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## Executive summary

### Note by the Secretariat

**Addendum**

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# II. Executive summary

## Chile

### 1. Introduction: overview of the legal and institutional framework of Chile in the context of implementation of the United Nations Convention against Corruption

Chile signed the United Nations Convention against Corruption on 11 December 2003 and ratified it on 13 September 2006.

The implementation by Chile of chapters III and IV of the Convention was reviewed in the first year of the first review cycle, and the executive summary of that review was issued on 30 September 2011 (CAC/COSP/IRG/I/1/1/Add.2). The full country review report is available on the website of the United Nations Office on Drugs and Crime (UNODC).[1]

The legislation implementing chapters II and V of the Convention includes Act No. 20.880, Act No. 19.886, Act No. 20.285 and Act No. 19.913.

The main public institutions involved in preventing corruption are the Office of the Comptroller General of the Republic (Comptroller General's Office), the Presidential Advisory Commission for Public Integrity and Transparency (Integrity Commission) and the Financial Analysis Unit.

### 2. Chapter II: preventive measures

### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Chile has adopted a number of laws and policies aimed at preventing corruption, including the National Anti-Corruption Strategy of the Comptroller General's Office and the Open Government Action Plans. The objective of the National Anti-Corruption Strategy is to enhance the contribution of the Comptroller General's Office to anti-corruption efforts. The Strategy consists of three pillars (good governance, protection of public resources, and probity and democracy) and contains 25 proposals. The fifth Open Government Action Plan (2020–2022) sets out 10 commitments, one of which concerns the improvement of access to information on public procurement. The authorities reported that a national strategy on public integrity was being developed.[2]

Chile has established and promotes corruption prevention practices, both as part of the Anti-Corruption Alliance UNCAC Chile and otherwise, those practices including training activities related to integrity and transparency and activities aimed at encouraging the adoption of corporate integrity systems. The Anti-Corruption Alliance, which comprises 34 public sector, private sector and civil society institutions, was founded with the aim of promoting the implementation and dissemination of the Convention in a coordinated manner.

There is no legal obligation to periodically evaluate the anti-corruption framework in place, nor is there any established practice of conducting such evaluations.

[1] Available at www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fchl.html.

[2] Development following the country visit: the authorities indicated that on 4 December 2023, the President of Chile, Gabriel Boric Font, had launched the National Strategy on Public Integrity, an evidence-based public policy instrument drawn up by means of a participatory process and aimed at improving standards of transparency, integrity and corruption prevention in Chile. The Strategy establishes strategic objectives and an action plan setting out 210 legislative, administrative and governance measures distributed across five thematic areas: the civil service, transparency, public resources, policy and the private sector.

Chile participates in regional and global anti-corruption initiatives, such as those led by the Organization of Latin American and Caribbean Supreme Audit Institutions, the Community of Latin American and Caribbean States, the Financial Action Task Force of Latin America and UNODC.

The Comptroller General's Office and the Integrity Commission are the main bodies responsible for preventing corruption. The Comptroller General's Office was established by the Constitution as an independent body (chapter X of the Constitution; Decree No. 2421) and its functions include safeguarding the proper use of public funds (art. 1 of Decree No. 2421) and disseminating relevant information (art. 32 of resolution No. 1 (adopted in 2017) of the National Directorate for the Civil Service). The Comptroller General, who is appointed by the President with the prior consent of the Senate, has the power to appoint and remove any official of the Comptroller General's Office at any time (art. 3 of Decree No. 2421).

The Integrity Commission, which was established by Decree No. 14 of 2018, advises the President on matters relating to public integrity, probity and transparency (art. 2) and is responsible for coordinating the implementation of the Open Government Action Plans. It comprises the Under-Secretary-General of the Office of the President, who chairs the Commission, and other officials of the executive as listed in article 5, who may be removed at any time. Its budget is managed by the Office of the Minister and Secretary-General of the Office of the President (arts. 9 and 10).

The Comptroller General's Office may assist other States parties in developing and implementing specific measures for the prevention of corruption.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The Constitution provides for equal opportunities to enter the civil service (art. 38). Act No. 19.882, part VI, and Legislative Decree No. 29 regulate the recruitment, hiring, retention, promotion and retirement of civil servants. Act No. 19.882 applies to senior managerial officials (trusted officials holding managerial positions) (art. 35). Legislative Decree No. 29 applies to other civil servants and, in respect of matters not covered by other instruments, to senior managerial officials. It establishes that, as a general rule, civil servants are recruited by means of an open competition consisting of a technical and objective procedure (arts. 17 and 18). Exceptionally, professionals, technicians or experts may be hired to render services on a fee basis (art. 11 of Legislative Decree No. 29; ruling E173171 of 2022 of the Comptroller General's Office). Civil servants may be promoted only through an internal competitive procedure (art. 53 of Legislative Decree No. 29). Senior managers are selected through an evaluation process that is regulated by the National Directorate for the Civil Service and that must include the evaluation of merit (art. 48 of Act No. 19.882). The competent authority appoints one of the three or four candidates preselected by the National Directorate for a three-year term, renewable twice (arts. 41 and 57 of Act No. 19.882). The President may exempt a maximum of 12 senior management positions from application of the mechanism for the preselection of senior managerial officials (art. 36 bis of Act No. 19.882). The training of public officials is regulated by article 48 of Legislative Decree No. 1 and articles 26 to 31 of Legislative Decree No. 29 and includes issues relating to probity.

Civil servants are remunerated according to the grade assigned to them (art. 9 of Legislative Decree No. 29). Article 65 of Act No. 19.882 regulates the remuneration of senior managerial officials.

Persons who have been convicted of an especially serious crime or an offence (art. 54 (c) of Legislative Decree No. 1) may not be appointed to positions in the public administration. Chile has not identified public positions considered especially vulnerable to corruption and has not established adequate procedures for the selection and training of individuals for such positions or for the rotation of those individuals.

Articles 25, 48, 50 and 124 of the Constitution establish the requirements for appointment to the offices of president, deputy, senator, regional governor or mayor and to other elective offices, one of those requirements being that the candidate must be a citizen with the right to vote. Persons sentenced to severe penalties, that is, sentences exceeding three years of deprivation of liberty (art. 37 of the Criminal Code), lose their right to vote (art. 17 of the Constitution), and persons who have been accused of offences to which a severe penalty applies have their right to vote suspended (art. 16).

Political parties and election campaigns are funded by private capital (subject to restrictions) and public capital (arts. 9–17 of Legislative Decree No. 3). Articles 10 and 24 to 27 of Legislative Decree No. 3 establish a number of restrictions, including the maximum amount that a person may contribute and the prohibition of contributions by legal persons. Each contributor must be identified and contributions must be made through the funding system of the Electoral Service (art. 19 of the Decree). Legislative Decree No. 3 establishes the maximum expenditure limit for each campaign (arts. 4–7) and sets out the accounting requirements applicable to political parties and campaigns (arts. 44–46) and to the submission and verification of electoral accounts, which are audited by the Electoral Service (arts. 47–53). Records of electoral income and expenditure are public (art. 54 of the Decree).

Public officials are prohibited from: (a) soliciting or accepting gifts or advantages of any kind, except in the case of gifts that are presented officially or in accordance with protocol, or permitted by custom; and (b) involvement, by virtue of their functions, in matters in which they have a personal interest (art. 62, paras. 5 and 6, of Legislative Decree No. 1). Public officials who are subject to the law governing lobbying (arts. 3 and 4 of Act No. 20.730) are required to register such gifts in a public registry (art. 8).

Public functions must be performed in a transparent manner, and public officials are required to adhere to the principle of administrative probity (arts. 13 and 52 of Legislative Decree No. 1; art. 61 (g) of Legislative Decree No. 29). As part of the integrity system that each public institution may implement, a specific code of ethics must be adopted (Official Communication No. 335 of the Ministry of Finance). Instruction and training in the implementation of integrity systems have been provided (for example, Official Communication No. 1316 of the National Directorate for the Civil Service) and, with the support of the United Nations Development Programme (UNDP), a guide on preparing a code of ethics has been drawn up. At the time of the country visit, 360 entities had adopted such codes.

Public officials are required to report any act of corruption to the Public Prosecution Service or the police (art. 61 (k) of Legislative Decree No. 29). The identity and address of the reporting person must be provided (art. 90 B). Article 90 A of Legislative Decree No. 29 protects reporting persons against certain forms of retaliation. As part of the integrity system, public institutions must provide channels for obtaining information and advice and reporting non-compliance with ethical requirements (Official Communication No. 1316 of the National Directorate for the Civil Service). During the country visit, the authorities indicated that it had emerged from consultation with officials that most of those officials were unaware of how to use the available reporting channels.

The public servants referred to in article 4 of Act No. 20.880 must declare their assets and interests yearly (art. 5) (see art. 52, paras. 5 and 6, of the Convention). Outside activities, whether paid or not, must also be declared, including any in which the official engaged in the 12 months prior to taking office (art. 7 of the Act).

Article 12 of Act No. 7421 establishes that the judiciary is independent in the exercise of its functions. In order to be a judge, it is necessary to have completed the training programme of the Judicial Academy, admission to which is subject to a competitive selection process (art. 252 of the Act). Judges are appointed by the President (art. 78 of the Constitution). The members of the Supreme Court are appointed by the President on the basis of a list proposed by the Court and approved by the Senate

(art. 78). The Supreme Court also exercises disciplinary power (arts. 80 and 82 of the Constitution). The members of the judiciary listed in article 1 of Act No. 118-2016 are required to submit a sworn declaration of interests and assets as provided for in Act No. 20.880. The Supreme Court or, depending on the official's position, another entity listed in article 10 verifies the submission of such declarations. The judiciary has adopted the Ibero-American Model Code of Judicial Ethics (Act No. 262-2007). Articles 194 to 205 of Act No. 7421 specify the grounds on which a judge may be removed from a case (those grounds mainly concern conflicts of interest).

Article 83 of the Constitution establishes the Public Prosecution Service as an autonomous body in which the Prosecutor General and regional prosecutors may be removed only by the Supreme Court at the request of the President or the Chamber of Deputies; regional prosecutors can also be removed at the request of the Prosecutor General (art. 89 of the Constitution). The Prosecutor General is appointed by the President on the basis of a list proposed by the Supreme Court, subject to the agreement of the Senate (art. 85 of the Constitution). Regional prosecutors are appointed by the Prosecutor General from a list of three candidates proposed by the court of appeal of the respective region, and deputy prosecutors are appointed by the Prosecutor General from a list of three candidates proposed by the regional prosecutor (arts. 86–88 of the Constitution). The list of candidates is drawn up on the basis of a competitive selection process (arts. 87 and 88 of the Constitution). With the support of UNDP, an integrity system has been implemented in the Public Prosecution Service, comprising a code of ethics (approved in 2020 through the Service's resolution No. 922); a web portal through which members of the Public Prosecution Service can obtain information and advice on situations concerning ethics and probity and file complaints; and a related training plan.

*Public procurement and management of public finances (art. 9)*

Act 19.886 and the regulations implementing that Act (Decree No. 250) regulate the public procurement of goods and services, while Decree No. 75 regulates contracting for public works. Various bodies are excluded from the application of Act No. 19.886, including the Public Prosecution Service, special courts and public enterprises (art. 1). The selection modalities are framework agreements (art. 8 of Decree No. 250), open tendering, selective tendering and direct contracting (arts. 5 and 7 of Act No. 19.886). Open tendering is mandatory where the value of the contract exceeds 1,000 tax units (art. 5), except in the cases provided for in article 8 of Act No. 19.886 and article 10 of Decree No. 250, in which selective tendering or direct contracting is appropriate (for example, in case of emergency, urgency or unforeseen circumstances). Each entity is responsible for the procurement process, except in the case of framework agreements, the procedure for which must be organized by the Procurement Directorate through an open tendering process (chapter III of Decree No. 250).

All procurement processes must be carried out using the electronic Government Procurement and Contracting Information System (arts. 18–21 of Act No. 19.886).

The bidding conditions, which set out the details of the bidding, including deadlines, conditions for participation and award criteria (art. 38 of Decree No. 250), must be published in the Information System (art. 7 of Act No. 19.886; art. 26 of Decree No. 250). No minimum period is established for the distribution of such information. In the event that the bidding conditions are modified by means of an administrative decision issued by the competent authority, interested parties must be granted a reasonable period of time within which they may modify their bids (art. 19 of Decree No. 250).

The Public Procurement Tribunal, which is composed of three lawyers appointed by the President for a term of five years, hears any challenge raised in relation to acts or omissions in the procurement procedure (arts. 22–25 of Act No. 19.886). The final decisions of the Tribunal may be appealed before the Court of Appeal of Santiago (art. 26).

Decree No. 75 applies to public works contracts entered into by the Ministry of Public Works (art. 1). Contracting for public works is carried out through open tendering (art. 1). The bidding documents may not be modified once the procurement proceedings have commenced (art. 3). Only companies registered in the General Register of Contractors (art. 69) in accordance with the procedures and requirements set out in part II of Decree No. 75 may participate. Invitations to bid must be published in accordance with the deadlines established in article 70, those deadlines depending on the value of the contract. Complaints must be filed with the authority that called for tenders (art. 83). Appeals against an administrative decision must be in accordance with the provisions of chapter IV of Act No. 19.880 on the framework for administrative procedures.

There are no special procedures for the screening or training of personnel responsible for procurement.

It is the exclusive prerogative of the President to propose bills relating to the financial or budgetary administration of the State, including amendments to the Budgets Act (art. 65 of the Constitution). The draft budget must be submitted to the National Congress at least three months in advance, and the Congress may only reduce the expenditures contained in the draft; it cannot increase or decrease the estimated revenues (art. 67 of the Constitution).

Decree No. 1263 regulates budgetary, accounting and fund administration processes (art. 1). The budget system consists of a medium-term financial programme and annual budgets (arts. 5 and 9 of the Decree). Revenues and expenditures must be supported by original documentation accounting for the transactions concerned (art. 55 of the Decree). Information on the budget and its execution must be made permanently available to the public (art. 7, para. (k), of Act No. 20.285). The Budget Directorate is responsible for guiding and regulating the budget formulation process and overseeing public spending (art. 15 of the Decree). The Comptroller General's Office is responsible for overseeing compliance with legal provisions relating to the administration of State resources (art. 52 of the Decree).

Official Communication No. 60.820 of the Comptroller General's Office establishes accounting procedures for the recording of transactions. The falsification of public documents is a criminal offence (art. 193 of the Criminal Code).

*Public reporting; participation of society (arts. 10 and 13)*

Article 19, paragraph 7 (12), of the Constitution establishes the right to freedom of opinion and the right to inform. Access to public information is regulated by Act No. 20.285, which applies to the entities listed in its article 2. The Comptroller General's Office and the Central Bank are bound only by the provisions that expressly bind them.

As a general principle, the administration of the State is transparent (arts. 3 and 4 of Act No. 20.285) and every person has the right to request and receive information from any body of the State administration (art. 10 of the Act), except where such information may affect the rights of third parties (art. 20 of the Act) or has been declared confidential or secret (art. 8 of the Constitution; arts. 21 and 22 of Act No. 20.285). Access to information must be free of charge (art. 11 of the Act). Complaints may be filed with the Council for Transparency (art. 24 of the Act). In the case of a decision denying access to information issued by the Council, a claim of illegality may be filed with the court of appeal of the place of the claimant's domicile (art. 28 of the Act).

Article 7 of Act No. 20.285 describes the type of information that bodies of the State administration must make permanently available to the public on their websites. Although that information does not include periodic reports on the risks of corruption in the public administration, the Comptroller General's Office has implemented relevant projects, such as the launch of the study *Dismantling Corruption: Ideas to Strengthen Integrity in Chile*.

The Council for Transparency is responsible for overseeing the implementation of Act No. 20.285 (arts. 32 and 33) and for applying the sanctions established in articles 45–49. On the basis of the results of a study, the authorities had determined that fewer than 50 per cent of the population were aware of Act No. 20.285, and indicated that they were taking measures to disseminate the Act.

Act No. 21.180 promotes digital transformation and the carrying out of all administrative procedures in electronic format with a view to the simplification of those procedures.

Act No. 20.500 on associations and citizen participation in public administration and Presidential Directive No. 007 establish the right of individuals to participate in the management of public affairs.

According to the authorities, a series of campaigns aimed at promoting ethics and integrity have been carried out, covering, inter alia, the reporting channel of the Comptroller General's Office.

*Private sector (art. 12)*

The Commercial Code establishes that all traders must keep accounts and lists the records that must be kept (art. 25; see also arts. 19 and 20 of Legislative Decree No. 830 (Tax Code)). Act No. 20.393, which regulates the liability of legal persons, encourages the adoption of integrity programmes (art. 3) and lists the minimum elements that such programmes should contain (art. 4). The Anti-Corruption Alliance UNCAC Chile, which includes private entities and law enforcement agencies, was established in 2012 with the aim of promoting the implementation and dissemination of the Convention. In order to encourage greater integrity in the private sector, the Anti-Corruption Alliance prepared a product entitled "Basics of a corporate integrity system".[3]

Legal persons of the types listed in article 2 of Act No. 20.659 must be registered in the Register of Enterprises and Companies (arts. 1 and 11). Chile does not have a register of beneficial owners.

Former officials of a regulatory institution are not permitted to engage in activities with a private sector entity within the first six months of leaving office if that entity is subject to regulation by the institution in question (art. 56 of Legislative Decree No. 1).

The falsification of private documents is a criminal offence (art. 197 of the Criminal Code). Article 31 of the Commercial Code prohibits certain actions in respect of accounting books. The Tax Code also establishes penalties for certain acts relating to accounting books (art. 97).

Chile disallows the tax deductibility of expenses that constitute bribes (circular No. 38 of 2018 of the Inland Revenue Service).

*Measures to prevent money-laundering (art. 14)*

Chile has adopted a regulatory framework for preventing money-laundering and the financing of terrorism, namely Act No. 19.913, which established the Financial Analysis Unit, and the circulars issued by that entity. Regulated entities include financial institutions, casinos, real estate brokers, real estate agents, bureaux de change and notaries (art. 3 of Act No. 19.913). They do not include dealers in metals, precious stones or vehicles, lawyers, accountants or trust and company service providers.[4]

[3] Further information on the Anti-Corruption Alliance can be found at the following address: www.alianzaanticorrupcion.cl/AnticorrupcionUNCAC/bases-de-un-sistema-de-integridad.

[4] Development following the country visit: through the adoption in 2023 of Act No. 21.575, which amended several legal instruments with the aim of improving the prosecution of drug trafficking and organized crime, the list of entities required to report to the Financial Analysis Unit was

The bodies responsible for oversight are the Financial Analysis Unit (art. 2 of Act No. 19.913), the Commission for the Financial Market (art. 3 of Act No. 21.000), the Office of the Superintendent of Pensions (art. 93 of Decree-Law No. 3.500) and the Office of the Superintendent of Casinos (art. 36 of Act No. 19.995).

Regulated entities must, inter alia: (a) identify and know their customers (art. III of circular No. 49 of the Financial Analysis Unit as amended by the Unit's circular No. 59); (b) report suspicious transactions to the Financial Analysis Unit (section I of the Unit's circular No. 49); (c) maintain records for at least five years, depending on the supervisory body (art. II of circular No. 49 of the Financial Analysis Unit; book IV, part XI, chapter II, art. II.3, of the Compendium of Pensions System Regulations; art. 155 of the General Banking Act); and (d) request any customer that is a legal person or a legal structure to submit a declaration containing identification data with respect to the identification of beneficial owners (art. 2 of circular No. 57). The latter requirement does not apply to designated non-financial businesses and professions.

The concept of "beneficial owner" is defined in circular No. 57 of the Financial Analysis Unit and includes natural persons who own, directly or indirectly, through companies or other mechanisms, a share equal to or greater than 10 per cent of the capital or voting rights of a given legal person or legal structure or who exercise effective control over such an entity or structure.

In 2017, the Financial Analysis Unit published the first National Assessment of Money-Laundering and Terrorist Financing Risks, which uses a risk-based approach and defines two types of due diligence: simplified and enhanced (part III, section 5, of circular 49 of the Financial Analysis Unit as modified by the Unit's circular No. 59). The authorities of Chile indicated that other national risk assessments were being carried out.[5] The Financial Analysis Unit is also responsible for receiving and analysing suspicious transaction reports (art. 2, para. (a), and art. 3, second para., of Act No. 19.913) and preparing intelligence reports for the Public Prosecution Service. The Financial Analysis Unit also shares information with its international counterparts (art. 2, para. (h), of Act No. 19.913) through the Egmont Secure Web.

Persons carrying or transporting cash or bearer negotiable instruments to or from Chile in an amount exceeding $10,000 or an equivalent amount in another currency must declare such cash or instruments (art. 4 of Act No. 19.913). Failure to comply with this provision may result in a fine of up to 30 per cent of the amount not declared (art. 39 of the Act).[6]

Electronic transfers of funds exceeding $1,000 must be accompanied by accurate and meaningful information on the originator and the beneficiary, except in certain cases. In the absence of such information, the regulated entity must review the transfer, but after such review may clear it (part V of circular No. 49 of the Financial Analysis Unit as amended by the Unit's circular No. 59). The legislation does not stipulate that such information must be maintained throughout the payment chain.

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expanded (by article 4 of the Act) to include the following: vehicle rental companies; persons engaged in the manufacture or sale of weapons; shooting, hunting and fishing clubs; natural or legal persons who buy and sell purebred horses; and dealers in metals, jewellery and precious stones.

[5] Development following the country visit: by the time the executive summary was adopted, Chile had carried out three national risk assessments on money-laundering and the financing of terrorism and the proliferation of weapons of mass destruction; those assessments were approved by the Intersectoral Committee on Preventing and Combating Money-Laundering and the Financing of Terrorism in 2023 and published in January 2024. The assessments cover the period 2016–2023 and are available on the website www.estrategiaantilavado.cl.

[6] Development following the country visit: Chile criminalized money smuggling through Act No. 21.632 (2023), which amended various legal instruments in order to strengthen legislation on smuggling, incorporating article 168 bis of the Customs Ordinance (Legislative Decree No. 30). Accordingly, such smuggling is now punishable as a criminal offence rather than an administrative offence.

Chile is a member of the Financial Action Task Force of Latin America.

### 2.2. Successes and good practices

- At the time of the country visit, Chile had begun to design and develop, on the basis of a participatory and inclusive approach, the National Strategy on Public Integrity with the aim of promoting the principles of integrity and transparency in State institutions and coordinating efforts to counter corruption (art. 5, para. 1).
- The integrity system that each public institution may implement, and the instruction and training provided with respect to the implementation of such systems (art. 8, paras. 1 and 2).

### 2.3. Challenges in implementation

It is recommended that Chile:

- Continue its efforts to finalize, approve and implement the National Strategy on Public Integrity and ensure that the Strategy is comprehensive and coordinated, promotes the participation of society and incorporates a mechanism for periodic evaluation (art. 5, para. 1).
- Endeavour to periodically evaluate anti-corruption legal instruments (art. 5, para. 3).
- Grant its preventive bodies the necessary independence, including by providing its officials with greater stability (art. 6, para. 2).
- Endeavour to identify public positions considered especially vulnerable to corruption and establish adequate procedures for the selection, training and rotation of holders of such positions (art. 7, para. 1 (b)).
- Strengthen measures to prevent and detect conflicts of interest, in particular through the establishment of a mechanism for managing potential conflicts of interest and through the training of public officials (art. 7, para. 4, and art. 8, para. 5).
- Consider taking measures, including workshops and campaigns, to encourage public officials to use, and train them in the use of, existing reporting channels (art. 8, para. 4).
- In relation to public procurement: (a) ensure that all State agencies are subject, not only on a voluntary basis, to an appropriate public procurement system based on transparency, competition and objective decision-making criteria; (b) establish a reasonable minimum period of time for the publication of bidding conditions when procuring goods and services; and (c) establish measures to regulate screening procedures and training requirements for personnel responsible for public procurement (art. 9, para. 1).
- Continue its efforts to enhance transparency in its public administration. Those efforts might include: (a) the adoption of measures to expand the dissemination and implementation of Act No. 20.285; and (b) the inclusion of periodic reports on corruption risks in the minimum information that each entity must publish (art. 10, paras. (a) and (c)).
- Continue its efforts to enhance transparency among private entities by, inter alia, making information on beneficial owners and the management of corporate entities available to the public (art. 12, para. 2 (c)).
- Extend its regulatory and supervisory regime to designated non-financial businesses and professions such as dealers in metals, precious stones and vehicles, lawyers, accountants and trust and company service providers (art. 14, para. 1 (a)).

- Extend the requirements relating to beneficial owner identification to designated non-financial businesses and professions (art. 14, para. 1 (a)).
- Consider requiring financial institutions, including money remitters, to ensure that all electronic transfers of funds, regardless of the amount, contain accurate and meaningful information on the originator and that that information is maintained throughout the payment chain (art. 14, para. 3).

### 2.4. Technical assistance needs identified to improve implementation of the Convention

Chile indicated the following technical assistance needs:

- Assistance in establishing preventive anti-corruption control mechanisms in the agency responsible for the administration of seized and confiscated property (art. 5, para. 2).
- Improvement and development of plans and standards relating to conflicts of interest in order to raise the standard beyond that of current regulations (arts. 7, para. 4, and 8, para. 5).
- Implementation of and awareness-raising with respect to a register of beneficial owners, and large-scale analysis of data (art. 12).
- Development and implementation of an awareness-raising plan for the inclusion of new regulated entities (lawyers and accountants) (art. 14).
- Support in the development and implementation of a guide on best practices with respect to data governance standards, with common mechanisms and standards for formats and data, to facilitate the exchange of information for the purposes of preventing and detecting money-laundering and the financing of terrorism or underlying offences (corruption) (art. 14).
- Technical assistance in establishing a procedure for collaboration among various public agencies that takes into account legal and administrative obstacles to the exchange of information that may contribute to the detection of money-laundering and underlying offences (art. 14).

## 3. Chapter V: asset recovery

### 3.1. Observations on the implementation of the articles under review

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Chile does not have a law on international cooperation in criminal matters. All international cooperation activities are based on the Criminal Code, the Code of Criminal Procedure, the treaties on international judicial cooperation to which Chile is a party and the principle of reciprocity.

The spontaneous transmission of information is not prohibited, and the Financial Analysis Unit may exchange information with its foreign counterparts without prior request through the secure network of the Egmont Group of Financial Intelligence Units. The Public Prosecution Service exchanges information through the Asset Recovery Network of the Financial Action Task Force of Latin America, the Global Operational Network of Anti-Corruption Law Enforcement Authorities, the Network of Anti-Corruption Authorities and Law Enforcement Agencies of the Asia-Pacific Economic Cooperation forum, and the Ibero-American Association of Public Prosecutors. The Public Prosecution Service and, subject to the Service's prior authorization, the Investigative Police, may share information through other channels, such as the International Criminal Police Organization.

Chile has not signed any bilateral or multilateral agreements aimed specifically at enhancing the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Financial institutions are required to verify the identity of their customers and to identify and take reasonable measures to verify the identity of beneficial owners, regardless of the value of the accounts held (art. III of circular No. 49 of the Financial Analysis Unit as amended by the Unit's circular No. 59; second art. of circular No. 57 of the Financial Analysis Unit).

The definition of "politically exposed person" includes Chilean or foreign nationals who are, or have been, entrusted with prominent public functions in a country, up to one year after they have ceased to perform those functions, and their spouses and relatives up to the second degree of consanguinity. The definition of "close associate" is limited to natural persons with whom a joint participation agreement has been concluded in accordance with which those persons have sufficient voting power to influence companies incorporated in Chile (section IV of circular No. 49 of the Financial Analysis Unit).

Regulated entities must identify politically exposed persons or, if a beneficial owner is considered to be a politically exposed person, obtain senior management approval to establish relations with that person, determine the source of the person's funds and the reason for the transaction and implement an ongoing due diligence procedure (sect. IV of circular No. 49 of the Financial Analysis Unit; second article of circular No. 57 of the Unit). However, these measures do not cover all so-called enhanced diligence measures (part III of circular No. 49 of the Financial Analysis Unit as amended by circular No. 59). The definition of "politically exposed person" does not include officials of international organizations who are, or have been, entrusted with prominent public functions.

Regulated entities have been informed – through a document on money-laundering and terrorist financing typologies – of certain activities, products and services that should be considered as posing a risk and to which enhanced scrutiny should be applied.[7] In certain cases, the Financial Analysis Unit may notify financial institutions of the identity of particular persons whose accounts should be subject to enhanced scrutiny, including at the request of another State party.

Regulated entities must keep separate records on cash transactions, due diligence and "know your customer" measures, transactions carried out by politically exposed persons and electronic transfers of funds for at least five years (section II of circular No. 49 of the Financial Analysis Unit).

It is not possible to establish banks that have no physical presence in Chile, since banks must be constituted as special corporations domiciled in Chile and must obtain a banking licence from the Commission for the Financial Market in order to operate (arts. 27 and 42 of the General Banking Act). Financial institutions must refrain from establishing relations with shell banks (chap. 1-14, sect. 3, of the Updated Compendium of Regulations of the Office of the Superintendent of Banks and Financial Institutions). However, there is no obligation to refrain from continuing an existing correspondent banking relationship with a shell bank. Furthermore, Chile has not established a legal definition of "shell bank", and there is no requirement to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

Certain public officials are required to submit a declaration of interests and assets using an electronic form (arts. 4, 6 and 7 of Act No. 20.880). Depending on the agreed asset regime, declarants may be required to declare the assets of their spouse or civil partner and those of any children of whom they have legal custody (art. 8 of Act No. 20.880) or persons of whom they are guardians, to the extent that such individuals

[7] Development following the country visit: the updated report on typologies and warning signs for 2007–2022, published in 2023, is available at the following website: www.uaf.cl/entidades_reportantes/info_tipo.aspx.

are owners of assets covered by the regulations and managed by the declarant. Failure to comply with that obligation or the submission of an incomplete or inaccurate declaration results in the issuance of a warning notice, and if the non-compliance is not resolved, it may result in the imposition of a fine and even, in the case of non-compliance for more than four months, the dismissal of the official (art. 11 of Act No. 20.880). Since the Comptroller General's Office is responsible for reviewing the declarations of most of those persons subject to the declaration requirement (art. 6 of Act No. 20.880), it carries out a systematic and large-scale annual exercise to verify the content of the declarations. There is no obligation to report an interest in or signature or other authority over a financial account in a foreign country.

Chile has a Financial Analysis Unit (Act No. 19.913) that is a member of the Egmont Group. The Unit is a decentralized institution with legal personality and its own assets (art. 1 of the Act). According to the Chilean authorities, the increase in the Unit's activities has not led to an increase in the number of its staff.[8]

Regulated entities must report suspicious transactions to the Financial Analysis Unit, and if the Unit suspects a money-laundering offence, it sends a financial intelligence report to the Public Prosecution Service, which may request provisional measures in respect of the accounts or assets in question (art. 32 of Act No. 19.913). The Financial Analysis Unit does not have the capacity to block transactions in the event that an offence is suspected (art. 2 of the Act).

At the time of the country visit, the Financial Analysis Unit had signed 36 inter-institutional agreements and 47 agreements with other financial intelligence units, although it may also share information in the absence of an agreement (art. 2 (h) of Act No. 19.913).

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Chilean civil law does not explicitly provide for the possibility for other States to initiate civil action in its courts. However, Chile indicated that in criminal proceedings, other States could be considered victims and that fact would enable them to seek restitution through the courts (arts. 59, 108, 109 and 189 of the Code of Criminal Procedure).

The Chilean authorities confirmed that, in theory, the country's courts may order those who have committed offences to pay compensation or damages to another State party that has been harmed by such offences (the Convention, in conjunction with article 59 of the Code of Criminal Procedure), and that the courts may, when deciding on confiscation, recognize another State's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention. With respect to the return of property, if the enforcement of a foreign judgment ordering confiscation is sought, Chile applies, inter alia, article 13 of the Code of Criminal Procedure as the basis for such action.

Article 13 of the Code of Criminal Procedure regulates the effect in Chile of criminal sentences handed down by foreign courts. Although the article is based on the principle of *non bis in idem*, the Chilean experts indicated that effect could be given to a foreign order of confiscation in application of the first sentence of the article. The authorities indicated that the article was also the legal basis for giving effect to foreign seizure and freezing orders.

[8] Development following the country visit: under the National Plan for Countering Organized Crime, for the 2023 budget, more than 38.329 billion pesos (approximately $41.6 million) were allocated to strengthen the operational capacity of those institutions engaged in combating organized crime, including the Financial Analysis Unit. In addition, the budget of the Financial Analysis Unit was increased by 7.6 per cent as part of a four-year plan to increase its staff by 26 professionals, from 72 to 98.

The competent authorities may order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or any other offence in accordance with the general rules applicable to confiscation (art. 348 of the Code of Criminal Procedure).

Chile has not adopted provisions regulating non-conviction-based forfeiture, nor has it received requests for international cooperation on the basis of forfeiture orders.[9]

In the absence of a foreign judicial decision, measures enabling the freezing or seizure of property may be taken on the basis of the general rules governing international assistance (art. 20 bis of the Code of Criminal Procedure). In such cases, the Public Prosecution Service receives the requests for assistance and requests the judge responsible for procedural safeguards to carry out the necessary steps. The judicial authority must analyse the background of the case.

No additional measures enabling the preservation of property for confiscation have been provided for.

Chilean law does not establish requirements relating to the content of requests for mutual legal assistance. However, the Chilean authorities indicated that, in direct application of the Convention, the elements covered by article 55, paragraph 3, of the Convention would be included.

During the course of the review, Chile furnished copies of its laws and regulations that give effect to article 55 of the Convention. Chile does not make adoption of the measures referred to in article 55, paragraphs 1 and 2, of the Convention conditional on the existence of a relevant treaty.

In practice, Chile may refuse to execute a request for assistance or to lift a provisional measure if there is insufficient evidence to request judicial authorization in cases where intrusive measures are requested or if the measure sought is not provided for in Chilean law; it does not make any distinction with respect to the value of the property concerned. In any case, Chile may request additional information in order to be able to execute a request.

Provisional measures relating to real property are automatically lifted when the danger that they were intended to avert ceases to exist; there is no legal obligation to give the requesting State an opportunity to present its reasons in favour of continuing the measure (art. 301 of the Code of Civil Procedure).

Confiscation does not affect property belonging to third parties that are not liable for the criminal offence (art. 31 of the Criminal Code). In the case of seized assets, any bona fide third party may file a third party claim (art. 189 of the Code of Criminal Procedure; art. 518 of the Code of Civil Procedure).

*Return and disposal of assets (art. 57)*

Confiscated assets, or the proceeds from their sale at public auction, are handed over to the Administrative Department of the Judiciary (art. 469 of the Code of Criminal Procedure). Property seized in relation to a money-laundering offence may be used for the prosecution of that offence (art. 36 of Act No. 19.913). There is no national legislation providing for the return of confiscated property to its prior legitimate owner in accordance with article 57, paragraphs 2 and 3, of the Convention. However, Chile provided an example of a case in which, exceptionally, in direct application of the Convention, confiscated assets were auctioned and the proceeds were transferred to another State party.

Chile indicated that in the case cited, it had deducted the expenses incurred in selling the assets as part of the proceedings for the return of those assets. The deduction of

[9] Development following the country visit: Chile provided for non-conviction-based forfeiture through the adoption of Act No. 21.577, which was published in the Official Gazette on 15 June 2023.

expenses is not regulated in its legislation, but the Chilean authorities indicated that direct application of the Convention would be possible in that regard.

Chile has not concluded any agreements on the final disposal of confiscated property.

### 3.2. Successes and good practices

- Article 3, fifth paragraph, of Act No. 19.913 establishes that certain public bodies have the duty to report suspicious transactions of which they become aware in the course of performing their functions (art. 52, para. 1).

### 3.3. Challenges in implementation

It is recommended that Chile:

- Adopt specific legislation regulating international cooperation matters in detail, including requests for mutual legal assistance in the recovery of assets linked to offences established in accordance with the Convention, in conformity with the requirements set out in chapter V thereof (general recommendation related to chapter V).
- Ensure that enhanced scrutiny is applied to accounts sought or maintained by or on behalf of persons who are, or have been, entrusted with prominent public functions, including officials of international organizations that fit that criterion; and expand the scope of the definition of “close associate” to include natural and legal persons who clearly have a relationship with persons who are or have been entrusted with prominent public functions (art. 52, para. 1).
- Consider preventing banking institutions from continuing correspondent banking relationships with banks that have no physical presence and are not affiliated with a regulated financial group, and also consider requiring financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by such banks (art. 52, para. 4).
- Extend the obligation to declare assets to the spouses of public officials, regardless of the matrimonial regime; and consider taking measures to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship (art. 52, paras. 5 and 6).
- Ensure that under domestic law, other States parties have locus standi to initiate civil action in Chilean courts to establish title to or ownership of property, including in the context of a separate civil proceeding (art. 53 (a)).
- Ensure that in practice, its courts may order those who have committed offences established in accordance with the Convention to pay compensation or damages to another State party that has been harmed by such offences, and may, when having to decide on confiscation, recognize another State party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention (art. 53, paras. (b) and (c)). If, in the future, the courts do not interpret the law in that way, it may be necessary to clarify the law through legislative reform.
- Ensure that its courts are able to give practical effect to any order issued by a court of another State party for: (a) confiscation; and (b) seizure or freezing. If, in the future, the courts do not interpret the law in that way, it may be necessary to clarify the law through legislative reform (art. 54, paras. 1 (a) and 2 (a)).
- Consider taking measures to ensure that its judicial bodies may act on a request for legal assistance in relation to the confiscation of property without a criminal conviction (art. 54, para. 1 (c)).
- Consider taking measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (art. 54, para. 2 (c)).

- Ensure that a requesting State party is given an opportunity to present its reasons in favour of continuing a provisional measure before the measure is lifted (art. 55, para. 8).
- Adopt the legislative measures necessary to ensure the return of confiscated property to its legitimate owners, including other States, in accordance with the modalities set out in paragraphs 1 to 3 of article 57, taking into account the rights of bona fide third parties, and ensure that, where appropriate, only reasonable expenses are deducted (art. 57, paras. 1–4).
- Consider steadily increasing the number of staff of the Financial Analysis Unit and investment in infrastructure in order to be able to cover the 38 economic sectors subject to oversight and the country's 8,379 regulated entities (art. 58). [10]
- Consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention (art. 59).

### 3.4. Technical assistance needs identified to improve implementation of the Convention

Chile indicated the following technical assistance needs:

- Technical assistance in the drafting of a bill that comprehensively regulates asset recovery in Chile, either through amendment of the Code of Criminal Procedure or through the enactment of a special law (chapter V).
- Assistance with the confiscation of virtual assets; the development of a procedure for freezing assets linked to the financing of terrorism and the promulgation of that procedure among all competent institutions; and the establishment of a centralized register (statistical system) containing data on seized, confiscated and forfeited property and assets (linked to money-laundering and the financing of terrorism) that includes information from all relevant institutions and from the mechanisms that those institutions use with respect to such property (arts. 54 and 55).
- Technical assistance with the development of a protocol among relevant institutions for the identification of property and assets related to the investigation of offences underlying money-laundering (art. 55).

[10] Development following the country visit: under the National Plan for Countering Organized Crime, for the 2023 budget, more than 38.329 billion pesos (approximately $41.6 million) were allocated to strengthen the operational capacity of those institutions engaged in combating organized crime, including the Financial Analysis Unit. In addition, the budget of the Financial Analysis Unit was increased by 7.6 per cent as part of a four-year plan to increase its staff by 26 professionals, from 72 to 98.