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Corporate Compliance Programs and Challenges to the Private Sector. Seeking to Meet Expectations

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Effectively Using Corporate Compliance Programs
to Combat Domestic and Foreign Bribery
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- Corporate Compliance Programs and challenges to the the private sector. Seeking to meet expectations.

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Corporate Compliance Programs

- I want to concentrate in three issues
 - 1) Challenges to the private sector
 - 2) Challenges to the regulators
 - 3) Necessary Requirements to meet expectations

Corporate Compliance Programs

1) Challenges to the private sector

- It's necessary create concern about the importance of compliance programs and to go further than the legal requirements; it is important to foster a culture of ethics and compliance with the law.
 - In a dynamic world conducts that are considered as illegal are changing though time
 - The reputation cost of failures (corruption, bribery, etc) are increasingly important in a world each time more informed
- Today the boards of the companies must consider as a part of the duty of care (art 41, Law 18.046) the compliance policies because if those policies failed it is negatively affected the social interest of the company.
- Negative externalities to the economic system could be significative if firms fail in compliance issues. The trust in the system and institutions is crucial for the economic development. (papers of Zingalez et al)

Corporate Compliance Programs

- **2) Challenges to regulators**

- It will be important a coordination between the CMF and the Public Prosecutor's Office.
 - i) Because the CMF in front of cases of corruption, bribery, etc, must examine fails to the duty of care of the board regarding the implementation of an effective compliance policy. On the other hand, the Public Prosecutor's Office must examine if corresponds the applicability of an exempt from criminal responsibility to a company that have a certified crime prevention model
 - ii) At a corporate level, the CMF has defined standards of risk management and internal control for some institutions under his supervision and this must be considered by the Public Prosecutor's Office
- Even it miss an explicit reference to a coordination necessity, it doesn't seem easy to applicate some things that the US Department of Justice Criminal Division "Evaluation of Corporate Compliance Programs" prescribes.

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3) Necessary Requirements to meet expectations

- **An appropriate system of criminal penalties for the no compliance of the law.** From my point of view is a real problem that persons with jail sentences lower than 3 years don't go to jail. The incentives for a good behavior are negatively affected and sometimes the prosecutors can exaggerate the responsibility for a crime in order to maximize the jail probability
- Prosecutors devoted to a serious and silent work. It is a problem when they succumb to the media lights.

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3) Necessary Requirements to meet expectations

- From my past experience as chairman of the SVS (actual CMF) I feel that the legal system is already very vulnerable when people accused has many resources. They can inciderate and dilate the processes too much, abusing of the law and fueling a feeling of impunity.
- I am also concerned about the precedents of some pronouncements of the Constitutional Courts that weakened strongly the fines of the regulators (Cascada case) invoking open texture principles as proportionality. This gave a very bad signal to the market.