



Modelos Comparados de Responsabilidad Penal de las Personas Jurídicas: La visión de la OCDE

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Outline

- The OECD Anti-Bribery Convention and liability of legal persons;
- Models for liability of legal persons;
- Best practices in enforcement of the foreign bribery offence against corporate entities;
- Good practice guidance on internal controls, ethics and compliance.

The OECD Anti-Bribery Convention

- Entered into force 9 December 1999, 38 States Parties, including Chile.
- Requires countries to hold both citizens and companies responsible for bribery of foreign public officials in international business transactions.
- Working Group on Bribery in International Business Transactions and the peer-review process.

Corporate Liability under the Anti-Bribery Convention

- Article 2 – Responsibility of Legal Persons
 - Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.
- Commentary 20
 - In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall not be required to establish such criminal responsibility.



Corporate Sanctions

- Article 3 – Sanctions
 - Must be ‘effective, proportionate and dissuasive’
 - Comparable to sanctions for domestic bribery
 - Must include at least monetary sanctions
 - Seizure and confiscation of bribe and its proceeds
 - Additional civil or administrative sanctions (e.g. debarment)

Good Practice Guidance: Article 2

- Corporate liability should not be restricted to cases where the natural person(s) is prosecuted or convicted.
- Corporate liability should have flexibility about the level of authority of the person whose conduct triggers corporate liability OR cover all of the following scenarios:
 - Highest level managerial authority bribes;
 - Highest level managerial authority directs or authorises a lower level person to bribe;
 - Highest level managerial authority fails to prevent a lower level person from bribing by:
 - Failure to supervise or
 - Failure to implement adequate internal controls, ethics and compliance programmes.
- Ensure that legal persons cannot avoid responsibility by using intermediaries, including related legal persons.

Good Practice Guidance: Internal Controls, Ethics and Compliance

- Addressed to companies, business organisations and professional associations;
- Non-legally binding, flexible and intended to be adapted to individual circumstances (e.g. SMEs);
- Includes: risk assessments, corporate anti-bribery policy, due diligence, financial and accounting procedures, training and disciplinary procedures and detection and reporting.