their public functions, specific private activities (office, profession, trade or industry).*

¹⁶ *Prohibitions refer to conduct considered highly detrimental to the principle of administrative probity and these include penalties applicable to public officials for participating in decisions when there is any circumstance that might compromise their impartiality (See Article 62, No. 6 of the LOCBGAE attached).*

professional and financial interests.¹⁷ These standards are generally applicable to all authorities and officials in government administration, independently of the legal tie that connects them to the administration and the specific statute that governs them.¹⁸

To all the above should be added the supplemental standards contained in the May 2003 Law on Administrative Procedure (Law No. 19,880) establishing the principle of abstention in the conduct of public officials in applications, formalities and generally any type of administrative procedure when an official cognizant of a procedure is affected by any situation that would keep him or her from being impartial under the terms of the law.¹⁹

Standards are also imposed to prevent conflicts of interest in the Judicial Branch. These are found in the Organic Code of Courts (COT) and refer to disqualifications,²⁰ conflicts of interest,²¹ prohibitions,²² and the statement of interests. In addition, the judicial branch has a Public Ethics Oversight Commission that conducts inquiries and issues reports to

¹⁷ *There is a requirement to submit a **public statement of interests**. In addition, there is a requirement to submit an **asset statement** in the regulations of some government agencies, such as the Internal Tax Service, the General Treasury of the Republic and the Central Bank of Chile. This is presented in Chapter II of the Questionnaire.*

¹⁸ *Chilean administrative law, following the French organizational model, establishes a descriptive system of public office in that conditions of employment are not established through negotiation or direct contracts with variable conditions but rather are defined in a more or less detailed way by objective standards that cannot be easily changed.*

¹⁹ *Article 12. Principle of abstention. Government authorities and officials to whom any of the circumstances indicated below apply shall abstain from intervening in the procedure and shall communicate this to their immediate superior, who shall resolve the matter as appropriate. Grounds for abstention are as follows:*

- 1. Having a personal interest in the matter at hand or in another matter the resolution of which could influence the resolution of the matter at hand. Being the administrator of an interested company or entity, or having some pending matter in a dispute with an interested party.*
- 2. Being related by blood to the fourth degree or by marriage to the second degree, to any of the interested parties, the administrators of interested entities or companies as well as to advisors, legal representatives or agents intervening in the procedure, or sharing a professional office or being associated with these persons for assistance, representation or agent purposes.*
- 3. Having close friendship with or manifest enmity toward one of the persons mentioned above.*
- 4. Having intervened as an expert or witness in the procedure involved.*
- 5. Having a service relationship with an individual or legal entity directly interested in the matter, or having provided them in the last two years with professional services of any type, under any circumstances and in any place.*

The actions of government authorities or officials in cases where there are grounds for abstention shall not necessarily imply that the actions in which they have intervened are invalid. Failure to abstain in cases where it is appropriate shall give rise to liability.

In the cases provided in the preceding paragraphs, interested parties may seek disqualification at any point in the handling of the procedure.

Disqualification shall be proposed in writing to the authority or official involved, stating the grounds or cause on which it is based.

²⁰ *See Articles 256, 257, 258, 259 and 260 of the COT attached.*

²¹ *See Articles 261 and 199 of the COT attached.*

²² *In the Judicial Branch, judges are generally subject to a series of prohibitions that basically seek to ensure that the judge's impartiality is not compromised regarding matters on which he or she must rule (Articles 316, 317, 320, 321, 322 and 323 of the COT attached).*

the Full Supreme Court with respect to claims that anyone might make. Through an agreement of the Full Supreme Court, the judicial branch has also established its own text on the Principles of Judicial Ethics, which represents a systematization of the standards of conduct contained in the COT and other laws.²³

Constitutional standards are also applied in the National Congress. These are basically directed to making the decisions of senators and deputies transparent so as to prevent conflicts of interest.²⁴ Our Political Constitution provides a series of standards that—through disqualifications and incompatibilities—are designed to prevent the occurrence of conflicts of interest situations. These standards are primarily directed to the members of Congress: deputies and senators of the Republic. Some disqualifications also refer to the members of the Constitutional Court and the Elections Qualifying Court.²⁵ There are also constitutional provisions that establish conflicts of interest²⁶ and the penalty of removal from office²⁷ in various cases. Finally, the CPE establishes specific prohibitions for these authorities.²⁸

²³ This law can be accessed at www.poderjudicial.cl or in the attachment.

²⁴ See Articles 54 to 57 of the Political Constitution of the State and Articles 5A, 5B and 5C of Organic Law No. 18,918 Establishing the National Congress.

²⁵ In the case of disqualifications, the following may not be deputies or senators: 1) Ministers of State; 2) Superintendents, Governors, Mayors, members of Regional and Municipal Councils; 3) members of the Board of the Central Bank; 4) magistrates of the Higher Courts and judges who are attorneys; 5) members of the Constitutional Court, the Elections Qualifying Court and the regional electoral courts; 6) the Comptroller General of the Republic; 7) those who serve in a management capacity in a guild or neighborhood; 8) individuals and the managers or administrators of legal entities that enter into or secure contracts with the state; and 9) the Attorney General, regional prosecutors and prosecutors attached to the Office of the Attorney General (Article 5 of the CPE). The disqualifications indicated will be applicable—as a general rule—to those who have had the aforementioned characteristics or positions within the year immediately prior to the election.

²⁶ The positions of deputy, senator and member of the Constitutional Court or the Elections Qualifying Court are mutually incompatible and incompatible with any employment or commission compensated with funds from the Treasury, the municipalities, autonomous fiscal or semifiscal entities, state-owned companies and companies in which the Treasury participates through contributions of capital. In addition, the positions of deputy, senator and member of the Constitutional Court or the Elections Qualifying Court are incompatible with the functions of directors or advisors, even when ad honorem, in autonomous fiscal entities, semifiscal entities or state-owned companies, and in companies in which the State participates through contributions of capital. The only exceptions are teaching positions and functions or commissions of a similar nature in higher, middle and special education. Provision is also made for conflict of interest extending even beyond the termination of the position (Articles 55, 56, 81 and 84 of the CPE).

²⁷ See Article 57 of the CPE attached. Finally, the CPE establishes, as an additional penalty, disqualification for choosing any public function or position for a period of two years.

²⁸ a) Prohibition on simultaneous occupation of public positions, whether compensated or not with public funds, with the exception of teaching positions (Article 80 of Law 18,834 and Articles 55 and 56 of the CPE); b) Prohibition on participating in decisions affecting ones own interests or the interests of relatives. For example, senators and deputies may not advocate for or vote on any matter that directly or personally affects them or their spouses, their forebears or descendents, et al. The same prohibition applies to regional council members with respect to matters in which they or their relatives have an interest (Article 5B of the LOC of the National Congress and Article 35 of the LOCGAR).

2.b. Chile has **mechanisms** for enforcing the standards of conduct referred to in Article II, No. 1 of the Inter-American Convention against Corruption. In each case, after a general description, the specific mechanism and the agencies responsible for enforcing it will be described.

The departments charged with internal oversight in government administration are responsible for ensuring compliance with the standards of conduct established in the LOCBGAE, as already described in point 2.a. These departments are internal units of government administrative agencies, they make up the internal oversight system in each institution and are under the coordination of the departmental manager. These are basically legal oversight units, human resource or personnel units, administration and finance units, planning units, and internal audit units. These units act on the basis of procedures, directives, rulings and technical criteria issued, depending on the subject, by the department manager, the Budget Directorate of the Ministry of Finance, the Office of the General Comptroller of the Republic, the General Secretariat of the Office of the President, the Ministry of the Interior and the General Government Internal Audit Council (CAIGG).

The means by which a conflict of interest in government becomes known are basically an accusation made by any inhabitant of the Republic, an accusation made by a public official, former official or union leader, a background review by the Personnel Office, and a finding of evidence through internal audit. In addition, conflicts may be revealed through the media, through an accusation made by Deputies or Senators, or by the supervisory action of the Office of the General Comptroller.

Once a conflict of interest has been revealed through any of the means indicated above, the department manager may request an internal audit or, when the information is specific, may decide to initiate internal or external investigative proceedings. These investigative proceedings are called the Summary Investigation and the Administrative Inquiry and are intended to determine the existence of circumstances that warrant specific liabilities on the part of officials. The external oversight agency, based on the accusation or at its own initiative, may also initiate an Administrative Inquiry, which may lead to proposed penalties for the officials responsible. The penalties,²⁹ in nearly all cases, are determined and imposed by the department manager through a formal administrative action. Administrative procedures are broadly regulated in Law No. 18,884, the Administrative Statute, are strictly applied in each case, and the administrative rulings of the Office of the General Comptroller are used for this purpose.

Units and agencies participating in each mechanism

In the case of disqualifications for entering government service: the **Personnel Offices** of each government agency carry out a major role in checking each individual's qualifications for entering government service and the absence of general and special disqualifications. Anyone entering government is required to submit a sworn statement

²⁹ *According to the Administrative Statute, Law No. 18,834, penalties imposed on public officials may consist of a) censure; b) fine; c) suspension from office; and d) removal from office.*

indicating they are not subject to any disqualification. This sworn statement is a public instrument, and thus falsehood in the data contained therein can be punished as an administrative failing and an offense. In addition, personnel units must access the information from the **Office of the General Comptroller of the Republic**, which maintains a record on each public official in the administration, in order to check any of the grounds. The personnel unit may also do specific checks or request them from the institution's **internal audit unit**. In the case of disqualification due to conviction for a crime or simple offense, this situation is checked by the institution through the delivery of a Police Record Certificate, a document issued by the **Civil Registry**, a government agency answering to the Ministry of Justice, which is responsible for maintaining confidential records of sentences for crimes or simple offenses that have been imposed on each inhabitant of the country. In the event there is a surviving disqualification,³⁰ i.e. while the official is rendering services to the State, the public official must report it to his or her superior and submit his resignation within a specific period, under penalty of being removed.

In the case of incompatibilities between the public office and private activity: the mechanism for compliance with this prohibition basically involves the **Personnel Offices**, the **legal units**, and the **internal audit offices** of the administration's institutions, as well as the **Office of the General Comptroller of the Republic** as the external oversight agency. The Personnel Offices are charged with requiring timely submission³¹ of the Public Statement of Financial and Professional Interests by public officials at a certain level, and are also charged with the safekeeping of such documents and submitting copy to the external oversight agency, which must make public disclosure of the statements so as to allow citizens to have unrestricted access to them. In addition, any official may consult the legal department of the institution to which he or she belongs, or the Office of the Comptroller General, regarding the existence of any incompatibility between the function he or she performs and any financial or professional activity engaged in outside the institution and outside working hours.

In the case of prohibitions: violation of prohibitions, as well as any conduct that violates the principle of administrative probity may be reported by **any individual or official**. In the event said violation also constitutes an offense, it is the duty of all officials to report it to the **courts of justice**.³² The department manager must determine the means for obtaining data on the matter, which are usually obtained through **internal audits** when general and preventive examinations are involved, or through summary investigations and administrative inquiries when specific situations that have already occurred are involved. Once the violation of a prohibition is confirmed, the **Department Manager** determines what penalty is applicable to the officials responsible.

³⁰ See Article 64 of the LOCBGAE attached.

³¹ The Statement of Interests must be updated every 4 years and in the event of a relevant occurrence.

³² See response to Chapter I, No. 4 on reporting corrupt acts.

In the case of the Statement of Interests:³³ This statement must be submitted by all authorities or officials indicated in the law within 30 days of assuming their positions. It should be prepared according to the form provided by the Legislative Legal Division of the **General Secretariat of the Office of the Presidency**. It should be prepared in three copies. One copy remains with the official, another remains with the **Personnel Office** for safekeeping, and the third is sent to the **Office of the General Comptroller** for publication. The statement must be updated every 4 years and whenever a relevant event occurs. The inexcusable omission of relevant information as well as the inclusion of incorrect though relevant information brings about the removal of the official.³⁴ Statements are public without exception and may be requested without indicating cause by **any interested party**. The procedures are found in the Regulations attached.

In the case of the right of citizens to have access to information on the administration:³⁵ Since 1999, any inhabitant of the Republic (whether Chilean or a foreigner) may request, without indicating any reason and without prior qualification of the request, a document from any government agency or public service. This is an innovative and essential institution and mechanism in the effort to prevent conflicts of interest. Its regulation is described in the response to Chapter IV of the questionnaire.

2.c. The **results** of the standards and mechanisms described are included in major statistical data. Chilean government statistics normally refer to elements proper to management and quantitative and qualitative measurements of specific phenomena or effects of corruption are not normally broken down. Nonetheless, there are statistical data that can help provide an understanding of the status of activities to prevent conflicts of interest.

According to statistical samples from the CAIGG,³⁶ 8.69% of legal departments in government agencies received requests for access to information based on Article 13 of the LOCBGAE during the year 2002. In addition, 47.82% of said departments received requests for information from Congressional bodies during the same period. Based on the same sources, during the year 2002, 21.73% of personnel units carried out some verification action regarding the truthfulness of the sworn statements on disqualification that public officials submit, and 51.17% of them carried out review actions regarding the sworn statements of interests.

In the area of training on administrative probity and transparency in public administration, since approval of the Law on Administrative Probity until the current date, we have the following information:³⁷

³³ Established in Article 57 of the LOCBGAE and regulated under DS No. 99 of June 28, 2000 of the General Secretariat of the Office of the Presidency. Text attached in Spanish, English and French.

³⁴ Removal is the maximum administrative penalty and brings with it a permanent prohibition on reentering government service, except when 5 years have elapsed and rehabilitation is authorized by decree of the President of the Republic.

³⁵ See Article 13 of the LOCBGAE attached.

³⁶ General Government Internal Audit Council.

³⁷ Source: CAIGG Report. These figures do not include training activities carried out or contracted for by the same government agencies for their personnel.

Year	Type of official trained	Number of officials
2000	Directors and professionals	1,800
2001	Professionals and specialists	735
2002 ³⁸	Professionals and specialists	647
Total trained		3,182

In addition, the following training has been provided on administrative responsibility and administrative standards in general³⁹ by the external oversight agency:

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

Annual average of administrative inquiries and summary investigations conducted by the Office of the Comptroller General:⁴⁰ 53.3 (represents administrative inquiries for any grounds and not just for corruption). In addition, the average number of reports made to the courts is 9.6 per year.

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

3.a. Chile has constitutional and legal standards that make up a complex and strong structure of standards for the conservation and proper use of the resources entrusted to public officials in the performance of their functions. This legal structure is primarily comprised of the following standards:

1. **Constitutional precepts** that establish reciprocal and external controls among the branches of government, particularly:
 - a) Articles 48 (1), 49 (1), 81 and 87 of the Political Constitution providing reciprocal and external controls on the actions of the different branches (functions) of government.
 - b) Article 62 of the Constitution establishing that proposed laws are the exclusive initiative of the President of the Republic, including those that incur tax expenses.

³⁸ Figures as of July 2002. Starting with the second half of 2001, the number of officials trained by the CAIGG was deliberately reduced, in that a higher quality training methodology was adopted with a view to creating a National Network of Instructors on Probity and Transparency. As of July 2002, 102 officials have been pre-selected, from among all those trained, to make up the national network.

³⁹ Source: Report of the Office of the Comptroller General of the Republic.

⁴⁰ Source: Annual reports from the Office of the Comptroller. There are no combined statistical data on the summary investigations and administrative inquiries in effect in the agencies of public administration.

- c) Article 64 of the Constitution providing procedures with respect to the Budget Law and providing that the National Congress may not approve any new spending chargeable to national funds without indicating at the same time the sources of the funds needed to cover that spending.⁴¹
2. **Law No. 18,575 on the General Bases for the Administration of the State** contains provisions on probity, responsibility, efficiency, effectiveness, transparency and administrative disclosure, checks on the proper administration of public property, equality for bidders in government contracts and equality with respect to contract terms and conditions.⁴²
 3. The provisions of **Law No. 19,653 on administrative probity**, which governs not only probity in central government but also probity for the officials and authorities of regional governments, municipalities, members of Congress, judges, state-appointed directors of corporations and members of the Board of the Central Bank of Chile.⁴³
 4. The provisions of **Law No. 10,336, the Constitutional Organic Law of the Office of the Comptroller General of the Republic**. Articles 87 and 88 of the Political Constitution establish the Office of the Comptroller as an external oversight agency of state administration. Law No. 10,336, *inter alia*, contains its internal organization and oversight powers. It establishes standards on the collection and payment of public funds, on the responsibility of officials, guarantees, reporting, examination and auditing of accounts, investigations and inquiries, and reports.⁴⁴
 5. The **Administrative Statutes** govern the conduct of public servants and establish obligations, prohibitions and conflicts of interest to ensure the correct use of public funds.⁴⁵
 6. The standards on financial oversight contained in **DL No. 1,263 of 1975, the Law on Financial Administration of the State**, refer to the services and institutions of the centralized and decentralized administration of the State (Article 2) with the exclusion of public companies subject to special control provisions. With respect to oversight of public companies, Article 11 of Law No. 18,196 establishes that state-owned companies and those in which the State, its institutions or companies have capital contributions equal to or more than 50% are required to publish their duly audited balance sheets and annual financial statements. In addition, their financial activities must be adapted to a budgetary system that will include an operating budget, an investment budget and a budget for contracting, disbursement and amortization of credits, which shall operate through an Annual Cash Budget coinciding with the calendar year.⁴⁶

⁴¹ See attached *Political Constitution of the State (1980)*. The previous constitution (1925) also contained strict standards on reciprocal controls of the branches (functions) of government.

⁴² See attached.

⁴³ See attached. The provisions on administrative probity and on transparency were incorporated in Law No. 18,575, the LOCBGAE. However, Law No. 19,653 on administrative probity introduced provisions of this type in the legal statutes of the other branches of government and the autonomous agencies.

⁴⁴ See law attached.

⁴⁵ Basically found in Law No. 18,834, the Administrative Statute, in Law No. 18,883, the Statute of Municipal Employees, Law No. 19,070, the Statute on Professional Educators, and Law No. 19,378, the Statute on Municipal Primary Health Care.

⁴⁶ See attached.

The provisions on administrative decentralization also contain internal oversight systems with respect to senior officials in regional and local government agencies carried out by the collegial bodies that make up these institutions.⁴⁷

7. The year 2002 **Public Sector Budget Law**, Law No. 19,774 contains:
 - The year 2002 Public Sector Budget;
 - Some notations establishing limits on the powers of public officials with respect to the use of public funds and human resources (e.g., maximum staffing levels);
 - Provisions requiring prior authorization from the Ministry of Finance (e.g., Article 13 of the law) and governing information (e.g., Articles 2 to 20 of the law), which are repeated when formulating the budget each year in order to properly regulate public spending and its effectiveness, efficiency and viability in terms of the activities funded.⁴⁸

8. Law No. 19,939 of 1997, on the Procurement of Goods. The provisions in this law refer to procurement rights; buying and trading; donations; expropriations; management of goods; destinations and concessions; assignment and un assignment of goods; renting, and the disposition of the State or fiscal property.

9. **Special regulations.** There are other special regulations on specific subjects.⁴⁹

10. **Criminal standards.** Title V, Book II of the Penal Code, entitled “Crimes and Simple Offenses Committed by Public Officials in the Performance of Their Duties,” establishes a series of crimes applicable to public employees in Articles 220 to 260.⁵⁰

⁴⁷ See Law No. 19,175, the Constitutional Organic Law on Regional Governments and Law No. 18,695, the Constitutional Organic Law on Municipalities, attached.

⁴⁸ These are contained in the book on “Instructions for implementing the Budget Law.” Many of the laws and instructions can be found attached.

⁴⁹ Decree Law No. 799 of 1974 governs the use and circulation of government vehicles. Ministry of Finance Decree No. 1,312 of 1997 is on the Government Procurement and Contracting Information System. Decree with the Force of Law No. 262 of 1977 and Decree No. 1 of 1991, both from the Ministry of Finance, relate to per diems for government commissions inside and outside the country. Ministry of Finance Decree No. 698 of 1997 establishes the procedure for negotiating, authorizing and contracting public sector loans. Law No. 18,803 relates to the contracting of support tasks. Ministry of Finance Decree No. 98 of 1991 governs entering into agreements involving the provision of personal services. Law No. 18,196 (Article 11), Law No. 18,382 (Article 11) and Law No. 18,591 (Article 68) govern the budgetary system to which specific companies with government participation must adapt.

⁵⁰ Prevarication, absence without leave and failure in the duty to pursue crimes, disobedience and refusal to provide assistance, unfaithfulness in the safekeeping of documents, violation of secrets, bribery, drug trafficking, misappropriation of funds, fraud and extortion, dealings and activities prohibited for public officials and abuses in the performance of ones functions. Article 260 of the CP defines what is understood by a public employee for criminal purposes.

3.b. The mechanisms used to enforce the standards described above are as follows:

a. Oversight of administrative responsibility: Administrative statutes provide inquiry systems and penalty schedules for officials who fail to perform their obligations and duties, up to and including removal from office.

b. The Annual National Budget formulation, approval and execution process. This process follows a strict schedule so as to properly conserve public funds and use them optimally, for which purpose various government authorities and agencies are involved.

The first signals for budgetary formulation are provided by the President of the Republic in the Annual Accounting he must give the country regarding the country's administrative and political situation. This is presented in the National Congress on May 21st each year before the highest authorities of all branches of government and is traditionally broadcast to the public through the national television and radio network.

Subsequently, in June, the Ministry of Finance prepares instructions for formulating the budget. These are sent to all the ministries for all budget headings, accompanied by documents containing general guidelines, forms and instructions.

During the month of July all government institutions and services formulate their institutional level draft budgets.

Next, between July and August, discussions are held at the Budget Directorate level at the Ministry of Finance, with the participation of task forces (the Budget Directorate, Ministry of Planning and Cooperation with respect to investments) and Technical Commissions (Budget Directorate, Ministry of Planning and Cooperation and representatives from the respective ministries and services).

Later, in the month of September, the draft budget is discussed and approved at the senior level of government, the presidential decision is communicated to the ministries and the Minister of Finance meets with all ministers in the Executive.

Final preparation includes definitive preparation of the draft Public Sector Budget Law for the following year, with supplemental figures and provisions. The Minister of Finance prepares the background for the respective budget message and sends it to the General Secretariat of the Office of the President. No later than September 30 of each year, the President sends Congress the proposed Budget Law message for the following year. On occasion, this message has been sent before that date.

Pursuant to Article 64 of the Political Constitution, the President of the Republic submits the budget bill to the National Congress at least three months prior to the date it should begin to apply. If Congress does not vote on the bill within sixty days of its submission, the bill submitted by the President of the Republic becomes law.

The National Congress may not increase or decrease estimated revenues. It may only reduce the expenditures contained in the proposed Budget Law, with the exception of those established in permanent laws.

In December of the year before the Budget Law is to take effect, the Ministry of Finance approves a budget execution schedule and expenditure schedules called Cash Flow Schedules are drawn up, establishing the level and priority of expenditures.

The Law on Financial Administration of the State, in Title II, “On the Budget System,” provides precise and detailed standards on this subject that are complied with strictly.

With respect to oversight of budgetary execution, it should be pointed out that once the budget law is promulgated spending must be controlled according to the various permanent articles in the budget law. The detailed oversight of this spending is found in the Official Circular issued each year by the Ministry of Finance.

- c. The protocols for improving transparency and effectiveness in government action. Through the provisions of the Budget Law and agreements with members of Congress known as “protocols,” the Executive has implemented mechanisms designed to:

- provide periodic information to the National Congress on budgetary execution, the use of authorized debt and provisions included in the budget instrument;
 - perform the independent evaluation of programs and projects, use management indicators and programs to improve management, perform diagnoses of institutional operations and have public agencies prepare reports on their operational and financial management in the preceding year;
 - identify and limit some types of spending and their executing units with respect to which the National Congress has indicated a specific interest; and
 - define by setting annual maximum amounts the commitments for future years that entail studies and investment projects contracted during the current year.
- This series of measures⁵¹ seeks to perfect the process of resource allocation at the budgetary level, to improve budget execution and to provide the National Congress with more information on the use of budgetary authorizations in general and, as applicable, on the management of certain expenditures in particular, with references both to the current year and the immediately preceding year.

- d. Examination and audit of accounts. “Any public official, as well as any individual or entity that receives, holds in safekeeping, administers or pays the funds mentioned in Article 1 (public funds in general, regardless of the entity receiving them) shall render a confirmed accounting of their management to the Office of the Comptroller in the manner and timeframes established in this law.”⁵²

The accounts audit is a proceeding under administrative law that is initiated at the behest of the Office of the General Comptroller of the Republic and is established for the purpose of guaranteeing the interests of the State, i.e., the Treasury and other administrative entities under public law. Its purpose is to pursue the extra-contractual civil liability of officials and former officials responsible for the holding, use, safekeeping or administration of public funds or property in order to maintain the integrity of public assets.

This function falls to a dual jurisdictional body whose lower court judge is the Assistant General Comptroller and whose appeals level is comprised of the General

⁵¹ See 2003 Budget Law Protocol attached.

⁵² Articles 85 et seq. of Law No. 10,336, the Constitutional Organic Law on the Office of the Comptroller General of the Republic, attached.

Comptroller and two attorneys appointed by the President of the Republic from a short list suggested by the General Comptroller.

- e. The Internal Government Audit. In order to strengthen the internal controls over government administrative agencies, the President of the Republic created the General Government Internal Audit Council,⁵³ an advisory body serving the President on this subject, in order to strengthen the management of government agencies and the proper use of public funds allocated to carry out their institutional programs and responsibilities. This council supports the government services, providing technical coordination to 189 internal audit units within the government's administrative agencies, thus fulfilling its mission to collaborate with the Executive in developing an adequate system of internal controls.
 - f. The enforcement of criminal provisions applicable to public officials. Public officials are subject to the procedures established in the Code of Criminal Procedure, and in cases in which the criminal process reform is not in effect.
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3.c. Results and mechanisms for collecting objective data.

With respect to results, these are found in the execution of the respective budgets and this information is available on the DIPRES web site (www.dipres.cl).

With respect to mechanisms for collecting statistical data, there is an annual report on Public Finance Statistics with data on budget expenditures from 1992 to 2001, which have been recorded following internationally accepted standards and are available, together with the Budget Law and instructions for its execution for years 1999 and thereafter, the Law on Financial Administration of the State and the provisions on Management Improvement Programs, as well as other relevant documents, on the DIPRES web site (www.dipres.cl). The Report on Financial Management of the State⁵⁴ for the same period is also attached.

Other important data on results indicate that during 2000 the Office of the General Comptroller of the Republic recovered a total of \$191,438,264 for the public treasury, which is equal to approximately US\$273,483.00.⁵⁵

With respect to prevention work carried out by the administration's internal audit units, according to statistical samples from the CAIGG, internal auditing activities carried out are basically represented by management audits, financial audits and process audits. Less numerous in terms of total audit activities are activities relating to computer audits, project audits and particularly audits intended to verify fraud, irregularities or corruption.⁵⁶ According to the same statistical sources, the government services grouped in each ministry carried out an average of 88 internal audit actions during the year 2001, with a slightly higher level of activity planned for 2002, with an annual average of 93.66 internal audit actions within each ministry.

⁵³ See Supreme Decree No. 12 creating the CAIGG, attached.

⁵⁴ See report attached.

⁵⁵ At the average exchange rate for the month of July 2002.

⁵⁶ The internal audit policy started in 1994 and applied up to the present is characterized by preventive and management support activities. Thus, internal audits are directed to supporting the institutions' management and acting in areas of risk, preserving capacity to detect frauds and irregularities.

3.d. Other standards and mechanisms. In addition to the oversight mechanisms for budgetary and legal matters mentioned above, it should be noted that the Executive continuously evaluates the creation of improvements such as the SIGFE Project (Government Financial Management System), in which work is being done in conjunction with the Office of the Comptroller General of the Republic and for which a unit has been established in the Budget Directorate of the Ministry of Finance. This system seeks to provide a budget that continuously monitors accruals. All information in this regard is on the Project's web site (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.

Chile has standards of conduct and legal provisions that require public officials to report to appropriate authorities regarding criminal actions they become aware of in the performance of their public duties.⁵⁷ With respect to specific standards on reporting acts of corruption, our legislation considers these to be included in the general requirement contained in the following provisions:⁵⁸ Article 84, No. 3 of the Code of Criminal Procedure (CdePP); Article 175(b) of the Criminal Process Code (CPP); Article 55(k) of Law No. 18,834 or the Administrative Statute; Article 58(k) of Law No. 18,833 or the Administrative Statute on Municipal Employees; and with respect to the Office of the General Comptroller, Articles 117 and 139 of Law No. 10,336.

With respect to the Congress, Article 48 of the Political Constitution grants the Chamber of Deputies the power to oversee the actions of government. In carrying out this political criticism, members of Congress hold jurisdiction. This jurisdiction is a privilege enjoyed by Deputies and Senators from the day they are elected, appointed or incorporated, as applicable, by virtue of which they cannot be prosecuted or their personal freedom affected unless the respective Court of Appeals has previously declared the admissibility of grounds. The only exception is when a member of Congress is discovered in flagrante, in which case he or she may be arrested immediately. Also to be considered within Congressional jurisdiction is the fact that Deputies and Senators have immunity with respect to the votes or opinions they express in the performance of their duties in chamber or commission meetings.⁵⁹

In addition, in the Judicial Branch, the competent judge must, without waiting for any accusation or complaint “institute an inquiry *de officio* whenever, based on personal knowledge, confidential reports, notoriety or any other means, he or she receives information that a crime or simple offense has been committed in a public action.”⁶⁰

⁵⁷ See response to Questionnaire in Chapter I (b)(vi).

⁵⁸ The standards indicated below constitute the principal provisions establishing the generic requirement incumbent upon public officials to report crimes of which they are aware. Nonetheless, other provisions can be found in specific laws that establish, among disciplinary duties, equivalent requirements such as those indicated, for example, in the Regulations on Discipline of Investigations Personnel in Chile.

⁵⁹ See Article 58 of the CPE attached.

⁶⁰ See Article 105 of the CPP attached.

Finally, it is important to point out that there are no express legal provisions establishing exceptions to the legal requirement to report.

4.b. Failure to comply with the provisions establishing the requirement incumbent upon public officials to report in a timely manner⁶¹ any crimes they are cognizant of constitutes an administrative violation subject to sanction.

In government administration, once a public official is accused of having failed to comply with the requirement to report a crime, including all the crimes indicated in Title V of the Criminal Code (CP)⁶² relating to corruption, an administrative investigation procedure, called the Administrative Inquiry, can be started. This procedure is intended to determine the truth of the alleged actions and the responsibility of those involved. The conduct of administrative inquiries is governed in the Administrative Statute⁶³ and in the Administrative Statute on Municipal Employees.⁶⁴ The specific penalty is imposed by resolution of the department manager and may go so far as removal from office, without prejudice to the fact that the official may also be criminally sanctioned with a fine as indicated in Article 494 of the CP and imposed by the court hearing the criminal case with respect to the crimes he or she did not report at the proper time. Should criminal prosecution for a criminal offense be necessary, the Office of the Attorney General will be responsible for the investigation and the State Defense Council may institute the criminal action.

In the case of the Judicial Branch, the procedures for determining responsibility for violating reporting requirements are governed and described in the COT and the penalties are imposed by the bodies and authorities established therein.⁶⁵ With respect to the National Congress, this body has the general power to determine responsibility and to impose measures or sanctions on its personnel,⁶⁶ even though a proposal on creating an Ethics Committee is again being studied in the Senate.

4.c. Conduct that constitutes corruption is normally the subject of accusations even though such accusations do not always originate with public officials.⁶⁷ Accusations regarding major corruption generally come from officials themselves, from the press and from members of Congress.

⁶¹ *Within 24 hours of the time they became aware of the criminal act.*

⁶² *Called "On crimes and simple offenses committed by public employees in the performance of their duties."*

⁶³ *See Law No. 18,834 attached.*

⁶⁴ *See Law No. 18,883 attached.*

⁶⁵ *COT, Title XIV, disciplinary powers and visits. See attached.*

⁶⁶ *Senate Rules. See at <http://www.congreso.cl>*

⁶⁷ *The factors that have a negative influence on the reporting of corrupt acts by public officials, besides the problem of proof, notably include a type of misguided official "loyalty" and inadequate protection for the person making the accusation, in addition to the potential liabilities for them due to the facts in question.*

There are some emblematic cases⁶⁸ that reflect this eagerness to combat corruption based on accusations from within the administration itself or from persons linked to it, as was the case with futures operations in the CODELCO case⁶⁹ and the case of indemnities in Correos de Chile.⁷⁰

At any rate, a large number of corruption cases have been reported by former officials, the press, by NGOs and by members of Congress in the performance of their oversight functions. Noteworthy in the latter case is the work of some members of Congress who have made accusations of corruption in high amounts with respect to FACH purchases of supplies,⁷¹ removal of weeds by the RPC,⁷² and the ESVAL sewer line.⁷³ All these cases have been widely covered in the Chilean press.⁷⁴

With respect to small-scale corruption, there are no precise statistics regarding accusations from public officials with respect to acts of corruption, probably due to the complexities that such recordkeeping entails.⁷⁵ In any case, it happens not infrequently that the administrative inquiries instituted by government agencies themselves and by the Office of the Comptroller General of the Republic, as applicable, on specific corruption matters, result in reports filed with the courts. There are some government agencies that may have more specific information and use it for internal purposes, as is the case, for example, with the Chilean Investigations Police, which received 199 complaints in 1998 regarding irregular actions by its officials and 242 complaints in 1999. The Investigations Police have a special unit dedicated, among other activities, to investigating acts of corruption on the part of their officials, called Department V, Internal Affairs. It is made up of 90 highly qualified professionals. This public agency currently has 3,500 officials and an annual budget of US\$84,659,025 (2001 figures, according to June 2002 dollar estimate of \$700).

⁶⁸ *It is worth pointing out that all the cases indicated in this questionnaire are described solely for the purpose of showing accusations and the judicial action produced. This does not imply any prejudgment of guilt in those cases where a final executed decision has not yet been handed down.*

⁶⁹ *On January 26, 1994 the Executive President of CODELCO disclosed the losses suffered by CODELCO due to failed futures market operations, resulting in the so-called "CODELCO case," in which an executive was ultimately convicted as the perpetrator, among other crimes, of the crime of defrauding the Treasury of an amount in excess of 217 million dollars.*

⁷⁰ *In mid-September 2000, the union in the state-owned company Correos de Chile [Mails of Chile] reported that senior executives would have collected millions in indemnities thanks to advantageous contracts that would include indemnity clauses in all cases and well above those required by law.*

⁷¹ *In June and again in September of 1998, a Deputy reported the alleged and ultimately illegal acceptance by the Chilean Armed Forces of rattan furniture and 541 tons of meat totaling US\$1,350,000 as reserved material.*

⁷² *In March 1993 a scandal occurred that affected the Petroleum Refinery of Concon (RPC) due to the accusation of a deputy against those responsible for a possible overpayment of 381 million pesos in a contract to remove weeds from 320 hectares of the State-owned company.*

⁷³ *The ESVAL case involves potential irregularities during the first phase of construction of a sewer line between the cities of Viña del Mar and Valparaiso, which planned for a total investment of 10 million dollars and over time involved more than twice the initial value.*

⁷⁴ *Press information can be obtained from the news searches on the web pages of the various media outlets.*

⁷⁵ *So much so that often there is no formal record of the accusation attached to the inquiry files.*

Notwithstanding the above, emphasis should be placed on the government's interest in combating corruption, particularly large-scale corruption, as developed by the State Defense Council, the Congress through its investigation commissions, government agencies themselves, the Office of the Comptroller General of the Republic, and the Judicial Branch through its Ethics Commission.^{76 77} In this respect, and without prejudice to the source of the reports, the role played by the State in combating corruption after the return to democracy, starting primarily with the scandal that occurred in the CODELCO case, is remarkable.

In effect, although reports do not always find their source in government officials, the State, through the State Defense Council, is party to the principal judicial proceedings on corruption in Chile, regardless of the source of the accusation, to which should be added the prosecution of all cases of minor corruption indicated in the previous paragraph. In addition, in a broad sense, the State, including not only the Executive Branch but the Legislative and Judicial as well, has been the principal actor in combating corruption, reporting and pursuing activities that constitute corruption.

The State Defense Council is an autonomous body under the direct oversight of the President of the Republic and is charged with ensuring the judicial defense of the interests of the State.⁷⁸ It currently represents the Chilean government in 21,651 criminal cases, 1.69% of which represent potential corruption offenses. The statistics from the State Defense Council indicate that 47% of the criminal court proceedings for corruption involve the criminal offense of defrauding the Treasury. The remaining 53% represent various offenses such as misappropriation of public assets, improper allocation and other offenses (bribery, extortion, conflicts of interest).

4.d. Without diminishing the actions of the branches of government and government agencies in combating corruption, we should note the State's concern for improving the mechanisms for combating crime in general and abuses of authority in particular. In the first case, a far-reaching **reform in the administration of the criminal justice system** is underway in Chile, including changes not only in the courts and procedures but also in the auxiliary services and collaborators in the administration of justice. In the second case, mechanisms have been proposed for reporting actions involving abuse of authority through the establishment of specialized entities, such as the Presidential Advisory Commission for the Protection of Individual Rights, currently in operation and the basis for the future **Ombudsman**, now going through the legislative process in the National Congress. Furthermore, other legislative initiatives of interest have been submitted in the

⁷⁶ *There is an important commitment on the part of the Judicial Branch to combating corruption among its members, for which purpose the Supreme Court, in the context of its disciplinary jurisdiction, has created a Judicial Branch Ethics Commission, which has investigated and punished numerous cases of corruption.*

⁷⁷ *The Attorney General's Office is an agency that is called upon to combat corruption. However, given its recent creation and the partial implementation of criminal process reform, it is not currently possible to fully evaluate its actions in this area.*

⁷⁸ *See Ministry of Finance DFL No. 1 of June 28, 1993, attached.*

area of corruption, such as the one intended to establish a **Financial Analysis and Intelligence Unit**,⁷⁹ and the one intended to punish **bribery of foreign public officials** in international business transactions, consistent with the precepts of the OECD, signed by Chile.

CHAPTER TWO

SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, 4)

a. Yes, there are specific regulations establishing an Asset Statement to be submitted by individuals who perform public duties in specific government agencies and there are also general regulations on the Statement of Interests that are applicable to all government officials at a certain level in the hierarchy. The latter statement is described below because it represents the standard and the mechanism with the broadest application in Chile.

Statement of Interests: One factor favoring transparency in civil service relates to the requirement that authorities and certain officials in the administration must submit a statement of professional and financial activities in accordance with Articles 57 et seq. of Law No. 18,575.⁸⁰ The establishment of an expeditious system of specific disqualifications and conflicts of interest, as well as prohibitions, is supplemented by the requirement to declare ones interests, and thus it is considered necessary to establish in this statement of activities the private sector activities carried out—both when assuming a specific office and during the performance thereof—so that government agencies and civil society can oversee them.

The Statement of Interests is governed by Law No. 18,575 and the Regulations contained in Decree No. 99 of 2002 of the General Secretariat of the Office of the Presidency.^{81 82}

This statement must be submitted by the authorities of the agencies that make up government administration and the officials thereof up to the level of department head or its equivalent, i.e., those who have a specific level in the hierarchy. These authorities and officials must update their statements every four years and whenever a relevant event changing the content occurs, i.e., whenever an event occurs that affects or alters the professional and financial activities of the official or authority. The statement is a public document that is kept by each institution's personnel unit and at the Office of the General Comptroller of the Republic, at which agency anyone may ask to consult the statement.

Failure to submit this statement at the proper time is punished with a fine imposed administratively. If after the fine has been imposed the official fails to satisfy the

⁷⁹ *The Draft Law Creating the Financial Analysis and Intelligence Unit and amending the Penal Code, on the subject of money laundering, is contained in Congressional Bulletin No. 2975-07.*

⁸⁰ *See attached.*

⁸¹ *See attached.*

⁸² *See Statement of Interests Form attached.*

requirement to submit the statement within ten days of being notified, the punishment of removal from office is imposed. If the document is submitted within the time allowed, the fine is reduced by half.

The referenced disciplinary measure of removal from office is also imposed as the penalty for including incorrect relevant data and inexcusably omitting relevant information in the statement. Relevant information is understood to mean background information whose inaccuracy or omission produces an erroneous or false assessment of the content and scope of the professional and financial activities carried out by the official or authority, concealing or distorting the nature of the tie or relationship that such activity entails. In addition, the omission of information is considered inexcusable when the item of background omitted must have been known to the person making the statement. In all cases in which the responsibility of an official must be established and the penalty imposed, the institution to which he or she belongs must resort to a regulated investigation procedure called the Administrative Inquiry. The penalties are ordered by the Department Head through a formal administrative action.

There are some special regulations regarding the Statement of Interests:

The Office of the Attorney General has a special provision governing the statement of interests that is contained in its organic law, Law No. 19,640,⁸³ according to which the Attorney General, regional prosecutors and assistant prosecutors must within thirty days of assuming their positions make sworn statement of interests. Failure to submit this Statement of Interests at the proper time or failure to satisfy the requirement to update it shall be punished with a fine that is administratively imposed by the Attorney General or the respective regional prosecutor, as applicable. In addition, the department head is considered administratively responsible if, based on his or functions, he or she should have noticed the failure to submit or update the statement. In turn, the personnel regulations for prosecutors in this agency⁸⁴ establish the form and content of the sworn statement of interests that assistant prosecutors, regional prosecutors and the Attorney General must submit. The statement must contain, *inter alia*, the company rights, community rights or other rights held by the person making the statement and his or her teaching activities. It must be updated whenever the person making the statement is appointed to a new position or within thirty days of the fourth anniversary of the statement. Failure on the part of regional or assistant prosecutors to submit this statement of interests at the proper time shall be punished with a fine imposed by the Attorney General or by the respective regional prosecutor. The inclusion of incorrect relevant data and the inexcusable omission of relevant information by an assistant prosecutor are punished with his or her removal.

With respect to the Board Members and General Manager of the Central Bank, Law No. 18,840, the Constitutional Organic Law of that institution,⁸⁵ establishes a Sworn Statement that they must make before assuming and when leaving their positions. It

⁸³ See attached.

⁸⁴ See attached Resolution of the Attorney General.

⁸⁵ See attached.

covers their asset situation and the professional and financial activities in which they participate and the fact that they have no conflicts of interest in performing their function. In this case, the Board Members submit a statement of interests and assets before a Notary Public, copies of which are delivered to the Office of the General Comptroller.

The Organic Code of Courts⁸⁶ also requires members on the primary schedule and those in the second series of the secondary schedule of the Judicial Branch to submit within thirty days of assuming their position a Sworn Statement of Interests, the characteristics of which are similar to the statement to be submitted by authorities and officials of the government administration. Copy of this statement is kept with the Secretariat of the Supreme Court and the respective Appeals Court for public reference. Anyone may obtain a copy of the notarized instrument. This statement must be updated if the official is appointed to a new position and within 30 days of the fourth anniversary in the current position if he or she is not appointed to a new position.

Finally, Article 5(c) of Law No. 18,918, the Constitutional Organic Law of the National Congress,⁸⁷ requires deputies and senators to file a Sworn Statement of Interests within thirty days of assuming their position. This statement is also similar to that for authorities and officials of the government administration. Copy must be sent to the Secretariat of the respective house of Congress, where it will be kept for public reference. It should be noted that once the period for submitting the statement has elapsed, the secretary of each house will disclose the identity of members who have failed to submit their statements.

Asset Statements. Although the Statement of Interests is the general rule for authorities and officials in the hierarchy of Chile's branches of government, as well as for the autonomous public agencies, in some special cases there is a requirement to submit an Asset Statement. For example, Article 41 of Ministry of Finance Decree with Force of Law No. 7 of 1980, the Organic Law of the **Internal Tax Service**,⁸⁸ requires those who enter that agency to submit, before their appointment, a sworn statement of their assets and those of their spouse, even if separated, and this statement must be renewed each year. The Office of the General Comptroller of the Republic has had occasion to issue various rulings regarding the scope of this requirement. A similar requirement is contained in Article 18 of Ministry of Finance Decree with Force of Law No. 1 of 1994, the Organic Statute of the **Treasury Service**,⁸⁹ for those entering that agency.

In addition, as already noted, Board Members of the **Central Bank** must, *inter alia*, file their asset situation statement before assuming their positions and when leaving them.

b. In order to satisfy the requirement that the law imposed on the Office of the General Comptroller of the Republic to allow subsequent consultation of the statements of interest it receives, this external oversight agency implemented a computer system that allows it

⁸⁶ See Article 323 bis of the COT attached.

⁸⁷ See attached.

⁸⁸ See attached.

⁸⁹ See attached.

to keep check of such documents and view them using digital methods. As of July 15 of this year, this amounts to 27,003 documents.⁹⁰

The system allows one to compare the position and the institution where the person making the statement works with the profit-making or non-profit legal entities in which the same person participates, or in which he or she collaborates or to which he or she makes contributions, so as to establish potential situations that might violate the principle of administrative probity.

The following data are based on statistics kept by the Office of the General Comptroller of the Republic:

Sworn statements submitted by region and for Santiago

REGIONS	SANTIAGO	TOTAL
14,134	12,869	27,003
52.3%	47.7%	100%

Submissions and updates after the Initial Statement (2000):

UPDATE FOR RELEVANT EVENT	INITIAL STATEMENT
3,732	23,271
13.8%	86.2%

In addition, the following information can be submitted for the Judicial Branch:

Sworn statements submitted by region and for Santiago, as of 2002:

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

II.c. Not applicable.

⁹⁰ See Statement of Interests form attached.

CHAPTER THREE

HIGHER-LEVEL OVERSIGHT BODIES

a. Yes, Chile does have higher-level oversight bodies. For the purposes of Chapter III of the questionnaire, the response will be based on a broad definition of higher-level oversight bodies referring to state agencies with oversight responsibilities at a higher level, which includes entities, authorities or officials that are part of specific oversight subsystems or mechanisms. In addition, this broad definition can be applied to oversight systems, subsystems or mechanisms the nature of which is administrative, jurisdictional, political, internal, external, legal, merit-based, recommended, timely, et al.

Thus, it can be stated that Chile has higher-level oversight bodies responsible for carrying out functions associated with satisfying the provisions in numbers 1, 2, 4 and 11 of the Article III of the Convention.

In the case of numbers 1, 2 and 4 of Article III, the senior authorities in each government agency are considered higher-level oversight bodies. This means the Supreme Court in the case of the judicial branch, the houses of Congress in the case of the legislative branch, and the President of the Republic in the case of the executive branch. Their senior-level oversight functions are carried out directly as well as through the collaboration of internal oversight units in each government agency. In terms of the subject areas covered, these are basically personnel departments units, legal departments or internal comptroller's offices, administration and finance departments, and internal audit offices, which are also coordinated by the General Government Internal Audit Council. Within the active administration, the Ministry of Finance's Budget Directorate is an oversight body on budget matters. In addition, the Office of the General Comptroller of the Republic, an external oversight body of the active administration, has a significant level of participation in all these areas. The law gives this office oversight functions in the area of legality and specific responsibilities in ensuring compliance with the regulations governing the relationship between government administration and its personnel. Mention should also be made of oversight of the constitutionality of laws, decrees with the force of law and some administrative actions carried out by the Constitutional Court, as well as the work of oversight bodies within the administration itself such as the Superintendencies of Social Security, Pension Fund Administrators, Banks and Financial Institutions, Securities and Insurance, Health Care Institutions, Electricity and Fuels, and Sanitary Services; the National Economic Regulatory Agency; the Internal Tax Service; the Labor Directorate; and the Central Bank as applicable.

In the case of Article III, number 11, there are various higher-level oversight bodies that participate in each specific mechanism but no single or central entity that could be categorized as such.

In addition to the institutional legal system in Chile, the Presidential Advisory Commission for the Protection of Individual Rights is an important precedent for the

future creation of an Ombudsman in Chile, which could assume responsibility in this area should the measure be approved.

The description of the nature and characteristics of each higher-level oversight body, as well as their interrelationships, is incorporated in the explanations given in connection with each of the mechanisms described in the remaining chapters of this questionnaire, and in the laws attached.

b. In addition, the results that these bodies have achieved in fulfilling the referenced functions are incorporated in the statistical data for each chapter in this questionnaire. Additional information can be found on or through the Internet sites of the principal institutions cited.⁹¹

CHAPTER FOUR

PARTICIPATION BY CIVIL SOCIETY

1. On mechanisms for participation in general

1.a. Our country has various legal instruments establishing citizen participation at various levels.

Law No. 19,300, the Basic Environmental Law and its Regulations. This Basic Environmental Law establishes the participation of the community in the environmental impact assessment procedure, in the issuance of environmental regulations and in the approval of decontamination plans.⁹² The application of this legal instrument is no doubt one of the areas in which important economic interests are affected and thus legislation has established citizen participation to protect the environment and to prevent foci of corruption within the administration.

The Presidential Directive on Citizen Participation. This Presidential Directive orders the central administration to implement participatory mechanisms involving civil society. An attachment to the directive also establishes ministerial and regional commitments regarding participation, and also charges the General Secretariat of the Government with monitoring the application of the order and evaluating compliance, as well as with providing methodological support and all necessary training to the various public institutions that must put the directive into practice.⁹³

The Presidential Advisory Commission for the Protection of Individual Rights.⁹⁴ An advisory body to the President of the Republic was created in 2001 to ensure the defense and promotion of individual rights and interests vis-à-vis actions or omissions of

⁹¹ www.poderjudicial.cl, www.congreso.cl, www.gobiernodechile.cl, www.modernizacion.cl, www.dipres.cl, www.contraloria.cl, www.bcentral.cl.

⁹² See message and Articles 26 et seq. of Law No. 19,300.

⁹³ See directive and attachment in Official Communiqué No. 30 of December 2000 attached.

⁹⁴ See attached Supreme Decree No. 65 creating the Commission for Individual Protection.

government administrative agencies, with respect to the satisfaction of public needs, and to observe and study activities carried out by government agencies that affect citizens, reporting to the President of the Republic each quarter. Accordingly, the Presidential Advisory Commission is a body the purpose of which is to hear the views presented by citizens in the form of complaints or queries with respect to their relations with government agencies.⁹⁵

1.b. Objective Results: There are still no indicators in this field that allow for objective results to be considered.

1.c. Measures to enforce incentives for the participation of civil society. The Draft Basic Law on Citizen Participation in Public Administration:

The draft Basic Law on Citizen Participation is designed to amend the General Basic Law on Government Administration and seeks to guarantee the right of civil society to participate in public administration. This right includes individual citizens, organized and unorganized groups of citizens, with or without legal status, residing in the country. Public administration is understood to mean the series of policies, actions and programs carried out by the State to meet public needs. The draft law defines concepts and establishes the principles on which citizen participation is founded.

This draft law establishes the general standards and instruments of citizen participation, recognizing civil society's right to have access to information on public policies, with the exceptions established by law, and establishes mechanisms to keep civil society informed (web pages, annual public accounting, seminars, workshops and assembles). It also establishes mechanisms for citizen consultations and citizen recommendations, the right of citizens to present their observations to government administrative agencies, citizen councils and surveys. Also established is the ability of government agencies to form roundtables, call town meetings, assemblies or public hearings for the purpose of generating ongoing dialogue with civil society.⁹⁶

2. Mechanisms for access to information

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

Law No. 19,653 of December 14, 1999 on administrative probity applied to government agencies: This law introduces important reforms in Law No. 18,575, the Constitutional Organic Act on the General Bases for the Administration of the State.⁹⁷ One of the most important reforms consists of establishing the organic principle of transparency for the first [time]. The law provides that public service shall be carried out with transparency so as to permit and promote knowledge of the procedures, content and bases of decisions made in the exercise thereof. In addition to establishing the principle of transparency, it

⁹⁵ See Presidential Directive No. 30 of December 2000.

⁹⁶ See Draft Basic Law on Citizen Participation in Public Administration attached.

⁹⁷ See Articles 3 and 13 of the LOCBGAE attached.

requires the State itself to promote it, demanding positive action on the part of government agencies in applying it.

In addition to the principle, the law establishes the right of any interested party to access government information and the administrative and judicial mechanisms for enforcing this right.⁹⁸

The administrative mechanism establishes that when a request refers to documents or data containing information that may affect the rights of third parties, the senior official of the agency to which the request is directed must, within 48 hours, advise by means of certified letter the person or persons referred to or affected by the information that they have the power to oppose the delivery of the documents requested, attaching copy of the respective request. In turn, interested third parties may exercise their right of opposition within 3 working days. They must submit their opposition in writing but are not required to show cause. When opposition is expressed, the agency from which the information is requested is prohibited from providing the requested information unless there is a judicial order to the contrary. A similar situation may arise when the documents requested are secret or reserved in order to protect public or private interests. Anyone may challenge the decision not to provide documentation and file a claim with the courts, which through a short and special proceeding shall render a final decision as to whether the documents should be turned over or not.

Law No. 19,300, the Basic Environmental Law. Paragraph 3, Title 2 of this Law⁹⁹ establishes community participation in the Environmental Impact Assessment Procedure. Civil society may obtain information about environmental impact studies, and may submit observations to the competent agency that must be weighed in the respective administrative decisions. If due consideration is not given to their observations, they may submit an appeal to the higher authority.

The Draft Basic Law on Citizen Participation in Public Administration. In this draft law, the State recognizes the right of citizens to obtain information on public policies. In this regard, it is established that government administrative agencies are required to release information regarding their programs, policies, actions, and budgets, ensuring that the information is sufficient, timely, complete and fully accessible to the citizens.

Government agencies must publish on a web page or equivalent medium all the programs, policies and actions they carry out each year. They must also publish their budgets and annual accounting. Information methods are not limited to those mentioned; seminars, workshops or assemblies may be used as well.

Government agencies must give an annual public accounting of their management and budgetary execution. For this purpose, they must release a public document to the citizens through widely circulated communications media and through their respective web pages.

⁹⁸ See Regulations attached.

⁹⁹ See Article 26 of Law 19,300 attached.

2.b. Currently, 200 government agencies have web pages where they report on their institutional mission, budget, annual balance sheet, and those areas in which they carry out activities.¹⁰⁰ In addition, there are 90 interactive procedures the State carries out with its citizens. Numerous users visit the web pages each day. The Judicial Branch and the Congress also have web pages and abundant information.

3. Mechanisms for consultation

3.a. In the area of local administration, the General Law on Urban Planning and Construction and its Ordinances establish that the Communal Regulatory Plan (that establishes the different uses of lands and thus influences their value) shall be formed, modified and updated by the respective municipality in accordance with the General law on Urban Planning and Construction. Reports must be placed in two publications with broad daily distribution in the community, indicating the period during which the Community Regulatory Plan will be posted for public knowledge. Interested parties may make observations on the draft Community Regulatory Plan within the period provided in the law, which observations must be documented and submitted in writing to the municipality. The respective Council must be made aware of the observations in a timely manner.¹⁰¹

Our environmental legislation expressly establishes the existence of consultative councils that include representation from workers, non-government organizations, academic centers, business and science and others. These councils must issue their views regarding draft laws and supreme decrees establishing environmental quality standards, prevention and decontamination plans, preservation of nature and conservation of environmental riches. These subjects affect important economic interests, thus making the opinion of civil society essential.

Finally, it should be noted that the **Draft Basic Law on Citizen Participation** establishes that government agencies are required to consult the opinion of the citizenry prior to adopting decisions on subjects generally affecting the citizens or of interest to them, understanding this to mean matters affecting or impacting citizens' rights and duties. In order to achieve this end, government agencies shall seek to learn the views of civil society organizations that have recognized experience with respect to the subject or matter involved. The opinion of civil society may be obtained through citizen consultations and citizen proposals.

3.b. There is no information as yet to determine objective results.

4. Mechanisms to encourage active participation in public administration

4.a. Since the 1990s our country has shown strong political will to promote the participation of civil society in the various spheres of public administration. This is

¹⁰⁰ *Only 7 government agencies still have no information on line.*

¹⁰¹ *As established in Article 43 of the General Law on Urban Planning and Construction.*

reflected in the various laws that have been described earlier in this document. In December 2000, the President of the Republic issued a Presidential Directive establishing the guiding principles of the participation the country wants to encourage as well as the obligation of regional governments to prepare a Regional Citizen Participation Plan, which will be incorporated in the regional development strategy.¹⁰²

4.b. There is no information as yet that would allow us to obtain the objective results that have been achieved through implementation of this presidential directive. In addition, the document itself indicates that as of January 1, 2003 the directive on citizen participation should be fully operational. Thus, it will be possible to have information in this regard shortly thereafter.

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

5.a. Currently the Budget Directorate maintains information on its web page relating to the yearly balance sheets and the fulfillment of goals. This allows civil society to monitor the public administration of the Ministries and Public Services. Any citizen can check that each institution's projected goals and objectives have been effectively met. In addition, the Draft Basic Law on Citizen Participation in Public Administration establishes that government agencies must give an annual public accounting of their management and budget execution. For this purpose, they must disclose a public document to the citizens through widely circulated communications media and through their respective web pages.

5.b. As yet no mechanisms have been developed that would allow us to record the objectives results obtained with implementation of the oversight indicated in point a). As already noted, the Draft Basic Law on Citizen Participation, the instrument that will enable civil society to fully oversee public administration, is not yet a reality.

CHAPTER FIVE

ASSISTANCE AND COOPERATION

1. Mutual Assistance

1.a. The following is the legal framework, established in different legal texts, that allows national authorities (administrative and judicial) to process requests for mutual assistance, both to request and to provide information, with agencies or authorities of other countries that, in accordance with their internal laws, have powers to investigate or prosecute acts of corruption.

Chapter VI A of the CPE establishes that the authority charged with investigating criminal offenses is the Office of the Attorney General and that the competent authority for entering into reciprocal agreements is the Attorney General, head and senior official

¹⁰² See attached Presidential Directive on Citizen Participation.

of the Office of the Attorney General.¹⁰³ Law No. 19,640, the Constitutional Organic Law of the Office of the Attorney General, develops this power and the specific method for routing requests.¹⁰⁴

The Criminal Process Code also contains provisions establishing the legal framework on the subject and enabling the Office of the Attorney General to send or receive communications from similar organizations for the prosecution of crimes of corruption. In addition, it contains provisions referring to active or passive extradition, which may also be requested in such cases.¹⁰⁵

Further, the Code of Civil Procedure is also involved in regulating the mechanism, establishing that requests are presented through the participation of the Ministry of Foreign Relations, the Supreme Court and, later, the court with jurisdiction in criminal matters (constitutional protections or oral argument) or the prosecutor from the Office of the Attorney General, as applicable (Article 76 of the CPC). Note that our country currently has two separate criminal process systems in effect due to the criminal process reform now underway.

Procedures for communication at the judicial level

At the judicial level, the procedure for communication and assistance is that stipulated in Article 76 of the CPC, as just indicated. In addition, there is ongoing exchange of information at the police level, which is routed through Chile's police organization and the International Police (INTERPOL).¹⁰⁶

Other procedures

Finally, administrative requests and applications for information are common at the executive level and in the administration. They generally refer to money laundering

¹⁰³ See *Organic Law of the Office of the Attorney General attached.*

¹⁰⁴ See *Articles 6, 13 and 17 of Law 19640 attached.*

¹⁰⁵ See *Articles 13, 192, 431, 434, 436, 437, 440, 441 and 443 of the Criminal Process Code attached.*

¹⁰⁶ *The procedure used in each case is as follows:*

- *With respect to communications to be sent to foreign governments:*

In this case, the communication should be directed to "the official who should intervene," routing it through the Supreme Court. The Supreme Court will send the communication to the Ministry of Foreign Relations for processing as indicated in treaties or general regulations. In the case of active extradition, the conduit is the Judge on Constitutional Protections, the Court of Appeals and the Ministry of Foreign Relations, initiated by the petitions of the complainant or the Office of the Attorney General.

- *With respect to communications received from foreign governments:*

In this case the general route is the same as that established for Article 76 (issuing official, Chile's Ministry of Foreign Relations, Supreme Court, judicial official who must carry out the order). In the case of active extradition, the foreign country directs the communication to the Ministry of Foreign Relations, which makes the facts known to the Supreme Court for designation of the competent Ministry.

Communication procedures at the police level:

The Investigations Police of Chile communicate with the International Criminal Police Organization (ICPO or INTERPOL) and it should be noted that the Police organization represents Chile as a member of Interpol. The connection is made through the National Central Office of INTERPOL, a division of the General Directorate.

operations, criminal organizations and terrorism financing, all of which are routed through the Ministries of Foreign Relations and Justice as well as through the State Defense Council and the Central Bank of Chile.

1.b. The government of Chile has in effect made requests for information and received similar requests from other countries. These requests occur at the judicial level and with the participation of the Ministry of Foreign Relations, the Supreme Court and, later, the court with jurisdiction in criminal matters (constitutional protections or oral argument) or the prosecutor with the Office of the Attorney General, as applicable.

It should be specified that statistics and records are not broken down by type of crime and thus there are no specific figures for requests for mutual assistance in connection with the crimes indicated in Title V of Book II of the Penal Code, i.e., crimes associated with corruption. All types of requests for information have been made, with favorable responses almost without exception, with a response time of 3-6 months, which has generally been considered satisfactory.

The data on formal requests and extraditions, from reports issued by the Judicial Inspector's Office of the Supreme Court, in the years 2000, 2001 and 2002 are as follows:

2000	
Formal requests	516
Extraditions	57
2001	
Formal requests	570
Extraditions	32
2002 (as of August 12)	
Formal requests	250
Extraditions	28

1.c. Not applicable.

2. Mutual technical cooperation

2.a. Chile has the same general mechanisms as any State to permit broad mutual technical cooperation with other States Parties regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of public corruption. The formulation and conduct of Chile's foreign policy is constitutionally¹⁰⁷ entrusted to the President of the Republic. Therefore, the President is responsible, among other tasks, for conducting negotiations to sign treaties and, after their approval by Congress, for ratifying them. In carrying out these tasks, the President of the Republic relies on the

¹⁰⁷ Article 32, No. 17 of the CPE attached.

collaboration of the Ministry of Foreign Relations, which is responsible for planning, coordinating, executing, overseeing and providing information on the foreign policy set by the Chief of State. Thus, there are constitutional and legal provisions, as well as financial resources considered annually in the Budget Law, and personnel available for the conduct of international cooperation relations. Although there are many examples, mention can be made of the Legal Directorate and the Special Policy Directorate, a division of the General Directorate for Foreign Policy of the Ministry of Foreign Relations, the latter as a body that provides services in this area, and specifically facilitates mutual cooperation in the fight against corruption. The Ministry of Foreign Relations, then, is the Executive's primary collaborator and its procedures are carried out by all government agencies when the purpose is the signing of treaties and agreements that bind the government of Chile.

In addition, all Chilean government agencies, as entities under public law, generally have the power to enter into mutual technical cooperation agreements so as to best develop the functions legally assigned to them. In this case, the subject is inter-institutional agreements, which establish procedures adapted to the specific needs of the institutions that are party to them.

2.b. Agreements: Within the government administration, the CAIGG¹⁰⁸ has entered into the following technical assistance, exchange and mutual cooperation agreements for the prevention and detection of corrupt practices:

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

Together with the General Government Internal Audit Council of the Republic of Chile, the following foreign institutions are parties to this memorandum:

- a) The United States Office of Government Ethics;
- b) The Canadian Office of the Ethics Counsellor;
- c) The Government Ethics Office of Puerto Rico;
- d) The Anticorruption Office of the Ministry of Justice of the Republic of Argentina;
- e) Uruguay's Advisory Board on Economic and Financial Issues.

This memorandum is in the initial execution phase.

MEMORANDUM OF UNDERSTANDING ON INTERNAL AUDITING STANDARDS AND POLICIES BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND CHILE

The signatory states are represented, respectively, by the Office of the Inspector General of the United States Department of State and the General Government Internal Audit Council of the Republic of Chile. Execution of the memorandum is currently suspended for reasons presented by the United States government.

¹⁰⁸ *General Government Internal Audit Council, created by Supreme Decree No. 12. See attached.*

Meetings: Preparatory working sessions have been held to formalize and carry out collaboration and mutual assistance actions with representatives from the following foreign organizations and bodies and international organizations:

- a) Anticorruption Office of the Ministry of Justice of the Republic of Argentina, for the purpose of signing a technical cooperation and exchange agreement between that Office and the General Government Internal Audit Council, on matters relating to the prevention of corruption.
- b) Governmental Ethics Office of Puerto Rico, for the purpose of obtaining that institution's cooperation in the training of officials in the National Network of Ethics and Transparency Instructors in Chile. Initial meetings have been held, teaching materials have been received and the draft is now being prepared.
- c) Transparency International for Latin America and the Caribbean, and the Chilean chapter of Transparency International, organizations with which activities have been carried out over the last three years to promote civil culture, official probity, and transparency in public administration, one of the results of which was the seminar called "The Inter-American Convention against Corruption and the Chilean Legal Framework," inaugurated by the Secretary General of the OAS in October 2000 and in which experts analyzed the OAS report on the adaptation of Chilean legislation to the Convention. Previously, in 1999, a workshop was jointly carried out on the description of acts of corruption in government.
- d) Previously, in 1998, CAIGG organized the "Symposium on Strengthening Probity in the Hemisphere," in which most of the signatory countries to the Inter-American Convention against Corruption participated.

In addition, the Office of the General Comptroller of the Republic has become involved in international organizations that bring together upper-level oversight bodies: INTOSAI (International Organization of Supreme Audit Institutions) and OLACEFS (Organization of Latin American and Caribbean Regulatory Agencies). At the XVI International Congress of Supreme Audit Institutions (INCOSAI) held in Montevideo, the Chilean Comptroller's Office was responsible for presenting the subject "Methods and Techniques for Detecting Fraud and Corruption." In the case of OLACEFS, it should be emphasized that at the XI Assembly held in August 2001 in Panama a joint paper was presented with the title "Corruption: Prevention, Identification and Punishment: The Chilean Model," copy of which is attached. In addition, the Office of the General Comptroller of the Republic of Chile was appointed to the Board of Directors of that organization.

Further, since 1987 the Office of the Comptroller General of the Republic of Chile has served as the local headquarters of OLACEFS on the subject of computer auditing, for which it conducts a course each year on Computer System Audits for all of Latin America and the Caribbean. As a result of this there has been ongoing concern in this area for updating the content of that course, incorporating modern technologies and tools to support auditing. Finally, the Office of the Comptroller General joined the Mercosur Supervisory Entities Group, carrying out supervisory work in some common areas with Argentina and Bolivia.

2.c. Not applicable.

2.d. For various reasons including the already noted external perception of the phenomenon of corruption in Chile, our country has **not** developed technical cooperation programs with the support of international cooperation agencies or bodies, except for a few isolated cases. However, it is hoped and desirable that there will be greater support in 2004 for projects now being designed and some projects in which the execution phase has already begun.

CHAPTER SIX

CENTRAL AUTHORITIES (ARTICLE XVIII)

VI. 1. Designation of Central Authorities

1.a. and 1.b. Yes. The OAS has been informed that Chile generally uses the designated Central Authorities in accordance with treaties in effect and, in the absence of treaties or in cases where no designation has been made, the function is carried out on a residual basis by the Ministry of Foreign Relations.

With respect to the Inter-American Convention against Corruption and as indicated in the previous paragraph, the Ministry of Foreign Relations is currently acting as the Central Authority, although the OAS will be informed in due time of the Central Authority permanently designated for such purposes.

1.c.

In the area of cooperation (investigation and prosecution)

Name of Institution:	Ministry of Foreign Relations
Official responsible:	Claudio Troncoso Repetto
Title:	Ambassador, Legal Affairs Director Ministry of Foreign Relations
Telephone:	679 4237
Fax:	699 5517
E-mail:	dijur1@minrel.cl

In the area of mutual technical assistance

Name of Institution:	Ministry of Foreign Relations
Official responsible:	Luis Winter Igualt
Title:	Ambassador, Special Policies Director Ministry of Foreign Relations
Telephone:	679 4374
Fax:	672 5071
E-mail:	dipesp!@minrel.cl

1.d. Not applicable.

2. Operation of Central Authorities

2.a. The Ministry of Foreign Relations has constitutional and legal powers and jurisdiction to carry out the role of the central authority in the same way as the ministries and government institutions that, pursuant to international treaties on assistance and cooperation, have responsibility for such activities. Secondly, the Ministry of Foreign Relations has resources that are allocated annually in each year's Budget Law and approved in the preceding year by the National Congress. The Ministry's budget for the year 2003 is approximately \$18.4 billion (approximately US\$26,285,714). Disaggregated budget information can be consulted on the web site of the Budget Directorate (www.dipres.cl). It also has units and staff to carry out such tasks as it has a Legal Affairs Directorate answering directly to the Under-Secretariat of Foreign Relations and a Special Policies Directorate answering to the General Foreign Policy Directorate.

2.b. Not applicable as the OAS has been informed of the central authority in the course of preparing the response to this questionnaire.

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

State Party:	Chile
Official to be consulted:	Diego Velasco Von Pilgrimm
Title:	Chief, Transnational Organized Crime Unit
Agency:	Special Policy Directorate Ministry of Foreign Relations
Address:	Catedral No. 1143, Santiago, Chile
Telephone:	(56-2) 679 4374
Fax:	(56-2) 672 5071
E-mail:	hsnchile1@minrel.cl