



OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC
INTERNATIONAL COOPERATION AND RELATIONS UNIT

Replies compiled by the Office of the Comptroller General of the Republic based on input from the Office of the Public Prosecutor, the State Defence Council, the Financial Analysis Unit and the Financial Market Commission, in the context of the UNCAC Anti-Corruption Alliance

QUESTION 1

Experiences and best practices regarding criminal and civil measures and proceedings to improve international cooperation and the recovery of assets, relating to the types of corruption involving large amounts of assets.

(In Chile, the agency responsible for prosecuting crimes and the exercise of criminal proceedings is the Public Prosecutor's Office [MP]. For advising, defending and representing interests - asset-related and non asset-related interests of the State of Chile and its agencies - through the exercise of judicial and extrajudicial action and defence, the State Defence Council [CDE] is called on to act).

Regarding the recovery of assets in Chile, the following cases are of note:

1. In a case linked to the "United Nations Convention against Transnational Organized Crime" (section a), paragraph 3, article 14, and section c), paragraph 2, article 30), Chile signed a special agreement with the Swiss Confederation for the recovery and distribution of assets resulting from the crime of Law No. 19,366 on illicit drug trafficking, in force at the time, and confiscated in that country. The agreement brought about the practical application of the convention, allowing both countries, who were working together to prosecute the crime and apply sanctions, to distribute the confiscated monies equally. The State of Chile received its half of the US\$ 16,137,001.32 in full, in recent months;
2. Also of note is the case of a politician prosecuted for corruption in the Republic of Honduras in 2014. The case started as fraud against the treasury, with Mario Zelaya, then director of the Honduran Institute of Social Security, using false contracts to defraud his country of more than 100 million dollars. The embezzled assets were then transferred, through the acquisition of real estate and transferred money, to his Chilean partner, Natalia Ciuffardi Castro. The Republic of Honduras requested the extradition of Mrs. Ciuffardi, which was not agreed to. She was however tried in Chile and money associated with the accused was seized in the judicial process and remitted to the Republic of Honduras;
3. In terms of criminal proceedings for crimes of money laundering and drug trafficking, of note is the criminal action brought against Mauricio Mazza Alaluf, a Chilean national who was prosecuted in Chile for money laundering and was also charged and convicted in the United States for transferring sums of money without a license. He was sentenced to three years of actual imprisonment, being deported to Chile in May 2010. As part of this investigation the DEA, IRS and the New York Prosecutor's Office offered to split the funds seized in the United States from Mazza Alaluf - USD 3,577,327.32 - fifty-fifty with the Republic of Chile, given the collaboration provided by this service. In summary this was a seizure carried out by the US justice system and governed by the provisions of that country, which included sharing funds with other agencies collaborating in an investigation that ended in the confiscation of monies. In this case the State Defence Council was able to obtain the equivalent of USD 1,776,398.16 for the Chilean Treasury;



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As regards practical improvements, the following can be highlighted:

1. Increase of informal cooperation

As the recovery of international assets necessarily requires a request for international assistance, which must be processed through central authorities and pass through various stages in order to be sent to the recipient country (for purposes of detection, freezing and return of goods), the speed these processes require can be affected.

As such, informal cooperation is needed to reduce the response times required for this process, especially in the detection of assets.

To this end Chile joined *RAGG* (the Asset Recovery Network of *GAFILAT*, the Latin American Financial Action Task Force), as well as other informal cooperation networks such as *IberRed*, which is on the way to becoming a primary method for the formal electronic transmission of international requests to reduce remittance times for requests and their responses.

2. Use of the spontaneous information tool

Spontaneous information is an international cooperation mechanism that allows one state to provide information to another without making a formal request. Sending this information takes place within the framework of ongoing criminal investigations in the respective country and subsequent to familiarization with facts that could be investigated in another state.

It has been established that the use of spontaneous information is an effective and expeditious tool for requesting the freezing and subsequent recovery of assets in a foreign country.

3. Role of Chile's Public Prosecutor's Office as Central Authority

Until February 2018 Chile's central authority for pursuing the recovery of international assets was the Ministry of Foreign Affairs.

This role was transferred to the Office of the Public Prosecutor in the majority of the International Criminal Assistance Conventions (bilateral and multilateral) ratified by Chile, including the United Nations Convention against Corruption and the Ibero-American Convention against Corruption.

The fact that the Office of the Public Prosecutor takes on the role of the central authority has two important consequences:

- a) It highlights the autonomy and independence of the Office of the Public Prosecutor in its investigations with international aspects;
- b) It expedites the transmission of requests for international criminal assistance, given that it is the Public Prosecutor's Office itself that receives the request in its capacity as the central authority, and also as it executes it in accordance with Article 20 bis of the Chilean Code of Criminal Procedure, and there are no intermediaries.

4. Fast-track transmission of international requests



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The Office of the Public Prosecutor has called for the transmission of international requests to be carried out electronically with authenticity assurances such as advanced electronic signatures.

So far Chile has signed agreements on electronic processing of international assistance requests for criminal matters with Peru and Argentina and is looking at other possible agreements with countries in the region.

QUESTION 2

Best practices regarding identifying legal and physical persons involved in setting up companies, including fictitious companies, trusts and similar setups, that could be used improperly to commit or cover up crimes of corruption or conceal, disguise or transfer the proceeds of corruption in countries that provide security for the corrupt and/or the proceeds of the crimes.

As reported by the Public Prosecutor's Office, identification requests can effectively be made both through international assistance requests on criminal matters or via other networks such as the *RRAG*. The best practices that Chile has taken on in terms of international assistance requests on criminal matters are the same as those mentioned in the first question that aim to expedite and provide confidentiality for the requests, in order that they should be effective.

From the perspective of preventing the use of the financial system, and other sectors of Chilean economic activity, for committing the crimes of asset laundering and financing terrorism, two major actions can be highlighted:

I. UAF Circular No. 57/2017 on Final Beneficiary and the identification and/or orientations of Politically Exposed Persons

To contextualize, the Financial Action Task Force (FATF) defines Final Beneficiary as the natural person (s) that ultimately owns or controls a client, and/or the natural person in whose name a transaction is made. It also includes persons who exercise ultimate effective control over a legal entity or other legal structure.

In Chile, the National Strategy for Preventing and Combating Asset Laundering/Financing Terrorism in its 2014-2017 action plan includes a strategic approach to Transparency and Final Beneficiary of legal persons. The goals of this strategy are the following:

- to prevent the use of these and other legal structures, with particular emphasis on the Non-Profit Organization (NPO) sector, to launder assets and finance terrorism;
- to implement measures to ensure that information on the ownership of legal persons is available to the competent authorities in a timely and appropriate manner, without any impediment;
- to ensure that general information on the constitution and nature of legal entities, and of those who participate in them, can be obtained by the authorities in a timely and adequate manner, as well as by financial institutions and other sectors of the economy that establish commercial relationships with them;
- to make it easier for authorities responsible for prosecuting to obtain - in a timely and adequate manner - relevant up-to-date information on the final beneficiary/beneficiaries of any legal entity incorporated in the country; and,



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- to make it easier for financial institutions and other sectors of the economy to obtain up-to-date information on the final beneficiary when clients are legal entities, so they can develop proper Due Diligence of Clients (DDC).

Based on input from the National Strategy, the Financial Analysis Unit (*UAF*) issued Circular No. 57/2017, dated June 12, 2017, regulating the obligation of all obligated parties in the financial sector (referred to in the first paragraph of article 3 of Law No. 19,913), in the framework of compliance with the obligation of due diligence and knowledge of the client (DDC), to request from its clients who are legal entities or legal structures a declaration containing sufficient information regarding the identity of their final beneficiaries.

For the purposes of applying anti-asset laundering and anti-terrorist funding regulations, *UAF* Circular No. 57 defines Final Beneficiary as:

- The natural person (s) that ultimately owns, directly or indirectly, through companies or other mechanisms, a stake equal to or greater than 10% of the capital or voting rights of a determined legal entity or structure legal
- The natural person (s) that ultimately owns, directly or indirectly, through companies or other mechanisms, a stake equal to or greater than 10% of the capital or voting rights of a particular legal entity or structure legal

II. Since 2012 Chile has promoted the lists of Politically Exposed Persons (PEPs) and matters relating to them, and these are now standard anti-laundering and anti-corruption measures.

Circular No. 49 of the Financial Analysis Unit defines Politically Exposed Persons as "Chileans or foreigners who perform or have performed prominent public functions in a country, up until at least one year after these functions have ended."

Included in this category are heads of state or government; high-ranking politicians; government, judicial or military officials; top executives of state enterprises and their spouses, relatives up to the second degree of consanguinity, and natural persons with whom they have had a joint action agreement through which they have sufficient voting power to influence companies incorporated in Chile.

In Chile the *UAF* heads a Prevention Group which implements the National System for the Prevention of Asset Laundering and the Financing of Terrorism, built around the pillars of prevention, detection, prosecution and punishment for these crimes. The Commission for the Financial Market (CMF)¹ is part of this group. It is the institution in charge of ensuring the proper functioning, development and stability of the financial market, facilitating the participation of market agents and fostering the care of public trust, in addition to ensuring that the persons or entities inspected, from their start to the end of their liquidation, comply with the laws, regulations, statutes and other provisions that govern them.

In the context of the work of this group, the CMF has issued instructions on the prevention of asset laundering and financing terrorism, through Circular No. 1809 of 2006, instructing on the need for due diligence and knowledge of clients and Politically Exposed Persons, by all insurers, securities intermediaries, general fund management companies, mutual fund management companies, investment fund management companies, securitization companies, housing leasing companies, professional sports

¹ Former Securities and Insurance Supervisor.



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corporations and others companies or entities registered in the Securities Registry which are considered parties obligated to provide information to the Financial Analysis Unit.

Internally, the CMF developed a "Procedures Manual for the Prevention of Asset Laundering, Crimes Committed by Officials and Financing Terrorism", in compliance with the obligations set out in Law No. 19,913 for Public Utilities and, in particular, for the Superintendencies to inform the UAF of suspicious operations relating to these crimes, advising on the performance of their duties. The aim of the manual is to implement an efficient mechanism for detecting and preventing the aforementioned crimes, establishing a simple procedure and easy-to-access, confidential communication channels for CMF officials to report such operations, thus safeguarding the principles of Transparency and Integrity of the public administration.