



**Asia-Pacific
Economic Cooperation**

2019/SOM3/ACT/NET/WKSP/016

**The Use of Corporate Compliance Programs to
Prevent Criminal Liability - Private Sector
Experience from Chile**

Submitted by: Falabella



**Workshop for Law Enforcement Agencies on
Effectively Using Corporate Compliance Programs
to Combat Domestic and Foreign Bribery
Puerto Varas, Chile
18-19 August 2019**

The Use of Corporate Compliance Programs to Prevent Criminal Liability

Private Sector Experience from Chile

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Falabella – About us



Who we are, what we do and where we do it

- Multi-format retailer, financial services business and commercial real estate developer
- Largest Chilean Company measured by market capitalization
- We operate businesses in seven economies throughout Latin America, plus support operations in China and India
- In excess of 300 million transactions per year
- Over 500 million visits to our websites per year
- More than 390 million visits to our shopping malls per year
- In excess of 3 million square meters of gross leasable area
- Net revenue of US\$14.5 billion in 2018
- Over 110,000 direct employees throughout the world

Falabella – Our Compliance System

Roadmap to the presentation

I will try to provide a practical private-sector approach, based on experience, for the prevention of criminal liability through the use of corporate compliance programs

In order to do this I will address the following aspects:



Strategy

- Our Legal & Compliance Strategy consists of **modeling or shaping behavior**:
 - whether we are advising the board, writing a contract, litigating a case or implementing a compliance program, everything we do results in the modeling of behavior
 - Such behavior can be the corporation's behavior, that of our associates or behavior relating to or connected with our organization
- Our Legal & Compliance Strategy is also based on the fact that there are three sides to our organization:
 - we are a **legal entity** (actually, a number of them) that has a legal life to it
 - we are a **business**
 - we are a form of **societal organization** that connects with the community at large on several and different levels (hence, our stakeholders have expectations we must thoughtfully consider)
- Our Legal & Compliance Strategy further believes that:
 - businesses need management
 - corporations (as societal organizations) need to be governed
 - simplicity is better than complexity
 - exceptions are very expensive (they all need further controls and monitoring)

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Structure

- Our Legal & Compliance strategy impacts our structure
- Because of the three different sides to our organization, our Legal & Compliance strategy impacts our structure as follows:
 - Because we are a legal entity our GC Office includes a Vice Presidency of Corporate Legal Matters
 - Because we are a business, our GC Office includes a Vice Presidency of Legal Operations
 - Because we are a form of societal organization our GC Office includes a Vice Presidency of Governance, Ethics & Compliance
- **Reporting lines:** In order to protect the independence of judgment of our legal & compliance professionals all lawyers practicing law or professionals within our Legal & Compliance structure within our organizations report directly within our structure, all the way up to the CL&GO of the entire organization (no business manager can hire or fire members of our Legal & Compliance structure)

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Process

- Our Legal & Compliance process comprises the following main steps:
 - Risk identification, assessment and management (the what, where, how and who of our risks)
 - Preparation of programs for the modeling of behavior (some result in compliance programs, some do not)
 - Implementation of our programs
 - Continuous improvement of our programs
- All our behavior modeling programs have four types of elements:
 - Regulatory elements (the expected behavior is determined)
 - Communication elements (the expected behavior is transmitted)
 - Execution elements (the expected behavior is made real)
 - Control elements (the quality of the program is assured)

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Process

- Our programs for the modeling of behavior follow our 5-Ds approach:
 - Decisión (decision)
 - Dirección (direction)
 - Dedicación (dedication)
 - Deliberación (deliberate action, not chance)
 - Dotación (resources)
- Finally, following the work and teachings of social psychologists Geert and Geert Jan Hofstede, we believe a corporate culture of integrity is not a stand-alone attribute of an organization, but rather a feature existing (or not) within a series of cultural choices made by organizations that make it more plausible

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Process

The Hofstede Model to Understanding Corporate Culture

Cultural Dimensions	Explanation
Process-Oriented vs. Results-Oriented	Concerned with means vs concerned with goals
Employee-Oriented vs. Job-Oriented	Concerned with people vs concerned with completing the job
Parochial vs. Professional	Employees identify with the organization vs with their type of job
Open System vs. Closed System	Open to newcomers or outsiders or not
Loose Control vs. Tight Control	Amount of internal structuring and rules (written or not)
Pragmatic vs. Normative	Focused on the customer vs customer satisfaction through process

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Process

- Regulatory elements of our behavior modeling programs
 - These are the rules we work with, whether internal or external.
 - Our internal rules:
 - ✓ Are first based on principles and only after those are set they shift to prescriptive mode
 - ✓ Should serve only two purposes:
 - Explain the expected behavior
 - Set out the consequences of not following it
- Communication elements of our behavior modeling programs
 - These are designed to “put the word out there” about what the company expects
 - They include the following types of communication actions:
 - ✓ Advertising (difusión): mere “*brand recognition*” that something is important to the organization
 - ✓ Awareness (concientización): an argument is made as to why something is important
 - ✓ Training (capacitación): actual content or knowledge is conveyed
 - ✓ Exercising (entrenamiento): simulations or mock situations are conducted

YO JUEGO LIMPIO

NUNCA ACEPTO NI OFREZGO SOBORNO A UN FUNCIONARIO PÚBLICO

- 1. Los regalos van a ser a favor de la empresa para comunicarme.
- 2. No tengo más que una cuenta en cuentas oficiales de la república pública y no a través de redes.
- 3. Acuerdo mis reuniones con funcionarios públicos en el calendario de la empresa.
- 4. Evitar cualquier tipo de actividad de interés personal para el funcionario público.
- 5. Me reúno exclusivamente en las oficinas de la empresa o de la república pública.
- 6. Cuido siempre en las citas o reuniones a mi jefe y a la mamá mamá del jefe del jefe.
- 7. Anticipo siempre a los reuniones o reuniones de un superior o superior de la empresa.
- 8. Cada decisión que tome siempre la tomo en la oficina.
- 9. Pongo la empresa a un lado cuando se trata de la familia de la mamá del jefe.
- 10. Dependo de la mamá del jefe para que siempre sea el jefe del jefe.

ESPECIAL ATENCIÓN EN:

- Reuniones con funcionarios públicos.
- Obtención de permisos y autorizaciones.
- Transmisión de funcionarios públicos.
- Cualquier interacción con instituciones del estado.

El valor de hacer lo correcto

PROGRAMA ANTISOBORNO
 PROGRAMA DE PRÁCTICAS DE ÉTICA
 2023-2024

UN MILLÓN DE GRACIAS, PERO NO

Sabemos que la práctica de hacer o aceptar regalos en el contexto de una relación comercial o profesional es una realidad y se intensifica con las celebraciones de fin de año, sin embargo, debemos tener cuidado porque pueden afectar la independencia de nuestras decisiones, nuestra reputación o la de la empresa.

TE INVITAMOS A VER EL SIGUIENTE VIDEO

A LA HORA DE HACER - RECIBIR LO CORRECTO

TE QUEREMOS PEDIR QUE TENGAS EN CONSIDERACIÓN LOS SIGUIENTES CRITERIOS O REGLAS BÁSICAS:

- No aceptes o hagas un regalo que vaya más allá de una simple cortesía de valor mínimo.
- No aceptes un regalo si tienes la sensación de que quien lo hace quiere influir en tus decisiones.
- No hagas un regalo si estimas que con él podrías influir en las decisiones de quien lo recibe.
- Nunca hagas o aceptes regalos, a o de, un funcionario público o competidor.
- En ningún caso hagas o aceptes regalos en dinero, representativos de dinero, favores o servicios, entre otros.

Por esto, todos los colaboradores, sin excepción decimos:

UN MILLÓN DE GRACIAS, PERO NO

S.A.C.I. FALABELLA

EL VALOR DE HACER LO CORRECTO

Si tienes dudas consulta directamente al Canal de Integridad
 Link de Intranet - Teléfono 800 726 100
 contacto@gerenciadeetica.com

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Process

- Execution elements of our behavior modeling programs
 - These are the elements that make a program exist in reality
 - Examples:
 - ✓ Processes and controls specifically designed for compliance purposes
 - ✓ Our Integrity Line
 - ✓ Ethics & Compliance Officers
 - ✓ Ethics & Compliance Committees
 - ✓ Vendor, partner and TPI due diligence
- Control elements of our behavior modeling programs
 - Continuous auditing of our programs
 - Project management of our programs
 - Periodic revisions to our programs:
 - ✓ On an as-needed basis
 - ✓ Programmed obsolescence (three years max.)

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Challenges we see

Preventing crimes has been a long-standing public duty that is now shifting to the private sector

The legal means afforded to corporations do it have not followed suit (especially labor law and privacy restrictions)

Unresolved issues with intrusive measures by the authority and attorney-client privilege (i.e. privileged communications, redacted reports, etc.)

Lack of coordination between governmental agencies as to what compliance functions and programs mean, entail or what they should look like

General unwillingness of governmental agencies to publicly announce their compliance priorities

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Suggestions

The criminalization of corruption is not new, what is new is the introduction of institutionalized liability by corporations and the means to ameliorate or prevent institutional consequences

This new approach to fighting corruption seems to be working much better than the (sole) banning of individual conducts that constitute corruption

Because corruption is always a two-sided story, economies could presumably improve their success in the fight against corruption if some form of institutional responsibility and compliance obligations existed also in the governmental and public sector

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THANKS FOR LISTENING!

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