



# Chile - Global bribery offenses guide

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## 1) What is the legal framework governing bribery in Chile?

In Chile, the legal framework that regulates and sanctions bribery acts is the Chilean Criminal Code and Law 20,393 that establishes the criminal responsibility of legal entities. The latter sanctions companies or corporations for acts of bribery committed by their executives or workers and have not adopted compliance models aimed at preventing the commission of these crimes.

## 2) What constitutes a bribe?

Bribery constitutes requesting, accepting, offering or consenting to give a national or foreign public official an economic or non-economic benefit, to gain a personal advantage for the person offering the bribe or for a third party.

## 3) What are the principal offenses under this legal framework?

- Offering or consenting to give an economic or non-economic benefit to a national public official, for the benefit of the person giving the bribe or for a third part.
- Request by a national public official of an economic or non-economic benefit to give an improper advantage.
- Offering, promising, giving or consenting to give an economic or non-economic benefit to a foreign public official.

## 4) What is the jurisdictional reach of the legal framework?

The Chilean Criminal Code and Law 20,393 only apply in Chile. Our criminal legislation is governed by the principle of territoriality of criminal law.

## 5) Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Private individuals, public officials and companies can be prosecuted for bribery offenses under Chilean Criminal Code and Law 20,393.

A company can be held liable under the identification principle if a “directing mind and will,” typically a senior person in the company (such as a director), commits a bribery offense in benefit of said company.

A company or partnership may be liable for failing to prevent bribery. It is a strict liability offense and the relevant commercial organization doesn't even need to know that the bribery has taken place in order for it to be liable.

## 6) Can a parent company be liable for its subsidiary's involvement in bribery?

It could eventually and very remotely. This to the extent that the directors or administrators appointed by them in the subsidiary have committed crimes punishable by Law 20,393, for the benefit of the parent company, and the latter has been aware of such situation or has not taken the necessary safeguards to prevent its commission. In any case, it is a complex reality with little practical occurrence. In a criminal investigation, this situation must be proven in court.

## 7) Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Yes, provided they meet the criteria, facilitation payments are considered bribery, no matter how small the amount.

However, according to Chilean law, official or protocol donations are not constitutive of bribery, also those of low economic value that the custom considers as a manifestation of courtesy or good education.

## 8) Does the legal framework restrict political and charitable contributions?

Yes. In Chile there are special laws that regulate such matters (Law on the Financing of Political Parties and Donations Law), therefore, outside of that framework, they can be considered bribery.

Official or protocol donations are not constitutive of bribery, also those of low economic value that the custom considers as a manifestation of courtesy or good education.

A political or charitable contribution could be considered a bribe if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so.

## 9) Does the legal framework place restrictions on corporate hospitality?

Not in general. Corporate hospitality should be oriented towards official or protocolary donations (being a courtesy gift given to an authority as a gesture of gratitude for an invitation) or gifts of little economic value, usually understood as a manifestation of courtesy and good education. Anything outside this framework is prohibited.

However, our criminal law always prohibits protocolary donations to foreign public officials.

## 10) Are there any defenses for bribery offenses?

There are no specific statutory defenses to charges of bribery.

It is a defense for a commercial organization charged with the offense of failing to prevent bribery to prove that it has adequate procedures in place to prevent bribery.

The Chilean Criminal Code does not define what is considered adequate procedures, but Law 20,393 guidance states that the adequacy of a commercial organization's procedures will be assessed by reference to six key compliance principles, including risk assessment, proportionate procedures, top level commitment, due diligence, communication and training, monitoring and assurance.

## 11) What are the key regulatory or enforcement bodies with regard to bribery?

The Public Prosecution Office is the primary agent in Chile for investigating and prosecuting cases of overseas corruption.

## 12) What are the legal consequences of being found guilty of bribery offenses?

Individuals face up to ten years' imprisonment and/or a limited fine on conviction and temporary absolute disqualifications for the exercise of public office during the duration of the sentence.

Companies can receive a limited fine on conviction, partial or total loss of rights, temporary or total prohibitions to contract with the government and the dissolution or cancellation of the legal entity.

## 13) Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

Yes, bribery offenses are capable of being settled.

The settlement may be offered by the prosecutor to companies, partnerships, unincorporated associations and individuals.

If a DPA is offered and accepted, and provided all conditions of the DPA are met, the prosecutor may agree not to pursue a prosecution against the entity or person concerned.

Both corporate entities and individuals can enter into plea discussions with the prosecutor, where they agree to plead guilty to a charge in anticipation of receiving more lenient treatment.

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