Chilean Efforts to Provide Incentives for Companies to Adopt Compliance Programs

Submitted by: Chile
Chilean efforts to provide incentives for companies to adopt compliance programs

Hernán Fernández Aracena
Deputy Director
Anticorruption Specialized Unit
Public Prosecutor Office
Chile

ACTNET Workshop for Law Enforcement Agencies on effectively using corporate compliance programs to combat domestic & foreign bribery
Puerto Varas, August 18-19
Chilean System of LLP

Law 20.393/2009: Criminal liability of Legal Person

- Relevant offences:
  - Domestic Bribery
  - Foreign Bribery
  - Money laundering
  - Others

- Owners, CEO, any person within the company with duties of direction and supervision
- “In benefit of the company”
- Breach duty of direction and supervision. The company could demonstrate its fulfillment adopting a Offense Prevention Model (OPM)
Minimal Requirements OPM

- Prevention Officer
- Supervision and certification OPM
- Establish an offence prevention system
- Resources and Faculties
OPM are not mandatory

Law only establish minimal requirements. The OPM could consider more and better standards

Jurisprudence will verify if an OPM fulfill the Law

Phase 4, OECD recommendation: “Develop guidance on the elements of an effective OPM for preventing foreign bribery”.
Law 20.393 promotes the adoption of OPM:

- OPM could constitute a defence if is adopted before offence (art 3 & 4)
- OPM could mitigated the liability of the LP (art 6.3):
  “The adoption by the legal person, before the beginning of the trial, of effective measures to prevent the repetition of the same class of offences under investigation”
- OPM could also be a Condition in SCP (art 25):
  “Implement a program to make effective the model of organization, administration and supervision referred to in article 4.”
Incentives

- PPO published “Practical Guide on Good Investigation Practices Criminal Responsibility of Legal Persons”.

Guía Práctica
Buenas Prácticas de Investigación
Responsabilidad Penal de las Personas Jurídicas
Incentives

- Practical Guide aimed at prosecutors...
  - Prevention Officer
    - Budget
    - Reports
    - Software and Skills
  - Risk Assessment
  - Code of conduct
    - Authorizations
    - Public Bidding in Public Procurement
    - Gift policies
  - Training and OPM’s diffusion
Incentives

- **Guide to SOE**

- **Training:** INN (ISO institution) and PPO
Incentives

- Training
  - Academy: During 2018 in PUC:
    - “Diploma in Law and Sports Management”
    - “Diploma in probity, transparency and good governance”
  - To PDI, “Brideff” and Heads of “Bridec”
  - Diffusion in compliance and OECD standards by the “Responsible Business Conduct Division” of the “Undersecretary of International Economics Relations” (MOF)
  - This APEC Workshop...
Chilean experience in LLP

STATISTICS 2009-2018

- Formalized prosecutions (with formal charges):

<table>
<thead>
<tr>
<th>Number of cases against LP</th>
<th>Number of LP formalized</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>24</td>
</tr>
</tbody>
</table>

- Offences committed by LP: 16 Domestic bribery cases (23 companies) and 1 foreign bribery case (1 company)

- Ongoing cases vs concluded cases:

<table>
<thead>
<tr>
<th>LP with concluded cases</th>
<th>LP with ongoing cases</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>5</td>
<td>24</td>
</tr>
</tbody>
</table>
**Chilean experience in LLP**

**STATISTICS 2009-2018**

- **Concluding cases (reasons):**

<table>
<thead>
<tr>
<th>Number of LP subject to a SCP</th>
<th>Number of LP convicted in abreviature procedure</th>
<th>Number of LP aquitals in oral trial</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>5</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>57,9%</td>
<td>26,3%</td>
<td>15,8%</td>
<td>100%</td>
</tr>
</tbody>
</table>

- **Negotiated terminations**: 84,2
- **Oral Trials**: 15,8
Thank you