# THE CHILEAN LOBBYING ACT:

# LEGAL ANALYSIS AND CRITICISM


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# ABSTRACT

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In 2014, the Government of Chile approved the Law number 20.730, known as the Chilean Lobbying Act. This paper tries to elaborate a doctrinal description of the lobbying rules, as well as initiate a critical account of them. The Lobbying Act is a significant step forward in the regulation of the relationship between money and politics in Chile. Furthermore, the Chilean democracy represents an interesting context in which to analyse the importance of lobbying regulations. It demonstrates the fundamental role of interest groups in modern societies, and the subsequent legal challenges to properly regulating lobbyists' activities via their methods of influence. In this short paper I shall describe **(I)** the legal structure of the law number 20.730 through a general explanation of its internal logic. Then, I shall try to establish **(II)** the main deficiencies of the Chilean Lobbying Act by illuminating it in the light of other significant examples from comparative law and international standards **(A)**. I dedicate a complete section to analysing the lack of revolving door rules, which encompass the personnel movement from government to corporations and vice versa **(B)**. The third point is related to the ambiguous legal situation of think tanks, which were excluded from the Chilean Lobbying Act´s scope **(C)**. Finally, I shall conclude **(III)** with a few final ideas about lobbying regulations, the threat of crony capitalism, and the rent-seeking dominance of the Chilean developing strategy.

**Table of Contents**

## Table of Statutes

## Introduction

The Chilean Lobbying Act (Law number 20.730) is an interesting piece of legislation. Its history is rooted in significant debates on the globally rising topic of the relationship between money and politics. My aim is to initiate a research-based journey to explore the critical issues surrounding lobbying regulation, beginning with the example of Chile. Chile is a small country located on the southern tip of America. Since its population does not exceed seventeen million, Chile is not a particularly attractive market to foreign investors, nor is it an economic engine of the future or a world leader in technology. However, the importance of Chile is symbolic, because it has been a laboratory for political and economic experiments ever since the early sixties. The Kennedy Administration's Alliance for Progress sought to prevent a popular uprising in Latin America, as occurred in Cuba with Castro´s revolution. After the defeat of the reform strategy, Chile became a laboratory for democratic socialism. Salvador Allende, who represented an alternative path in the dichotomy between socialism and democracy, led the democratic socialism movement in Chile. After the coup of 1973, Chile became a laboratory for the neo-liberal reforms established at the University of Chicago[1].

During the eighties, Ronald Reagan and Margaret Thatcher were the two key political figures in the western world. Both were sympathetic to neo-liberal governmental policies, but it was in Chile where neo-liberalism found its most devoted adherents. Under the dictatorship of Pinochet, a civil group of economic

1 Youssef Cohen, Radicals, Reformers and Reactionaries: Prisoner's Dilemma and the Collapse of Democracy in Latin America (Chicago : University of Chicago Press, 1994). See also David Harvey, A Brief History of Neoliberalism (Oxford ; Oxford University Press, 2005 2005).

advisors called the "Chicago Boys", Chilean students of Milton Friedman during the seventies, implemented a monetary policy designed to quell inflation by way of governmental policies that emphasized privatization, deregulation, and the breakdown of the power of union organizations[2]. Today, only 9% of the Chilean labour force is organized in unions. Furthermore, 1% of the population controls approximately 30% of the total income, the public education system is in crisis, and private education is expensive and deeply segregated by parental income stratification. Chile is one of the most unequal nations in the world, with a Gini coefficient of 0.57 that ison par with the ratios for developing countries in Africa.

However, despite the current discontent of the Chilean population, which resulted in massive protests in 2011 and 2012, the Chilean "model" has been recommended by international organizations such as the IMF and World Bank since the nineties[3]. During these twenty years, the main concept used to refer to Chilean economic processes is "the miracle"[4]. Furthermore, in late 2009, Chile was accepted into the club of rich countries known as the OECD, as a perfect corollary

2 Andrés Solimano, Chile and the Neoliberal Trap: The Post-Pinochet Era (Cambridge University Press 2012). See also Edward Challies and Warwick Murray, 'Towards Post-Neoliberalism? The Comparative Politico-Economic Transition of New Zealand and Chile' (2008) 49 Asia Pacific Viewpoint 228, 228–243.

3 Alejandro Jadresic and Roberto Zahler, 'Chile's Rapid Growth in the 1990s-Good Policies, Good Luck, or Political Change?' International Monetary Fund Papers (2000) 20–28. See also Aslan Cigdem and David Duarte. How do countries measure, manage, and monitor fiscal risks generated by public private partnerships? Chile, Peru, South Africa, Turkey. Policy Research working paper no 7201. World Bank Group 2014. Washington, DC.

4 Marcus Kurtz, 'State Developmentalism Without a Developmental State: The Public Foundations of the "Free Market Miracle" in Chile' (2001) 43 Latin American Politics and Society 1, 1–26. See also Tim Congdon, 'The Rise and Fall of the Chilean Economic Miracle' [1985] Latin America, WR, 98–119. See also Michel Duquette, 'The Chilean Economic Miracle Revisited' (1998) 27 The Journal of Socio-Economics 299–321.

to the overarching transition process. Within two decades, Chile had shaken off the reigns of its authoritarian shadows and built a prosperous society in an unstable continent. During this process, interest groups gained power and increased their influence in the most prominent political and regulatory institutions. In several legislation procedures, the word “lobbying” appeared within the press as the announcement of dark influences in the Congress and corridors of La Moneda Palace. Meanwhile, the first bill to regulate the lobbying industry was introduced by the Lagos administration in 2003. It was eventually approved in 2008, but President Bachelet exercised her veto power by arguing that it was a deficient piece of legislation. She presented a second bill that was discarded in 2010 when the conservative coalition took power after the election of Sebastián Piñera, a successful businessman. In 2012, Piñera presented a third bill to regulate lobbying. This bill was eventually approved in March 2014, a few days before Michelle Bachelet took power after being elected for a second term with 62% of the popular vote.

Nowadays, there are heated public discussions over the influence of money in Chilean politics. As a result of several scandals, citizens are vociferously asking their representatives about the financing of their campaigns, and the press is drumming up unpleasant questions. In this context, the Lobbying Act represents the first symbol of the advance of a new agenda of transparency. Moreover the Chilean Lobbying Act appears at the crux of a political moment where the country is discussing significant reforms in regard to education, taxes and constitutional amendments. All of these changes have instigated interest groups to hire lobbying services and explore new strategies to influence the public arena. In parallel, there

is a rising industry of professional lobbyists dedicated to representing private interests in front of public authorities. In Chile, the lobbying market consists of five dominant firms, three of which are national businesses and two of which are multinational companies. Among the Chilean lobbying firms, there is Imaginacción, led by Enrique Correa Rios, former Minister of the Aylwin Administration (1990-1994). Correa is a powerful political figure because he was one of the key individuals involved in the transition to democracy. Another lobbying firm is Azerta, headed by Gonzalo Cordero Mendoza, a member of the UDI,a right-wing party. Cordero and Correa both participate in public debates, and they often publish columns on public affairs. A third firm is Extend, led by Maria de la Luz Velasco, the daughter of Belisario Velasco, who was the Interior Minister during the first Bachelet administration (2006-2010). These three companies compete with two multinational lobbying firms: Hill & Knowlton and Burson Marsteller, in the Chilean market. As the OECD recognizes, the issue of properly scope lobbying is a worldwide topic. In the first volume of its declaration, the OECD defines the "state of art" as such:

> Regulation of lobbyists' behaviour has focused on codes of conduct. These establish principles of behaviour – such as honesty, openness and professionalism – and rules to enforce them. Currently, debate centres on whether codes should be voluntary or imposed by law; experience suggests that legislative regulation is preferable. In considering the impact of codes, and other regulatory features of lobbying legislation, it should be remembered that lobby regulation cannot be free-standing. It is part of a regulatory regime consisting of laws, policies and practices that are interdependent and establish the principles of good governance across the public sector. Finally, securing and maintaining the integrity of the regulations requires that officials have sufficient resources, powers and independence to enable them to carry out their functions[5].

5 OECD ´Lobbyists, Governments and Public Trust, Increasing Transparency through Legislation.´ 2009. VOL I. 40.

## 1.- The Chilean Approach to Lobbying Regulation

The Lobbying Act is divided into three titles. I shall begin with the description and the legal analysis of each title. The first title provides the definitions and the main legal distinctions **(A)**, the second title establishes the rules for the registers where the authorities must provide information **(B)**, and the third title stipulates the sanctions for those who do not provide information and those who provide incomplete or false information **(C).**

### A) Definitions

In general, all Lobbying Acts start with legal definitions establishing what is lobbying, who is a lobbyist and who is lobbied. In the same way, the first title of Law 20.730 is called "General Provisions" and introduces legal definitions of the terms used in the law. The first article states that the Lobbying Act is based on the principles of publicity, transparency and probity in relations between private and state officers. These three principles are the framework on which the rest of the Act is predicated upon, and it is important to mention that they are also present in the Constitution of Chile within the new Article 8, reformed in the 2005 amendment. The second article of the Lobbying Act gives the key definitions; in Article number 1, Lobbying is defined as:

> 'A gainful activity, exercised by individuals or corporations, Chilean or foreign, which aims to promote, defend or represent any particular interest to influence decisions taken by the passive subjects referred to in Articles 3 and 4". (…) This includes specific efforts to influence the process of public decision making and changes in policies, plans or programs under discussion or

development, or any implemented measure or matter that must be decided by the officer, authority or relevant public bodies, or to prevent such decisions, changes and measures'.

This legal definition starts from the point that lobbying is a gainful activity; that is, people and corporations offer this service in the market and other people and corporations pay for that service. The definition of Lobbyist**,** Article 2 number 5, arises from the same conception:

'The natural or legal entity, Chilean or foreign, paid, that performs lobbying. If there is no payment involved, the entity will be called the interest manager, be it individual or collective. This definition is in accordance with the terms defined in paragraphs 1) and 2) above´.

It must be noted that the Chilean Lobbying Act establishes an unpaid activity known as the "Management of particular interest," which is defined by Article 2 number 2 as the following:

'The unpaid activity or activities carried out by individuals or corporations, Chilean or foreign, which aims to promote, defend or represent any particular interest, and to influence the decisions of the passive subjects referred to in Articles 3 and 4, in the exercise of their functions´.

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In this context, the particular interest is defined by Article 2 number 4 as: 'Any purpose or benefit, be it of an economic nature or not, derived by a natural or legal person, Chilean or foreign, or a particular association or entity´. Therefore, the Chilean Lobbying Act defines two different activities: one is the act of lobbying as a gainful task, and the other is "interest managing" - which is not a paid activity. Both lobbying and interest managing are private occupations carried out by individuals or corporations. This distinction is one of the bedrocks of law 20.730 because both activities – lobbying and interest managing -- must be registered in

the Public Agendas defined in Article 2 number 3 as "public records where passive subjects must include the information set out in Article 8".

Any meeting must be registered in the public agenda based on the information given by the passive subjects. Who are these passive subjects? In other words, who are the parties that are lobbied? Article 3 establishes a list of authorities in the Executive Power:

> 'For the purpose of this law, passive subjects will be ministers, vice-ministers, heads of departments, regional directors of public services, mayors and governors, regional ministerial secretaries and ambassadors". Article 3 also indicates that chiefs of staff and the executive team of each authority will "be subject to the obligations that the law states," as well as "the chiefs of staff of the persons named in the preceding paragraph, whatever form of contract they have; and those who, because of their role or position receive regular remuneration, with relevant decision-making powers or who unduly influence those with such powers. Annually, the head of the respective service must identify those individuals who meet this definition of passive subjects, in a resolution that must be published permanently on the websites listed in Article 9´.

Article 4 identifies the following individuals and entities as passive subjects as well: The Regional and Municipal Administration, The General Comptroller of the Republic, The Central Bank´s President, Vice President and counsellors, The Commanders of the Armed Forces and Public Order and Security, and the heads of acquisition of each institution, National Congress members, Deputies and Senators, and legislative advisers to be identified in each annual parliamentary meeting, The public prosecutor and regional prosecutors, The directors of the State Defence Council, the Board of the Electoral Service, the Council for Transparency, the Council of Senior Public Management, the National Television Council, the National Institute of Human Rights, and The Director of the Judiciary Administration.

All of these passive subjects interact with the active subjects, that is, the (paid) lobbyists and the (unpaid) interest managers. Under Law 20.730, the active subjects and passive subjects have relationships because the active subjects represent private interests in order to obtain certain conduct from the passive subjects. Following this assumption, Article 5 establishes that the activities covered by this law are those designed to obtain the following outcomes:

> 'The development, promulgation, amendment, repeal or rejection of administrative acts, bills and laws, as well as their decisions according to the provisions laid down in Articles 3 and 4. The production, processing, approval, amendment, repeal or rejection of agreements, declarations and decisions of Congress or its members, including its committees. The conclusion, amendment or termination of any contracts where the passive subjects have influence and that are necessary for their operation. The design, implementation and evaluation of policies, plans and programs carried out by the passive subjects included in this Law. Also included within the activities regulated by this Act are those activities that are carried out to ensure that the decisions and acts previously mentioned are not adopted´.

The first title concludes with Article 6, which defines those activities that are outside of the scope of the law. The list includes nine types of exemptions:

> The proposals or requests made during a meeting, activity or assembly in public. Any statement, action or notice by the passive subjects in the exercise of their functions. Any request, verbal or written, made to meet the processing status of a particular administrative proceeding. Information provided to a public authority, which has been specifically requested for the purpose of performing an activity or decision within the scope of their competence. The formal submissions made in an administrative proceeding by a person, his spouse or relative within the third degree of consanguinity and second of affinity in a straight line to the second degree of consanguinity or affinity in the collateral, provided that these submissions do not request the adoption, amendment or repeal of laws or regulations, nor changes to administrative processes' results or selection.
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> Consultancies, contracted by public bodies and parliamentarians, that are carried out by professionals and researchers at non-profit associations, think tanks, corporations, foundations, universities, research centres, and other similar entities, as well as any invitations extended by these institutions to any government official . Statements or information submitted to a committee of Congress, as well as the presence and verbal or written participation of any of the professional bodies previously mentioned, which, however, must be registered by these committees. Invitations from government officials and parliamentarians that are extended to the

professional entities previously mentioned in number 6, to participate in technical meetings. The defence at trial, the representation in judicial or administrative offences, or the participation as amicus curiae in cases where this is permitted, but only for those actions in judicial or administrative proceedings. The statements or communications made by the directly affected or their representatives in a proceeding or administrative investigation. Written submissions added to a file or recorded oral statements at the public hearing in an administrative proceeding that allows for the involvement of stakeholders or third parties.

**B.- Registers**

All Lobbying Acts involve the creation of one or more registers, where lobbyists, clients and authorities must provide specific information for the public domain. In the Chilean case, the second title establishes the registers where the information regarding the meetings must be included. While the first title answers the question "What is lobbying and who is a lobbyist?", the second title answers the question "What information is relevant and where must it be registered?" The answer to these formative questions is the establishment of the registers listed in Article 7. There are six different registers in total. Of these six registers, there are two for the Congress, one for the Supreme Court, one for the Central Bank, one for the Executive Power, and one for the General Comptroller. Article 8 establishes the specific information that must be included in the registers:

Hearings and meetings that are held for the purpose of lobbying the decisions listed in Article 5. These records must indicate the particular person, organization or entity that took part in the meeting, in whose name such interests are managed, the name of participants or bystanders in the respective hearing or meeting, if there was remuneration for these actions, the place and date of the meeting and the specific topics discussed. That person who, in requesting a meeting, inexcusably omits the information specified in the preceding paragraph or knowingly delivers inaccurate or false information about such matters, shall be punished with a fine of ten to fifty UTM, without prejudice to other penalties that may correspond.

Trips made by any of the passive subjects established in this law, in the exercise of their functions. The following information must be published in the

register: the travel destination, the trip's objective, the total cost and the name of the legal or natural person who financed the trip.

Gifts and official donations, as well as donations that are products of courtesy and good manners, that the passive subjects received while performing their duties.

These records must indicate specific information regarding the identification of the subjects, that is, the organization or entity requesting the hearing or meeting and the name of the organization or entity managing such interests. It must be recorded if remuneration for these actions exists, along with the place and date of the meeting. In the cases of travel, the travel destination, its objective, the total cost and the legal or natural person who financed the trip must be recorded in the register. Finally, there must be an explicit reference to donations and gifts that public authorities receive from private entities. Article 9 establishes that all the information detailed in the previous paragraph must be published and updated, at least once a month, on websites specially designed for these purposes. The information contained in the records established in Article 7 will be published and updated at least once a month, on the websites referred to in Article 7 of Law No. 20.285 on Access to Public Information. Regarding the passive subjects listed in subparagraphs 2), 3), 5), 6) and 8) of Article 4, this information will be published on the website established in accord with the active transparency rules that govern such information.

According to Articles 9 and 10 of the Lobbying Act, the Council for Transparency shall make these records available to the public on a website and shall ensure rapid and easy access to them. Similarly, quarterly, it shall make available a record containing a systematic list of persons, natural or juridical,

Chilean or foreign, that in a given period have held meetings with individual passive subjects listed in Article 3 and in paragraphs 1), 4) and 7) of Article 4, which lobby with respect to the decisions listed in Article 5. This list shall identify the person, organization or entity with which the passive subject held the hearing or meeting, noting: in whose name the particular interests were managed, the identification of the participants or bystanders, if there was remuneration for these actions, the place, date and time of each meeting or hearing held and the specific topic discussed. Every passive subject identified in subparagraphs 2), 3), 5), 6) and 8) of Article 4 must send the information that is agreed upon in any contracts to the Council for Transparency, so that this information can be posted to the website indicated in the second paragraph of this article.

**C) Sanctions**

The third title establishes the legal sanctions to be applied in the event that the terms described above are not met. In Article 14 there is a rule that outlines the administrative responsibility of the passive subjects. The Comptroller General must inform the department head if the passive subject is not fulfilling the informational duties required by the law. After such communication, the authority has twenty days to report said information to the passive subject's department head. If necessary, the probationary period will be eight days. The Comptroller General has ten days, following the last diligence, to instruct the department head of the passive subject involved, and a fine of ten to thirty UTM, equivalent to approximately £400 and £1200, will be applied. In Article 16 there is a sanction for the inclusion of

inaccurate or knowingly false information, carrying with it a fine of twenty to fifty UTM, equivalent to approximately £800 and £2000, respectively.

In both cases, the sanction works without prejudice to the corresponding criminal liability. The penalties referred to in Articles 15, 16 and 17 can be appealed before the Court of Appeals within five days of notification of the decision. The Court must request a report from the authority that issued the fine and the Court will then issue its decision within ten days. In the case of the Congress, the respective Parliamentary Committees on Ethics and Transparency of each house must hear and decide on the application of the penalties referred to in this law. Those determined guilty of an infraction will be fined ten to thirty UTM – this amount is deducted directly from the infractor's wages as deemed appropriate. The procedure may be initiated automatically by the committees or an interested party may submit a complaint. Said complaint is then informed to the passive subject, who must reply within twenty days. If necessary, the probationary period will be eight days. The passive subject and the complainant may submit any evidence they see fit, and the respective Parliamentary Committees will take the filed evidence into consideration. In the case of lobbyists and interest managers, they also face sanctions for submitting false or incomplete information. The fine for this behaviour ranges from ten to fifty UTM, equivalent to approximately £800 and £2000.

## 2.- Criticism of the Chilean Lobbying Act

After having described the structure and the rules of the Chilean Lobbying Act, I shall try to illuminate its principal deficiencies. This section starts with a brief description of eight legal criteria used by the literature to analyse the regulation. Hence, I shall try to apply those eight criteria to the Chilean case. I discuss the proportionality of the sanctions established in the law as well as specific legal issues regarding emails, phone calls, and private meetings outside working hours **(A)**. Then, in the second part I will analyse the specific issue regarding revolving doors, which is a worldwide topic in relation to which Chile is no exception. I shall provide examples of how revolving doors have worked in Chile in recent years **(B)**. Subsequently, the third part will describe the emerging discussion on think tank regulation and their role in modern democracies. These institutions represent challenges that must be faced in order to promote good practices, adequate funding, and transparency to knowledge production **(C)**.

### A.- General Deficiencies

Despite this not being a comparative project, it is useful to start with a list of those countries that already have lobbying regulations in place. In alphabetical order, they are Australia, Canada, Germany, Hungary, Lithuania, Poland, Taiwan, the European Union and the United States. The most complete global comparison between these laws was written by professors Raj Chari, John Hogan and Gary Murphy. In their book, they explore the possibility of establishing legal criteriain

order to compare lobbying rules. Following the ranking system, created by the Center for Public Integrity (CPI), the authors identify eight key areas of lobbying regulations. The first criterion is that all legislation should have a clear definition of who is the lobbyist, the second refers to the duty of individual registration, the third to the existence of an individual spending disclosure, the fourth identifies the information regarding employer spending, the fifth considers the possibility of electronic filing, the sixth evaluates if the information is available for public access, the seventh analyses the legal enforcement of the regulation, and, last but not least, the eighth addresses the existence of revolving door provisions, with a particular focus on 'cooling off periods'. The CPI divided the results of the ranking in three levels. The first level contains relatively lowly regulated systems. Countries like Germany and Poland exhibit this type of regulation. According to Chari, Hogan and Murphy, these systems have the following qualitative characteristics:

> 'They have rules on individual registration, where lobbyists must register, but few details have to be given (such as in the case of the EP where lobbyists do not have to state which subject matter/bill/institution they are lobbying). There are no rules on individual spending disclosure (lobbyists are not required to file spending reports) or an employer spending disclosure (lobbyists' employers are not required to file spending reports). There is a weak system of on-line registration. Lobbyists' lists are available to the public, but not all details are displayed. Finally, there are little enforcement capabilities, and no cooling-off period in the legislation, which means legislators can register as lobbyists immediately after leaving office'[6].

The second level includes medium regulated systems. According to Chari, Hogan and Murphy, Australia, Canada, Hungary, Lithuania, Taiwan, and the United States belong in this level. Within this level, those registering must state the subject matter, the particular bill an the governmental institution being lobbied.

6 Chari, R. Murphy, G. and Hogan, J. 2007. 'Regulating Lobbyists: A Comparative Analysis of the USA, Canada, Germany and the European Union,' The Political Quarterly, Vol. 78, No. 3, pp. 422-438. 432.

Furthermore, "regulations exist surrounding individual spending disclosures, whereby gifts are prohibited, and all political contributions must be reported. Yet, there are loopholes, such as free 'consultancy' by lobbyists to political parties"[7]. The highest level, relatively highly regulated systems, corresponds exclusively to American States. The most significant case is Washington State. According to Chari, Hogan and Murphy,

> 'The rules on individual registration in these systems are the tightest of the three. For example, not only is the subject matter/institution required when registering, but also the lobbyist must state the name of all employers, notify almost immediately any changes in the registration, and provide a photograph. Tight individual spending disclosures are required, in stark contrast to both lowly and medium regulated systems. In this context a lobbyist must file a spending report, his/her salary must be reported, all spending must be accounted for and itemised, all people on whom money was spent must be identified, and all campaign spending must be accounted for. Employer spending disclosure is also tight. Unlike "lowly regulated" or "medium regulated" systems, an employer of a lobbyist is required to file a spending report and all salaries must be reported. A system for on-line registration exists, and public access to a lobbying registry is available, which is updated frequently. This includes spending disclosures, which are available to the public, a provision not found in the other two systems'[8].

Using this scheme, the Chilean Lobbying Act can be analysed against each of the preceding criteria. It fulfils the definition of what is lobbying. However, there is no specific mention of phone calls, emails or private meetings. This could entail a problem for legal enforcement because modern technologies allow parties to have conversations in various ways, not only via face-to-face meetings. It is also useful to mention the Penta case, a nationwide scandal in which Penta's former General Manager contacted UDI´s President, via email, requesting a specific project on healthcare involving Penta interests. This email recently appeared in the Chilean press, triggering the prime question regarding the hypothetical application

7 Ibid. 433

8 Idem.

of the Lobbying Act to emails, phone calls, messages, and similar modes of communication. This loophole could be solved by introducing a general norm establishing that all significant communication between public authorities and private representatives falls under the scope of the Lobbying Act. Nevertheless, this problem could also be solved by a general interpretation of the principles listed in Article 1, such as: probity, transparency and publicity. Furthermore, Transparency International defines transparency as:

> 'Transparency is about shedding light on rules, plans, processes and actions. It is knowing why, how, what, and how much. Transparency ensures that public officials, civil servants, managers, board members and businessmen act visibly and understandably, and report on their activities. And it means that the general public can hold them to account. It is the surest way of guarding against corruption, and helps increase trust in the people and institutions on which our futures depend'[9].

In its clearest interpretation, the Chilean Lobbying Act includes phone calls, emails and messages. However, it is necessary to establish an explicit rule to avoid any other interpretation. Regarding the second criterion, the registers regulated in the second title of the law fulfil the need for basic information about the lobbyist and his client. Regarding the definition of who is a lobbyist, the Chilean legislation creates an original figure not found in other systems, nor in the literature. In Article 2 number 5, the Chilean Lobbying Act distinguishes the paid active subject (the lobbyist) from the unpaid active subject (the interest manager). -The latter is the result of a political need to differentiate lobbyists from Trade associations, Guilds, NGOs, and Unions. The distinction establishes payment as the key element in differentiating lobbyists from interest managers. Furthermore, this legal distinction is derived from a 2003 project where the active subject was divided into

9 Transparency International, 'FAQs on Corruption http://www.transparency.org/whoweare/organisation/faqs_on_corruption/

professional lobbyists and unprofessional lobbyists. Consequently, the interest manager can represent his interests or act as the unpaid representative of other interests. NGOs, Guilds, Trade associations and Unions usually have their own personnel dedicated to contacting authorities and trying to influence public policy. These organizations did not want to be considered lobbyists because, in Chile, the word is laden with negative connotations and implications. Accordingly, a lobbyist is an individual or a corporation that gets paid for representing private interests in front of public authorities. Under this legal definition, the main lobbying corporations of Chile are Imaginacción, Azerta, Extend, Hill & Knowlton and Burson Marsteller.

The duty of individual registration is fulfilled by the second title, including obligations for the passive subject and also some duties for the active subject. The Chilean Lobbying Act has a clear emphasis on the regulation of the lobbied and not the lobbyist. For example, the lobbyist has no legal obligation to deliver a list of his clients. The case of Imaginacción is an extreme case because no one is certain about who its clients are. On its website there is no reference to this point, although its competitors, Extend and Azerta, have a list of clients, but it is uncertain whether this list is complete or not. Another example is that the Law 20.730 does not delve into the topic of auditing lobby firms. Therefore, there is no public access to more macro details on their accounting and corporate structure. Nor are there laws that prevent companies lobbying to donate money to political campaigns. The mass media constitute an actor that is often forgotten in discussions regarding lobbying and conflicts of interest.

The media, radio, television, newspapers and magazines all play a key role in shaping public opinion. In its pages, screens and microphone agents become opinion leaders, and their analyses become inputs for policy deliberations. However, if these opinion leaders have undisclosed interests, their opinions can directly benefit those interests or their clients' interests. Therefore, it is important to mention that the Chilean case represents an anomaly that may be of interest to future study. In other words, it is important to note that the main lobbyists in Chile are also opinion leaders in the mass media. While it is a fact that nobody has discussed, lobbyists at Imaginacción, Azerta and Extend have permanent places in the major national newspapers, which include La Segunda, El Mercurio and La Tercera, just as columnists do. They are usually invited on the radio and prime time television to analyse national policy. Therefore, it is necessary to include a disclosure rule for lobbyists that take part in mass media communications.

The second title of the Chilean Lobbying Act also establishes rules regarding spending disclosure (the third and fourth criteria), but it is only a binary question as to whether there is payment or not. Therefore, no information is requested regarding the amount of the payment or the services hired by the represented company. Each meeting can be part of a wider communications plan that implies a higher payment. The OECD puts cogent arguments for the complete transparency of spending disclosures:

> 'Hardened observers of lobbying claim that to discover who benefits from lobby campaigns, one has to "follow the money". It is understandable, therefore, that reporters, politicians and members of the public should attach importance to obtaining information about the costs of lobbying. Intuitively, most observers correlate the level of expenditure on lobbying with the prize to be won, and while this may not be an infallible guide, it is a reasonable assumption. It is also reasonable for the public to question politicians when they appear to be selling public goods too cheaply; industries that are prepared to spend very large sums of

money in order to secure favourable public policies may well be expecting to recoup their expenditures at the expense of the taxpayer and consumer'[10].

Spending disclosure is one of the key elements used to measure the influence of money in politics and how corporations dedicate special budgets to contact decision makers and politicians. In regard to this particular point, the Canadian debate has witnessed plenty of discussions regarding which information should be included in the disclosures. Howard Wilson, who was part of the legislative process of the Canadian Lobbying Act, describes the importance of the disclosure rules. The electronic filing (the fifth criterion) is not included in the Chilean Lobbying Act, but it is still not clear if the definitive website will include it because it is still under construction. The same is true for the sixth criterion, since it is related to public access to the registers, which is included in the regulation. These two criteria are connected with the main principles of the lobbying legislation. As the OECD explains in the first volume of its report:

> 'Electronic filing has revolutionised lobby regulation, making it possible to collect and disseminate large quantities of information. But, there are limits to its application. Both compliance and timely and effective analysis are enhanced if disclosures are pertinent, but parsimonious. Conversely, some information needs – such as criminal prosecution – demand documentation and extensive records. For such purposes, regulation may be best served if lobbyists are required to hold records for a given period, or must file them in a separate process. Where transparency and integrity are the principal goals of regulation, effectiveness is best achieved if definitions are broad and inclusive, and the theatre of lobby activity is also defined broadly and inclusively, while compliance is best secured if definitions, and exemptions, are: Unambiguous and clearly understood by lobbyists and office holders; Practical in application; and Robust enough to support legal challenges. (...) Furthermore, registry officials need the authority to require additional information and to carry out investigations. To secure compliance, however, extensive education programmes, can be as important as enforcing the rules with powerful sanctions'.[11]

10 OECD, Lobbyists, Governments and Public Trust, Increasing Transparency through Legislation. 2009. VOL 1. 60.

11 Ibid. VOL 1. 39.

The legal enforcement (the seventh criterion) must be analysed in the light of the sanctions and fines established in the Lobbying Act. In comparison, the American law punishes all violations by a fine of up to $50,000 USD, equivalent to fifteen times the maximum fine of the Chilean law. Furthermore, in the United States, there are also rules carrying contingent jail sentences of up to twelve months and a three-year prohibition on lobbying. In the Canadian case, there were changes in 2008 that included monetary penalties for lobbyists "who are found guilty of breaching the requirements of the Lobbying Act are increased to a maximum of $200,000 or imprisonment for a term not exceeding two years, or both." Therefore, the penalties established in the third title of the Chilean Lobbying Act are insufficient. Sanctions must be strong enough to communicate to any potential wrongdoer the severity of distorting information or providing incomplete data. Moreover, imprisonment should also be included as anultima ratio for extreme cases. Another important point is the necessity of including a rule that allows public authorities to comprehensively and extensively audit lobbying firms.

If we analyse all seven criteria, we can conclude that the Chilean regulation completely fulfils the first, the second and the sixth, regarding definitions, individual registration and public access. However, the Chilean regulation lacks adequate stipulations regarding spending disclosures and electronic filling. Moreover, there could be problems pertaining to legal enforcement due to the low penalties for violation of the rules. Therefore, if we apply the CPI ranking model, the Chilean Lobbying Act falls somewhere between the lowly regulated system and the medium regulated system. However, the most significant mistake made by the

Chilean Parliament was to not include revolving door rules (the eighth criterion), which deserve a longer and more detailed explanation.

**B.- Revolving Doors**

In general, the freedom of labour and employment is recognised as one of the manifestations of the right to work, and international treaties and national constitutions have acknowledged this basic freedom as a human right. However, this general rule may be limited by law, especially when there are public goods at stake. One of the best known of these limitations is the so-called revolving door. This is the movement of personnel from public offices to private industries affected by their work as public officials. The aim of revolving door regulations is to prevent the flow of strategic information, know-how and networks from the public sector to private corporations.

In the legal literature, revolving door regulations and lobbying legislation are grouped in the generally known consensus regarded as "conflict of interest" literature. Within this corpus of literature, the problem of regulating lobbying and revolving doors is understood to belong to the same class of issues emanating from the junction of private incentives and public interests. Traditionally, the balance between the freedom to work and the public interest has been resolved through the establishment of a legal framework in which the subject must refrain from taking positions in private organizations. Furthermore, the legislation seeks to prevent public officials from promoting private interests inside public agencies. The most

common regulation of the revolving door involves the imposing of a term or time limit upon the public official before he or she can be hired by a private organization; this is known as the cooling-off period. The length of this period varies by country though the general rule is two years.

The revolving door is part of the discussion on lobbying because post-employment could imply a direct influence on the public sphere from private organizations. Nowadays, the revolving door problem is a worldwide topic. In 2009, President Obama introduced legal modifications to establish a two-year time limit between one job and another[12]. The OECD also recommends the two-year rule to its members, as part of a broader policy against conflicts of interest in public offices. Moreover, the OECD recently published a report on how revolving doors played a role in the beginning of the sub-prime economic crisis[13]. In the United Kingdom this is also an interesting issue because of the recent Murdoch scandal and the legal recommendations made by International Transparency UK to the Advisory Committee on Business Appointments (Acoba), which is also the public office in charge of overseeing the movement of senior civil servants and government ministers into prominent business roles. Acoba is not a statutory body and only has advisory powers. This is why International Transparency called for Acoba to be replaced by a new statutory body with greater powers to regulate the post-public employment of former ministers and crown servants. Moreover, in 2013 the British Committee on Standards in Public Life (Chair: Lord Paul Bew)

12 Executive order 5121 21-01-2009

13 OECD ´Revolving Doors, Accountability and Transparency - Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis`. 28-04-2009

presented information on "Strengthening Transparency Around Lobbying" where it argues:

> 'We consider that for reform of lobbying to be meaningful, it should also include consideration of the arrangements for movement of office holders between the public and private sectors, sometimes referred to as the "revolving door". Such movement is on the increase as public services are outsourced or managed through public-private partnerships, interchange in the public sector is actively encouraged and the notion of a lifetime career in public service diminishes. There are also continuing debates about the shifting boundary lines between the public and private sectors. (…) Interchange occurs in many OECD countries. It can drive innovation, enable the sharing of best practice and expertise and provide an opportunity for individuals to develop their careers. The knowledge, understanding and skills gained from another sector can enable better working in both sectors individually and when working together on complex problems. This benefits the consumer and taxpayers (...) The revolving door raises the risk of potential conflicts of interest and particular cases often generate close media attention or other public scrutiny. Hiring people either permanently or temporarily with contacts or knowledge gained from their time in government or the public sector can be seen as an attempt to buy access and influence'[14].

The most recent debate regarding revolving doors appeared during September 2014 in the European Union when the European Ombudsman presented a work of research touching upon fifty-four revolving door cases. The Ombudsman called on the European Commission to reinforce revolving door regulations and to make such legislation more robust in order to avoid conflicts of interest[15]. Therefore, lobbying regulations must include revolving door rules, because the influence of lobbying can be greater in cases where the subjects have been connected to public agencies. Furthermore, the pre-employment and post-employment attributes are important in order to identify the conflicts of interest pertaining to each individual. In Chile, the only norm that can be related to revolving door regulation could be

14 British Committee on Standards in Public Life, Strengthening Transparency Around Lobbying. November 2013. 30.

15 ´Revolving doors: Ombudsman will step up supervision of senior EU officials`. Press release. 23-09-2014

the final paragraph of Article 58 of CAFPA, the Constitutional Act on Foundations of the Public Administration. This rule establishes a six month cooling-off period for officials leaving regulatory institutions.

In this statute, the key lies in the notion of "regulatory institutions", which are referred to in Article 2 of the Decree Law No. 3.551. This decree states that regulatory institutions are the National Economic Prosecutor, the National Customs Service, the Department of Labour and the Superintendent of Social Security. This list is exhaustive (i. e. does not provide a generic reference). Only the entities listed in this provision of decree 3.551 may be considered "regulatory institutions", hence, only those specific authorities fall under the purview and scope of Article 58 of the Constitutional Act on Foundations of the Public Administration. Therefore, no other public authority is subject to the cooling-off period. This represents the first problem of the Chilean regulation, because Cabinet Ministers can leave their public offices and soon after be hired within the private sector. This is even more complicated in terms of regulated industries and lobbying firms. It is useful to describe some Chilean cases in order to further illustrate this point. For example, if we analyse the former Conservative government (2010-2014), we can identify several revolving door cases in various regulated industries.

The first case involves Rodrigo Hinzpeter, who was the Interior Minister from 2010 to 2012, and Defence Minister from 2012 to March 2014, until the right wing coalition handed over power to the social democratic coalition. Hinzpeter announced his new job as General Manager at Quiñenco in April 2014, just one

month later. According to its website, Quiñenco holds stakes in companies that engage in a wide array of business activities related to regulated industries. At present, Quiñenco has interests in "banking, financial services, industrial production, and food and beverages. It participates in the finance industry through LQ Inversiones Financieras (LQIF), Banco de Chile's controlling investment vehicle, which is 50-50 owned by Quiñenco and Citigroup. In the industrial sector, Quiñenco controls Invexans and Madeco, a Chilean flexible packaging company with regional presence. Through IRSA, it controls Compañía Cervecerías Unidas (CCU). The group also acquired in 2011 the Chilean assets of Anglo-Dutch oil major Shell, forming Enex, adding in 2013 Terpel's assets in Chile. In transport, Quinenco controls Compañía Sudamericana de Vapores (CSAV) while in the portuary sector, it has presence through SM SAAM".

The second case involves the last Interior Minister of the former government, lawyer Andrés Chadwick Piñera, former President Sebastián Piñera Echeñique's cousin. In June 2014, three months after handing over power, Chadwick announced his decision to create a Consultant Office on Public Affairs. In his communication, Chadwick stated that the main goal of the consultancy was to promote energy investments and create contingent relationships with local communities. This is an extremely sensitive topic in Chile due to the proliferation of conflicts between local communities and energy companies. The installation of a power plant is preceded by long administrative procedures that usually end up in courts because of conflicts between the communities and the company managers. Therefore, former Minister Chadwick was announcing the creation of a firm dedicated to helping the energy companies solve this kind of problem. Of course, this was followed by a huge

controversy in the Chilean vox populi because the former Interior Minister was moving from government to the lobbying industry. Moreover, his announcement informed that his business partners in this venture were: former Senator Pablo Longueira, and Enrique Correa Rios, the owner of Imaginacción, the largest lobbying firm in Chile. Given the ensuing public scandal, Chadwick and his partners decided to postpone the opening of their consultancy. This scandal clearly showed the need to extend the revolving door rules and demonstrated the deficiencies in the existing lobbying law.

The third case involves the former Foreign Affairs Minister, Alfredo Moreno, who left the Cabinet in March of 2014 and was subsequently hired by Penta Bank in July of 2014. This example constitutes a typical revolving door case, in which one of the key national authorities moves to a private industry. However, this is a sensitive case because Penta Group, the owner of the bank, is currently involved in a scandal as a result of its connections to illegal campaign donations in the 2013 elections. Penta Group has been accused of serious criminal charges, and this case has triggered a profound debate in Chile regarding the links between politicians and regulated industries. Therefore, the selection of Moreno as the new head of the holding company, in the middle of a political scandal, is another piece of evidence highlighting the need for more stringent revolving door regulations in Chile.

The fourth case involves the public transportation industry. In 2007, Michelle Bachelet's social democratic government launched the "Transantiago" program, a revolutionary transportation system featuring new buses and bus routes. Despite all

odds, the reforms resulted in a social debacle and an economic black hole that has been paid with public funds since 2008. Therefore, the relationship between the transportation industry and the government is crucial, and it is imperative that they negotiate the fares and the legal duties to be fulfilled by the companies. The most important authority in this particular field is the Transportation Minister, a member of the Cabinet fully dedicated to dealing with these issues. During the former government, this position was occupied by Pedro Pablo Errázuriz, who subsequently left the Cabinet in March 2014. In May 2014, he announced his contract with Subus, an important public transportation company. Errázuriz's relationship with Subus symbolizes another case of revolving doors operating in Chile, and the current Lobbying Act has no provisions prohibiting this kind of situation.

The fifth case involves the Parliament and the lobbying industry. Imaginacción, founded by Enrique Correa Rios, is the principal lobbying firm in Chile. Its influence has been tracked by the press in various instances. During 2013, its Public Affairs Manager was the lawyer Jorge Insunza who was running for the House of Representatives in parallel. In other words, during 2013, the manager of the nation's principal lobbying firm was also running for public office. In 2013, the Lobbying Act had not yet been enacted; however, even now it does not include a rule prohibiting lobbyists from running as candidates in elections. Furthermore, Insunza won the election and he assumed the role of representative in March 2014, one day after he resigned from Imaginacción. This is another case of revolving doors, operating between the previous employment and the public position, and is not covered by the Lobbying Act.

The sixth case also includes Imaginacción and its relationship with the current government. Carlos Correa Bau was the General Manager of Imaginacción until March 2014. When the new administration came to power, he was appointed vice-director of Secom, the communications office of La Moneda Palace and centre of the Executive power in Chile. Thus, former Imaginacción managers are now ensconced in the Parliament and in La Moneda Palace.

**C.- Think Tanks**

Think tanks are a global phenomenon. Despite their influence, they have gone relatively unnoticed until recent years. Think tanks are not commonly listed on lobbyist registers in comparative law, but that is starting to change, particularly in the United States[16]. In the context of the super PACs discussion, scholars have argued whether think tanks as institutions should be regulated under lobbying laws. According to Gateway India, a think tank is 'an organization, institute, corporation, group, or individual that conducts research and engages in advocacy in areas such as social policy, political strategy, economy, science or technology issues, industrial or business policies, or military advice'[17]. As Gateway explains:

> 'A think-tank is different from a lobbying organization, in its mandate. Unlike that of a think-tank, a lobbying organization's mandate is to influence a policy outcome for a particular interest group. A think-tank's mandate is merely to create innovative policies and hope to influence the policy outcome'[18].

16 Thomas Medvetz, Think Tanks in America. Chicago University Press. 2012.

17 http://www.gatewayhouse.in/about-us/how-you-benefit/faq/

18 http://www.gatewayhouse.in/about-us/how-you-benefit/faq/

During the legislative debate, Chilean think tanks were not considered as lobbyists or interest managers. According to Article 6 number 6 described in the first part of this paper, think tanks are not included in the list of active subjects. Therefore, they have no legal duties under the Chilean Lobbying Act. The common explanation repeats the Gateway argument that think tanks and lobbying organizations differ in terms of their mandates. Nevertheless, in the Chilean context, it is not easy to distinguish between the creation of innovative policies and the subsequent influence on the policy outcome. A counterargument can be drawn against the Gateway distinction between lobbying organizations and think tanks. The creation of a public policy and its defence in the public arena can link think tanks with a particular interest group or stretch their associations to the constituted particular interest groups.

In the worldwide context, the majority of think tanks have a legal structure that is similar to non-profit organizations in that they usually have the opportunity to use tax incentives to receive money from private donors. In general, the funding for think tanks comes from private businesses, associations, trade associations, unions, interest groups, and government departments or individuals to a lesser extent. Think tanks are frequently allowed to do consultancy or research projects for political parties in Congress. They are also allowed to sell services to private industries, such as specific studies or research papers. Furthermore, the institutional position occupied by think tanks is quite curious because they can be consultants to politicians, advisors of industry, and beneficiaries of tax incentives in order to receive donations from private parties. This debate constitutes a rising topic of contention in the United States. Recently, Silverstein has argued about the

increasing influence of think tanks in Washington. According to his argument, interest groups are applying new methodologies in order to convert their money into political power. The reason for this is because think tanks do not fall under the scope of the American Lobbying Disclosure Act. In his book, Silverstein highlights a set of cases that are all compelling and significant. For example, there are lobbyists who use their positions at think tanks to advance their clients' interests. This implies situations such as when one subject is a lobbyist in a private firm while also acting as a member of a think tank´s executive committee. In this situation, the incentive for the lobbyist is to use his influence to promote favourable policies for his client.

In other words, a client could be hiring not only a lobbying firm, but also the hidden influence of a think tank. Silverstein introduces a second set of cases in which prestigious American think tanks, including the notable Brookings Institution, have exhibited 'interesting behaviour'. For example, Brookings has been accused of advertising its readiness to draw up custom research agendas for major donors, thereby stimulating donations with the offer of research work. In this case, the donation becomes a veiled employment contract. A similar case is a situation when a think tank offers "strategic partnerships" to corporate donors, "strategically" promoting similar policies, and the same goals. In an extreme case, Silverstein describes the story of how the Heritage Foundation went from criticizing the Malaysian government to touting it as a beacon of democracy once

Malaysian business interests hired a consulting firm founded by Heritage's president[19].

The Chilean regulation of think tanks is practically nonexistent. Therefore, think tanks can take many legal shapes and adopt different institutional faces. In Chile, the label "Think Tank" is broad and covers non-profit corporations, foundations, institutes and NGOs, to list a few. They can all sell services to private parties as well as provide consultancy to the Congress. Moreover, according to the Cultural Donations Act, known as Ley Valdés, all donors to cultural activities must receive a tax cut equivalent to one half of the amount of the donation. Think tanks are included in this general rule as promoters of knowledge and ideas, and since they work with political parties and sell services to clients. This issue emerges as a central tenet of the Chilean public debate, because the number of think tanks grew very considerably during the decade from 2004 to 2014.

This situation contrasts with the lack of regulation of these institutions. This is why it is useful to analyse Chilean cases. The first case started with a publication by Ciper, an independent news website. They released an investigative report showing evidence of economic links between Libertad y Desarrollo (Freedom and Development), and the British Tobacco bureau during the legislative discussion regarding introducing legal limitations on tobacco advertising and consumption in public spaces. Libertad y Desarrollo is a major Chilean think tank, and it has close links with the biggest political player, the UDI, a right-wing conservative party.

19 Ken Silverstein, Pay-to-Play Think Tanks: Institutional Corruption and the Industry of Ideas, Ebook. June 2014.

Ciper´s investigation is the first to provide information on Libertad y Desarrollo's financing, a topic that is kept secret from all but its most inner sanctum of sycophants. This secret contrasts, however, with the influence it has had in the Chilean public debate. Ciper Chile estimates that Libertad y Desarrollo has appeared in more than 3,600 legislative processes from 1990 to 2013. In addition, Claudio Fuentes has argued about the influence of Libertad y Desarrollo in the constitutional debate of 2005. In his book, The Covenant, published in 2012, Fuentes shows that the constitutional reforms of 2005 were an agreement between the government of Ricardo Lagos and Libertad y Desarrollo. This agreement allowed an alliance between the UDI and the socialist government to reform the constitution. The influence of Libertad y Desarrollo in the legislative process is undeniable in light of the records cited by Fuentes. Thus, it is significant that such an influential institution has no funding information available.

The case of Libertad y Desarrollo can be compared to a newer think tank, created a couple of years ago by young professionals associated with the former government. Under the name Horizontal, these young leaders are building an influential institution that runs secret funding initiatives. There is no information on Horizontal's funding initiatives available to journalists and citizens. Horizontal's influence in public debate, however, is increasing. During the first half of 2014, its director, Hernan Larrain Matte, had over fifty appearances in the press, radio and television. In none of these instances, surprisingly, was he asked about his institution's sources of funding. This information is important because Horizontal´s former director was named Labour Minister in 2013. Additionally, Larrain Matte´s previous job was as assistant of the Presidency of the Republic. Horizontal´s case is

compelling because it involves both think tanks and revolving doors. Libertad y Desarrollo and Horizontal are only two examples of how think tanks are connected to politics in Chile.

These two cases are similar and they allow us to observe the deregulation of Chilean think tanks. Since think tanks are excluded from the lobbyist and interest manager categories, their actions and influences are not considered lobbying. In other words, Article 6 number 6 of the Chilean Lobbying Act could generate a gray zone between interest managers and lobbyists, a subtlety allowing receipt of donations on the one hand, while making papers, studies and negotiations with the authorities on the other. I will explain this issue by means of an example. If company X wants to hire lobbying services to curb law Y, given Chilean regulations, any meeting initiated by Company X should imply that Company X will be recorded as an "Interest Manager". However, if Company X hires a Lobbying firm Z to initiate the meeting, Z will be recorded as a lobbyist and X will be recorded as its client. Therefore, if Company X wants to avoid the records, it can make a donation to a Think Tank W that is responsible for writing papers and studies against law Y. Then, Company X could try to participate in the public

debate using the studies written by Think Tank W. According to Ciper's report, this is what occurred with Libertad y Desarrollo and the British Tobacco bureau during the tobacco regulations discussion. Interestingly, the explanation given by Libertad y Desarrollo was that the tobacco company had "paid for services" without any relation to legislative procedures or industry interests. Extrapolating further, what happens if the Think Tank W has intellectual influence in the Political Party U?

In this way, a donation to a think tank could be a way of promoting agendas from inside the political apparatus, thereby dodging the Lobbying Act. From the groups of interests' point of view, there are clear incentives to finance think tanks, due to fewer legal duties and more opportunities. Thus, this could produce gradual migration from the lobbying industry to other forms of influence. This could also explain the latter-day growth of think tanks in Chile. It could be reasonably argued that think tanks require an independent act, that is, their own piece of legislation establishing rules and principles to govern their creation and administration. That is certainly true. Nevertheless, the Lobbying Act should take a definitive position and define whether think tanks are "lobbyists" or "interest managers". Otherwise, think tanks appear as refuges, covers, and trenches for the interest groups who want to promote particular agendas or stop specific legislation that compromises their positions. In other words, Chile needs a *Think Tanks Act* and a reform to the Lobbying Act that would include think tanks as subjects under the regulation.

## 3. - Conclusions

During this short essay I described the fundamental structure of the Chilean Lobbying Act. In section II, I presented eight criteria for analysing the specific rules on registers, sanctions and revolving doors. As the result of that analysis, it is clear that this piece of legislation lacks stringent rules on emails, phone calls and other types of contact, such as private meetings pertaining to agendas. This could lead to the law being evaded and establish alternative lobbying paths. However, this first type of legal problem can be solved by the interpretation and application of the legal principles established in Article 1. The principles of transparency, publicity and probity indicate that the proper solution is to include emails, phone calls and letters as lobbying activities. The situation regarding private meetings is more complicated because it involves a hypothetical clash between the constitutional rights of the individuals and the interests of the public. Furthermore, the lack of revolving door regulation creates incentives for former ministers and high-level authorities to start their own businesses in the lobbying industry, and thereby use their influence in the public arena for private interests.

Therefore, Chile needs specific rules on revolving doors. In addition, think tanks also need specific norms to regulate their legal structure, funding, activities, and consultancy business. The concentration of power derives from practices to accumulate knowledge, contacts and experiences in the public sector in order to use them in favour of private interests later. Using lobbying information, in the future, the press will be able to derive interesting intersections between economic elites

and political elites. The specific issue of revolving doors is particularly complex in that both the United States and the European Union have specific cases that show an evolution in terms of practices and resistance to the enforcement of the rules. Developed countries, international agencies and organizations that promote efficient public policies have understood that such institutional architecture should go hand in hand with the desire to attract economic growth. Subsequently, Chilean civil society should move towards a new standard of public ethics, based on not working, partnering, or holding seminars with institutions that refuse to reveal their secretive modes of financing. As the OECD states, lobbying regulation must be accompanied by a strong commitment to ethics; however, ethics cannot replace the role of legislative regulation:

> 'Regulation of lobbyists' behaviour has focused on codes of conduct. These establish principles of behaviour – such as honesty, openness and professionalism – and rules to enforce them. Currently, debate centres on whether codes should be voluntary or imposed by law; experience suggests that legislative regulation is preferable. In considering the impact of codes, and other regulatory features of lobbying legislation, it should be remembered that lobby regulation cannot be free-standing. It is part of a regulatory regime consisting of laws, policies and practices that are interdependent and establish the principles of good governance across the public sector. Finally, securing and maintaining the integrity of the regulations requires that officials have sufficient resources, powers and independence to enable them to carry out their functions'[20].

Therefore, Chile is taking a gargantuan step forward by regulating lobbying. Chileans are facing the kind of problems that all developing societies intrinsically deal with. The main risk involved is that the private sector will capture public institutions and covertly use them for their own interests. At its worst, such covert influence could set the stage for the emergence of what the literature calls Crony

20 OECD, Lobbyists, Governments and Public Trust, Increasing Transparency through Legislation. 2009. VOL 1. 40.

Capitalism[21]. According to Malcolm S. Salter, Senior Faculty Associate of the Edmond J. Safra Center for Ethics at Harvard University:

> 'Stripped to its essential characteristics, crony capitalism conveys a shared point of view—sometimes stretching to collusion—among industries, their regulators, and Congress that results in business-friendly policies and investments that serve private interests at the expense of the public interest. More specifically, crony capitalism is a special type of moneymaking that economists call "rent seeking". Rent seekers pursue privileged advantages that typically show up as targeted exemptions from legislation, advantageous rules by regulatory agencies, direct subsidies, preferential tariffs, tax breaks, preferred access to credit, and protections from prosecution. The ultimate goal of rent seekers is "grabbing a bigger slice of the [economic] pie rather than making the pie bigger." Crony capitalism is a problem when innovation, economic efficiency, market pricing, and equal access to government decision makers—that is, fairness—are compromised, and when well-placed persons invest their vast fortunes in teams of lawyers, accountants, lobbyists, and political contributions to ensure that the system continues to work on their behalf'[22].

Salter´s argument rests on the premise that crony capitalism entails a shared point of view between the private sector and public authorities. Therefore, these common beliefs are woven by networks of people who share incentives and values. Lobbying is the way into these shared points of view via business opportunities to private parties, building bridges between corporations and the blurred lines between the private sector and public offices. The result is a locus of benefits and privileges that slowly set the conditions for those privileged enough to become the most powerful players in the system. Gradually, the concentration of capital leads to the concentration of power, and these powerful entities are then able to hire lobbyists, attract former public officials to key positions, finance the development

21 Salter, Malcolm S. Crony Capitalism, American Style: What Are We Talking About Here? Harvard Business School Working Paper, No. 15-025, October 2014. 8. See also Stephen Haber War, Crony Capitalism and Economic Growth in Latin America: Theory and Evidence (Hoover Institution Press, US 2002).

22 Salter, Malcolm S. "Crony Capitalism, American Style: What Are We Talking About Here?" Harvard Business School Working Paper, No. 15-025, October 2014. 8.

of research and papers in think tanks, and fund the campaigns of politicians. As Salter argues, this phenomenon is particularly dangerous because it promotes a special type of moneymaking, rent seeking, where certain businesses benefit from legal exemptions, advantageous treatment by agencies, subsidies, tariffs, tax breaks, and so on.

Nowadays, the crony capitalism problem has overcome the barriers of academia and reached the critical threshold of mass audiences. To a large extent, this phenomenon is played out in the scandals presently occurring and is highlighted in books that have described in simple language the most corrosive actions occurring in countries like Spain, England and the United States. Chile is no exception, as scandals have instigated public discussion and politicians have moved to make decisions while the press continues to publish awkward, spurious information. Eventually, crony capitalism sets the stage for the establishment of an oligarchic government, where a handful of men decide the future of the public and private sectors as a whole. Under this scenario, the state becomes an instrument for the benefit of corporations and these same corporations become the strongest allies of the rhetoric of power.

The Chilean neo-liberal project contains many contradictions, but there is one aspect that is particularly disturbing. The promise of the Chicago Boys was that Chile would overcome poverty by privatizing everything that could be privatized. However, this fetishisation of the private sector accompanies the blossoming of regulated industries, where fortunes can be constructed based on the degree of

relationship with the government. This structure is similar to countries that emerged from the old Soviet bloc, where antiquated bureaucracies gave way to a millionaire elite transversely related to political class. It is no coincidence that, in Chile, mainly millionaires have investments in regulated industries. The literature has not delved deeply enough to extrapolate the intimate relations between the neoliberal project and the oligarchic results. Chile can constitute a good example of how the formation of privatization policies must be accompanied by a set of rules of interaction between both public and private sectors. Otherwise, the private interest and the public goals are systematically confused, and the interests of normal citizens are relegated to the background. This also has social consequences, because a higher elite class arises that slowly builds walls to separate it from the rest of the citizens.

When citizens recognize the existence of a privileged group that has the government's approval, institutions lose credibility, and the promise of deliberative democracy is diminished. Nor is it a coincidence that in Chilean surveys, the Congress and political parties are evaluated by the people as the worst institutions. Finally, the government of Chile and, more broadly, the political elite of Chile, face the challenge of preventing the economic model from resulting in crony capitalism. Chile runs the obvious risk of generating a lasting disaffection between the powerful classes and normal citizens. This break could lead to the emergence of populism, which would wipe out the underground networks that have unbalanced the court in favour of the privileged. There is a short step from this fact to the rise of authoritarianism, something that Latin America knows very well from historical experience.

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