

# Doing Business in Chile

## Guide 2025

### REGULATORY COMPLIANCE



## EXECUTIVE SUMMARY

There is comprehensive regulation in Chile concerning money laundering (AML), financing of terrorism (CFT), and the related criminal liability. Laws and regulations are in place to effectively combat these illicit activities. Legal entities and individuals are obliged to adhere to preventive measures against AML and CFT. There are also statutes outlining the criminal liability of legal entities to deter involvement in such unlawful practices. This legal framework underscores Chile's commitment to combating financial crime and ensuring accountability across all sectors.

This article considers the issues in two parts:

1. Compliance with legislation established to prevent money laundering and the financing of terrorism.
2. Compliance with legislation establishing criminal responsibility of legal entities.



## II. COMPLIANCE WITH LEGISLATION ESTABLISHED TO PREVENT MONEY LAUNDERING AND THE FINANCING OF TERRORISM.

Reporting Entities that are covered by the legislation.

Various individuals and legal entities fall under Chile's regulatory requirements aimed at preventing money laundering and financing of terrorism. These include:

- Banks, financial institutions, factoring and leasing companies, as well as securitization entities. Additionally, managers of investment funds, currency exchange houses, and businesses authorised for foreign currency transactions are included.
- Issuers and handlers of credit cards, companies involved in valuables and money transportation, and entities operating in stock and commodity exchanges.
- Insurance companies, mutual funds managers, and operators of futures and options markets are subject to compliance obligations.
- Managers and users of free trade zones, casinos, gambling facilities, and racecourses.
- Merchant ships with overnight accommodations, provided they hold gambling permits and transport passengers.
- Customs agents, auction houses, real estate agents, and management companies are included, along with notaries and real estate registrars. Pension fund managers, professional sports organisations, savings cooperatives, and representatives of foreign banks and securities depository companies are also subject to these regulatory obligations.

Public sector individuals and entities are mandated to report transactions suspected of involvement in money laundering or financing of terrorism. This requirement extends to bodies such as Superintendents, Ministries, Intendancies, Governorates, and Public Services, along with entities serving administrative purposes. Additionally, the Comptroller General of the Republic, Armed Forces, Security Forces, Regional Governments, Municipalities, and public corporations established by law are included in this obligation.



Anyone transporting cash or negotiable bearer instruments exceeding US\$10,000 or its equivalent in other currencies to or from Chile must declare them to the Customs Service. In case of non-compliance, the Customs Service has the authority to retain up to 30% of the cash or 100% of the negotiable bearer instrument.

### Main compliance obligations

a) Individuals and entities are required to report any suspicious activities, transactions, or operations identified during their business activities. A suspicious transaction is characterised as any act, transaction, or operation that, based on the norms and practices of the relevant activity, appears unusual or lacks evident economic or legal rationale. Moreover, transactions associated with funds intended for terrorist activities or involving individuals or entities listed by the United Nations Security Council are also classified as suspicious.

Such acts are deemed suspicious irrespective of whether they occur singularly or repeatedly. No provision ensuring confidentiality or discretion can serve as grounds for exemption from this obligation. However, adhering to this obligation in good faith absolves the party concerned from any liability.

b) Individuals and entities must keep detailed records for a period of five years for any cash transaction surpassing US\$ 10,000 or its equivalent in Chilean pesos. These records should be made available to the appropriate regulatory body, the Financial Analysis Unit (*Unidad de Análisis Financiero – UAF*), upon request. This obligation does not extend to the public officials and entities mentioned earlier who are subject to other reporting requirements.

c) Entities are required to adhere to regulations issued by the UAF. These Notifications (*Circulares*) may be general in nature or tailored to specific industry sectors. Additionally, they must respond to requests directly issued to them by the UAF.

### The offence of money laundering

In addition to the legal obligations for reporting entities to prevent money laundering, it's crucial to recognize that money laundering itself constitutes a criminal offence. Money laundering involves hiding or altering the illicit origins of unlawful goods, with awareness that they stem from a specific list of predetermined crimes. This offence encompasses concealing or altering the identity of such illegal goods. Furthermore, it extends to the acquisition, ownership, possession, or utilisation of these goods for monetary gain.



The predicated offences that involve money laundering include:

- Drug trafficking and trafficking of chemicals used to produce drugs
- Infringement of anti-terrorism laws
- Violation of arms control laws
- Offences listed in the Securities Act (Ley de Mercado de Valores) and General Banking Act
- Corruption and bribing of Chilean and foreign public officials
- Kidnapping and abduction
- International prostitution and human trafficking networks
- Smuggling
- Intellectual property breaches
- Malicious falsehood in proceedings before the Central Bank or FX transactions
- Illicit association
- Marketing of pornographic material relating to minors under 18 years old
- Scams and frauds regarding subsidies
- Tax offences for wrongful return of tax credits.
- Attempts against the environments
- Offences referred in the Fisheries Act
- Offences referred in the Hunting Act
- Offences referred in the Forest Act
- Trafficking of protected species

Penalties for money laundering encompass fines and imprisonment spanning from five years and one day to fifteen years. These penalties can be imposed alongside punishment for the related predetermined offence.



Criminal sanctions also apply to “wilful blindness” or inexcusable negligence regarding knowledge of the unlawful origin of goods, albeit with a reduced penalty.

In all cases, the custodial sentence cannot surpass the sentence imposed on the primary perpetrator.  
Consequences of breach of these obligations

The severity of penalties for non-compliance varies based on the nature and frequency of the breaches, as well as the entity involved. Sanctions can range from cautionary warnings to fines of differing amounts. If the violation is committed by a legal entity, its directors and legal representatives may also be subject to these sanctions if they voluntarily engaged in the illegal act or omission.

In the case of financing of terrorism, a special procedure allows the funds belonging to individuals listed in the terrorist organisation rosters maintained by the United Nations to be withheld or Frozen.

### III. LEGISLATION ESTABLISHING CRIMINAL RESPONSIBILITY OF LEGAL ENTITIES

#### Law on Economic Crimes and Criminal Liability of Legal Entities

The new Law on Economic Crimes (law No 21.595) (the ECL) was passed on August 17, 2023. This law represents a significant reform in Chile’s criminal justice system, particularly concerning white-collar crime. The law introduces various changes that affect both individuals and legal entities. Some of the key points are:

- The law significantly increases the number of predicate offences for which legal entities can be held criminally liable. This means that companies and organisations may face criminal charges for a broader range of economic crimes.
- The criteria used to attribute criminal liability to legal entities have been modified. This could involve changes in how responsibility is assigned within an organisation when an economic crime occurs.
- The law introduces new legal requirements that crime prevention models must comply with. Companies will need to adapt their internal policies and procedures to meet these new standards.

The changes concerning individuals who commit economic crimes are already in effect, but the provisions affecting legal entities will come into force in September 2024.



### Offences or wrongful acts that form the foundation for the criminal liability of legal entities

All legal entities, regardless of size, whether public or private, for-profit or non-profit, must comply with regulations that establish their criminal liability while conducting operations in Chile. Compliance with these regulations is essential to mitigate or eliminate any contravention.

Criminal liability of legal entities may arise from a long list of more than 250 offences, most of which are listed in the recently enacted law on economic crimes. It includes offences related to corruption, fraud, security law, tax law, and environmental breaches, etc.

For a legal entity to incur criminal responsibility, a predicate offence must be committed in the interest of or for the benefit of the entity by individuals who have the duty and authority to manage and oversee its affairs. This includes owners, controllers, representatives, and senior executives of the company, along with the employees under their direction and supervision.

The entity can be held criminally responsible if the offence is committed within the scope of the activity of the entity, but not necessarily for the benefit or in the interests of the entity. The Only exceptions are when the offence is committed solely to the detriment of the entity itself.

### Compliance with managerial and supervisory duties - Crime Prevention Model

A legal entity is deemed to have complied with its managerial and supervisory duties if it has already established and implemented an organisational structure and procedures designed to prevent such crimes prior to any occurrence taking place. The prevention system should be audited and certified by an appropriate organisation.

The adoption and implementation of such a model do not prevent the Public Prosecutor (Ministerio Público) from investigating and prosecuting the legal entity. However, it makes the case to be proven significantly more difficult for the prosecutor. In addition to meeting the specific requirements of a particular offence, the prosecutor must demonstrate that the model has not been effectively implemented, is inefficient, or has failed to fulfil its purpose. This includes proving any circumstances that indicate a significant neglect of the entity's compliance duties, beyond the boundaries of the preventive model.



### Features of the Prevention Model

The Prevention Model must contain the following minimum features and requirements:

- (i) Identification of the activities or processes of the legal entity that pose a risk of criminal activity.
- (ii) Establishment of protocols and procedures to prevent and detect criminal conduct in connection with the activities referred to in the previous point, which must necessarily include secure channels for reporting and internal sanctions in the event of non-compliance.
- (iii) Designation of one or more persons responsible for the application of such protocols, with adequate independence, with effective powers of direction and supervision and direct access to the administration of the Legal entity.
- (iv) Provision for periodic evaluations by independent third parties and mechanisms for improvement or updating based on such evaluations.

### Autonomy and transfer of criminal liability of a legal person

The criminal liability of a legal entity is distinct from that of the individual who committed the crime, such as bribery. Consequently, the legal entity may be held accountable even if the criminal liability of the individual involved in the act of bribery is extinguished due to legal proceedings being suspended against them or for any other legal reason.

The criminal liability of the legal entity persists in the event of a fine being imposed, even in cases of conversion, merger, takeover, or voluntary termination of the legal entity. The responsibility is transferred to the corporation formed through such actions. In the case of a corporation's division, the liability applies individually to all corporations resulting from the division process.

In cases of dissolution of a corporation for profit by agreement of the partners or owners, criminal responsibility passes to the partners and participants in the capital distribution.



### Penalties applicable to the legal entity

Due to the unique nature of legal entities, the penalties they face differ from those typically applied to individuals. Penalties for legal entities can include fines, total or partial loss of tax benefits, temporary or permanent prohibitions from contracting with government agencies, and even dissolution or cancellation of their legal existence.

It is worth noting that the new Law on Economic Crimes introduced a so-called system of “days-fine” (*días-multa*), according to which the amount of the fine is determined by (i) the average daily net income of the legal entity in the year prior to the initiation of the investigation against the company; and (ii) the seriousness of the offence, based on the imprisonment penalty imposed by the law. In the most serious cases, the fine can reach approximately USD 200,000,000.

Mitigating and aggravating factors related to the offence are also considered, including the amounts of money involved, the size and nature of the entity, compliance with regulations and technical rules, the extent of harm caused, and the social and economic consequences.

The penalty may entail publication of a summary of the conviction in the Official Gazette or a national newspaper, as well as confiscation of the proceeds of the crime.