

CHILE

Limited enforcement

0.3% of global exports

Investigations and cases

In the period 2016-2019, Chile commenced nine investigations, commenced no cases and concluded no cases with sanctions.

The 2016 conviction in the *Fragatas* case was upheld on appeal in 2018.¹ Chilean authorities opened an investigation in 2018 into allegations that **Blue Oil** – a British Virgin Islands-based oil company owned by Chilean businessman Matías Rojas – and its subsidiaries interfered in the 2012 presidential election in Guatemala by financing the Patriotic Party campaign.² Blue Oil allegedly transferred US\$155,000 to the Patriotic Party using fake invoices issued by shell companies controlled by the party, whose candidate, Otto Pérez Molina, was ultimately elected President.³ A Chilean investigation into a case involving the **LATAM Airlines Group**, the parent company of **LAN Airlines**, was reopened in 2014 and later concluded without charges. In the United States, LATAM entered into a three-year deferred prosecution agreement with the Department of Justice in July 2016. Executives at the company were alleged to have executed a fictitious US\$1.1 million consulting agreement with officials at the Argentine Ministry of Transportation. The purported consultant allegedly funnelled payments to local labour union officials in exchange for the union agreeing to accept lower wages and not to

enforce costly labour rules. This generated profits of more than US\$6.7 million for LATAM.⁴

Recent developments

In November 2018, new legislation (Law n° 21.121) was enacted, increasing sanctions for a host of corruption-related offences and effecting amendments to the foreign bribery offence.⁵ The scope of the offence was widened, facilitation payments were included, the prison sanction for foreign bribery was increased and the statute of limitations for foreign bribery was significantly extended.⁶ The legislation also criminalised private-to-private corruption.

Transparency of enforcement information

The Chilean Public Prosecutor's Office and the Financial Analysis Unit (in cases of money laundering and financing of terrorism) publish detailed statistics on the number of crimes reported and investigated, cases opened and cases concluded on a quarterly and annual basis.⁷ This includes data on foreign bribery enforcement. The Public Prosecutor's Office does not publish any information on requests for mutual legal assistance (MLA) sent or received, but this is available through an official request for information.

The courts publish case information via an online database which allows any person to access judicial decisions and see the status of ongoing cases, the individuals involved and the case files.⁸

Beneficial ownership transparency

There is no centralised register for beneficial ownership information in Chile. However, plans to create one have been included in the country's

¹ <https://www.diarioconstitucional.cl/noticias/asuntos-de-interes-publico/2018/12/20/cs-rechaza-nulidad-y-confirma-fallo-que-condeno-a-militar-r-por-cohecho/>

² www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf, pp.31-32.

³ <https://cmiguate.org/caso-blue-oil-entramado-de-estructura-macrocriminal-con-insospechados-alcances/>

⁴ <https://www.justice.gov/opa/pr/latam-airlines-group-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1275>

⁵ <https://www.leychile.cl/Navegar?idNorma=1125600>

⁶ <https://globalcompliance.com/chile-new-law-fight-corruption-20190118/> ; <https://www.mondaq.com/crime/767708/law-no-21121-amends-rules-relating-to-corruption-and-other-crimes-incorporates-new-criminal-conducts-and-expands-criminal-liability-of-legal-entities>

⁷ <http://www.fiscaliadechile.cl/Fiscalia/estadisticas/index.do>; <http://www.uaf.cl/acerca/quehacemos.aspx>

⁸ <https://www.pjud.cl/consulta-unificada-de-causas>

2018-2020 Action Plan with the Open Government Partnership.⁹ Following Circular n° 57/2017 from Chile's Financial Intelligence Unit, all financial institutions must request and keep beneficial ownership information from the legal persons with whom they maintain relations.¹⁰ Law enforcement authorities may also access this information directly through companies, but, as with financial institutions, this may delay investigations.

Inadequacies in legal framework

While "conditional suspension" and abbreviated procedures have increasingly been used to resolve corruption cases, transparency and accountability remain lacking. There is little guidance from the Public Prosecutor's Office as to when and how to use these procedures. Judicial oversight is insufficient, and the lack of transparency prevents the public from determining the appropriateness of decisions.¹¹

There is no protection for whistleblowers in either the private or public sectors.

Inadequacies in enforcement system

There is not enough guidance on the elements of an effective prevention model or compliance programme for companies. Certification of the effectiveness of compliance programmes is under-regulated, leading to uneven implementation among companies. This is often not duly considered by prosecutors.¹²

Other issues mentioned by the OECD WGB in its Phase 4 Report on Chile in 2018 include deficiencies in the framework and practice regarding confiscation of the proceeds of corruption and premature termination of cases.¹³ The report also noted delays in requests for bank information and MLA requests.

A lack of training for prosecutors and judges jeopardises efforts to increase enforcement of foreign bribery regulations, as does the lack of

awareness of the issue, including in the diplomatic corps.

Recommendations

- Collect and publish detailed statistics on foreign bribery investigations and cases, as well as on MLA requests
- Create a public centralised register for beneficial ownership information
- Develop comprehensive whistleblower protection legislation that guarantees protection and confidentiality, and provides incentives to promote the reporting of corruption
- Increase transparency and accountability for conditional suspensions and abbreviated procedures
- Issue guidelines on effective prevention models for companies
- Provide more awareness-raising and training on the offence of bribery of foreign public officials, especially among prosecutors, judges and diplomatic personnel
- Include companies in anti-corruption policy discussions.

⁹ <https://www.opengovpartnership.org/members/chile/commitments/CL0061/>

¹⁰ <https://www.uaf.cl/legislacion/beneficiario.aspx>

¹¹ <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>

¹² <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>

¹³ <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>