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## **Corporate Compliance Programs and Challenges to the Private Sector: Seeking to Meet Expectations**

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**Workshop for Law Enforcement Agencies on  
Effectively Using Corporate Compliance Programs  
to Combat Domestic and Foreign Bribery  
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*APEC WORKSHOP FOR LAW ENFORCEMENT AGENCIES ON EFFECTIVELY USING  
CORPORATE COMPLIANCE PROGRAMS TO COMBAT DOMESTIC & FOREIGN BRIBERY*

*CORPORATE COMPLIANCE PROGRAMS AND CHALLENGES TO THE  
PRIVATE SECTOR: SEEKING TO MEET EXPECTATIONS*

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## Some perceptions from the private sector

- Surfing through an ever expanding and increasingly complex “Compliance Challenge”. Beyond combating corruption:
- A material increase in: criminal figures and other legal obligations, penalties, social condemnation, and the probability of getting caught.
- The prevalent vision is : We can't fail in this...
  - *...but it is becoming more difficult (and not always cost effective) to design and implement a robust and effective prevention model that encompasses all the criminal figures included in the expanding catalog of corporate criminal responsibility.*
- In addition to the extended catalog of potential criminal liabilities, some major uncertainties emerge, with respect to both the interpretation of the criminal figures and regarding the sufficiency of the crime preventive models.

# Questions in search for a clearer answer

- Which is the “perimeter” or legal meaning of some of the new criminal figures? Since very few cases are defined by a judicial decision, the lack of consistent jurisprudence increases the perception of legal risk.
- What kind of crime prevention model will be regarded as robust, effective and sufficient to avoid corporate legal liability?
- Would the prosecutors have a common understanding of the matter? What about the judges?
- Which is the real value of having a certified crime preventive model when a prosecutor decides to defy it?
- Is it possible or convenient to focus the scope of the crime preventive model and certification only to a limited number crimes?
- Facing the risk of shareholder´s controversies becoming “criminal”.
- Economic incentives and consistency with the prevention model
- Labour law: firing a wrongdoer can be very “expensive” in a labour court case.

# Dealing with an increasing domain of criminal corporate liability

- Corruption (the subject of this workshop) is just one out of many - yet probably the most salient- potential corporate crimes.
- Recently, a material legal amendment in the Chilean legislation (Law 21.121) included:
  - *Corruption among private parties*
  - *Expansion of the concept of bribery: the law extends the criminal concept of bribery to benefits of any kind (and not just related to those of economic nature)*
  - *Any undue benefit offered to a public official is now deem as bribery, regardless of the intention of the “giver” or consideration by the public official.*
  - *Extension of the scope for bribery of a foreign official, not longer restricted to an international transaction.*
- More eventual corporate criminal figures are in the legislative pipeline...

# The key debate at the corporate board level: how do we define and implement a cost effective prevention model?

- Scope
- Sufficiency
- Hot lines or whistleblowers policy: a) confidentiality; b) due and effective response.
- Effective implementation, autonomy of the compliance officer.
- Beyond the "check list": transforming culture. Tone at the top... when it really matters.
- In sum: What is the meaning of the "duty of care" that ought to be reflected in the corporate corruption (and beyond) prevention model?
- How to deal with the hindsight bias that may prevail in the behavior and decision making of prosecutors and judges?
- Guidelines issued by prosecutors and consistent jurisprudence can help.
- Until the concrete meaning of that "duty of care" becomes more precise, both the legal risk and the capacity to prevent it will be uncertain.