SPECIAL REPORT

Lobby in Chile: do we have the law we need?

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1. INTRODUCTION

"I have been a victim of the tobacco lobby", claimed Sebastián Piñera, the then Minister of Health (2013) in the context of the adoption of anti-smoking laws. Although the outcome was not positive for the companies in the sector, the Minister showed the powerful influence that lobbies can exercise.

In recent years, the concepts of lobbies and lobbyists are increasingly present in society although with negative connotations, as though pure lobbying activities were conducted by means of illicit mechanisms that put pressure on the authorities.

However, **the thin line separating lobbying activities between influence-peddling, bribery or coercion is sometimes blurred**. For instance, in the passing of the Fisheries Act, several corruption cases came to light, involving MPs and senators, both from Left and Right, who were investigated for receiving money from one of the most important fishing companies in Chile.

The fact that the Lobby Act was passed represents a first step towards the transparency of the relations between stakeholders and national politicians. However, will this legislation be enough to reveal the true interests of these groups? Will it be necessary to draft a more strict law including, for example, criminal sanctions?

The following paper sets out the main points of the Lobby Act, as well as the opinions of the most relevant stakeholders on this issue and compares the new Chilean standard with other projects developed beyond Chilean borders.

"Lobbying is legitimized as an activity through this law, which also differentiates it from influence-peddling and bribery"

2. A BROAD POLITICAL HISTORY

Finally, after 10 years in the National Congress, the Lobby Act officially entered into force in Chile on November 28, 2014. Even though it does not fully regulate the industry, it represents a step forward as regards transparency, since it enables citizens to know about the people with whom the authorities meet in order to influence them during the decision-making processes. Furthermore, lobbying is legitimized as an activity through this law, which also differentiates it from influence-peddling and bribery, regulated and punishable under Chilean law.

This regulation is part of the historical transparency and probity agenda created in 1994 by President Eduardo Frei's Commission of Public Ethics, whose main pillars are transparency, equality and probity.

As regards the political background, one of the most critical events was the first project regulating the 2003 Lobby Act, which was subsequently vetoed by President Bachelet in 2008 to include interest managers as non-profit bodies. At that time, the Government along with its legislative branch decided to launch a new draft law, this time taking account of the comments made by specialists and MPs in the original project.

In relation to this decision, one of the most significant developments was the message conveyed by President Michelle Bachelet on the regulation of the industry that was modified in 2011 and finally became the 20,730 Act. Despite being approved in the first stage of consideration, the Act was deadlocked in the Chamber of Deputies. In January 2010 its extreme urgency was reiterated.

After four years of unsuccessful initiatives, a new project was launched, whereby the approach of passive and active stakeholders was modified according to the law. In 2014, as a result of the last events at national level concerning influence-peddling and corruption during President Bachelet's second term, the obligations of active and passive stakeholders that are part of the law were further detailed and regulated.

The 20,730 Act entered into force on different dates:

- March 8, 2014: it was published in the Official Journal along with the actions representing particular interests to the authorities and State officials.
- August 26, 2014: under the 71st decree, the General Comptroller of the Republic gave effect to the decree, which was published on 28 August with the support of the Presidency's General Secretary Ministry.

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- Its entry into force was achieved through three stages according to the authorities involved.

The willingness to exercise some kind of influence on the authorities and those responsible of the decision-making processes within the country cannot be denied. In this sense, the challenge of developing a legal framework to regulate and monitor the behavior of the representatives has become one of the most critical challenges that need to be faced in order to boost public confidence in the institutions, currently rather undermined.

Probity and transparency must currently be the main prerequisites and guiding elements of public management. In this respect, the cooperation standards between the Government and private entities must particularly improve, since they were entrusted with the task of being solution providers and, in this regard, the enforcement is still pending in the country.

3. DESCRIPTION AND SCOPE OF THE LOBBY ACT

In Chile, the lobbying activity is defined as all paid activities carried out by people or entities to promote, defend or represent a particular interest or to influence decisions to be made by the authorities or State officials.

Accordingly, a lobbyist is any natural or legal person who is paid to lobby to defend his particular interests. Should the person or institution not be paid, they should be then called individual or collective particular interest manager. Both kinds of stakeholders are referred to as active stakeholders, since they are the ones lobbying.

Those who receive the lobbying actions are referred to as passive stakeholders or, in other words, those who make decisions through their public offices (senators, MPs, mayors, legislative advisors, prosecutors, counselors, among others).

One of the initiatives of this new law is the Public Register of Lobbyists and particular interest managers. Every entity and institution should have this document, including natural and legal persons who carry out lobbying activities. Lobbyists must register or will be automatically registered as soon as they carry out a lobbying activity with an authority or State official.

A special characteristic of Chilean regulation is that the people identified as interest managers, professional lobbyists and lawyers are all considered to be lobbyists. Although the law distinguishes between both types of stakeholders, lobbyists and interest managers, they have equal duties before the law.

"There will therefore be public registers controlled by each service or entity of the centralized, decentralized and regional administration"

Another element worthy of consideration is that this law was not a pioneering law in Chile, since over a decade ago, many other different projects were proposed with the purpose of monitoring the meetings between State officials and private entities. However, these projects were unsuccessful in Congress for purely political reasons.

The most relevant aspects of the law are summarized as follows:

1. **Creation of Agenda Public Registers:** in which the authorities and public officials listed as passive stakeholders will have to record all the meetings held with lobbyists and particular interest managers.

2. **Definition of lobbying passive subjects:** created in the last project and enhanced almost without exception including the regional service directors, those responsible for the acquisitions in the Armed Forces, the national prosecutor and regional prosecutors, amongst others.

3. **Inception of various public registers:** in which the information concerning various lobbying passive stakeholders is published, depending on the organization they belong to. There will therefore be public registers controlled by each service or entity of the centralized, decentralized and regional administration.

4. **Creation of a consolidated biannual register**: by the General Secretariat of the Presidency (Segpres), in which information is organized not by meetings but by any natural or legal person who has met passive subjects in the last six months.

5. **Agenda Registers**: will have to include the person, organization or entity having attended the meeting, as well as the location and the date on which it was held and the specific issues addressed. To this the Commission for Chamber constitution added whether the person requesting the meeting receives or not money for his actions, the name of the people being represented and the information requested concerning the structure and configuration of the legal person being represented.

6. **Register of donations/ presents and travels**: the latter referring to the travels undertaken in the exercise of their duties. This register must include the destination, purpose, total costs and the name of the natural or legal person who paid for the travels. Donations, in turn, also include courtesy and politeness expressions in the contexts of the exercise of their duties. The presents or donations received must

be registered along with the date and reason for which they were given and the name of the natural or legal person who gave them.

7. **Sanctioning system**: also decentralized. Although the comptroller's office is responsible for the monitoring and investigation of offenses and for issuing a reasoned resolution to recommend penalties, the power to impose sanctions is exercised by the relevant Head of Service or, in case he is the person who committed the offence, by the authority having the relevant designation power.

In accordance with Article 5 of the Act, the law specifies which actions shall not be considered as lobbying practices and, therefore, outside the scope of the law (Article 6). For instance:

- Draft, enactment, amendment, repeal or rejection of administrative acts, draft laws and laws and of the decisions adopted by passive subjects.
- Draft, processing, approval, modification, repeal or rejection of agreements, statements or decisions of the National Congress or its members, including its commissions.
- Conclusion, modification or completion in any form of contracts made by passive subjects, which are necessary for their functioning.
- Design, implementation and assessment of policies, plans and programs developed by passive subjects.

As regards the registration of meetings, it should be specified who they represent and the reason to hold the meeting. Subsequently, this information should be published on the platform created to this end. In addition to this, there is the publication process and the main role played by the General Comptroller of the Republic, who shall issue the corresponding actions. To date, no sanctions have been registered due to these meetings.

4. OPINIONS OF THE MOST RELEVANT STAKEHOLDERS

This law is somewhat controversial and gives rise to certain conflicts given its nature; hence many stakeholders have publicly expressed their opinion on this new legal provision.

ADVICE FOR TRANSPARENCY

It is an autonomous State corporation, created by virtue of the Act of Transparency of the Public Office and Access to Information of the State Administration. This entity is tasked with ensuring compliance of the aforementioned act and its

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counselors are proposed by the President of the Republic and ratified by the Senate.

Attorney Marcelo Drago, one of its counselors, took a critical stance in relation to this act and claimed that "rather than a Lobby Act, it is a hearing recording law, whereby public authorities (passive stakeholders) are obliged to register the hearings, ensure their veracity and publish them, taking the risk of being subject to strong sanctions. However, those who actually undertake the lobbying activity (active stakeholders) have just the obligation of providing transparent information on their activity when making their requests".

According to Drago, the main focus should be on lobbyists and the interests they represent, since the most important aspect for citizens is to know which companies are paying to influence public decisions and for what purpose. The effectiveness of this law lies in the ease with which the companies hiring lobbyists make themselves known and the matter of their lobbying activities. The aim must be to create a clear traceability of the company, sector and lobbyists-interests, with the public authority at the end of the process. This will enable to determine whether the decisions were made according to the general interest or if only a few interests were taken into account.

CONSUMER ASSOCIATIONS AND NGOS

NGOs have a different opinion and, although there is a consensus on the fact that this law should be passed to regulate the sector, there are many critical views on how improvable it may be. Research Director, María Jaraquemada, pointed out that "it is a transparency law for authorities rather than a regulation of the lobbying industry, since Chile does not have a strong lobbying industry like Canada or the US, where this matter is thoroughly regulated. In the future, once this is no longer delegitimized by society, we will be able to start talking about greater obligations of active subjects. The ideal scenario is a balanced regulation for both active and passive subjects."

Former Minister José Antonio Vieira-Gallo, chair of **Fundación Chile Transparente** and Chilean left-wing politician, stated that this is a major milestone in the quest for transparency and legislative independence as it shall build confidence among citizens. Nonetheless, he also expressed his concerns about certain points of the project, such as the fact that the information is limited at national level, since this could be understood as if the authorities do not have to inform about the meetings held abroad. According to him, the aforementioned issue should be carefully analyzed.

"The authorities do not have to inform about the meetings held abroad"

Regarding the restriction of the issues to be reported, such as health or trade affairs, he noted that "this is perfectly reasonable for Ambassadors, but addressing the rest of the proposed measures is also important".

On the other hand, **Fundación Multitudes** considers that the Government's project is "poor" because of what they call the "legal vacuum" that companies may take advantage of. Its Executive Director, Paulina Ibarra, voiced the following concern: "What happens when the authorities, including the President, have to travel? Implying that once entrepreneurial groups travel outside of the country there will be no register of their influence activities. She also pointed out that "now the aim is to protect companies".

CONGRESS

The Senate, through its former President, Isabel Allende, has questioned the law stating that the Parliament had passed a sound law and it is now feared that a large amount of information will be published, which might end up being useless. According to her, this law will have to be adjusted in the short term, since it will not be useful unless there is an active register of lobbyists.

The President of the Senate's Ethics and Transparency Commission, Hernán Larraín (UDI, right-wing) affirmed that this new regulation will let people know that the decisions made by the Congress are made in consideration of all perspectives and for a common good and not because someone has been influenced, lobbied or bought by the interest of a third party".

Besides, concerning the responsibility of the active subjects established by this law, he explained that "all those who undertake lobbying activities, whether or not remunerated, will have to register, if they want, in a space especially set up for this purpose as regards Congress. This will increase transparency in relation to the people who carry out lobbying activities".

AMBASSADORS

A few days before the Lobby Act entered into force, the Chancellery took great efforts with the General Comptroller of the Republic and Congress to adapt the regulation and limit its impact on the management of the ambassadors on overseas missions.

Some of the provisions of the regulation set up by the General Secretariat of the Republic by means of its Decree 71, among which are the obligation to publish the names of the people applying for a meeting and the issues

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addressed therein, do not take into account the special nature of the Ministry of Foreign Affairs' work. According to the latter, this law could become an obstacle and represent a risk for the efficient implementation of the diplomatic task of Chilean overseas missions.

The rules imposed by this law on the activities of ambassadors, whereby they are considered as lobbying passive subjects and particular interest managers, may not be in line with the 1961 Vienna Convention, which regulates the diplomatic relations between different countries. Such practice even contravenes the standard practice of the chancelleries throughout the world.

Some heads of mission, such as the Chilean Ambassador to the United States, Juan Gabriel Valdés, informed the Deputy Secretary for Foreign Affairs, Edgardo Riveros and the Legal Director of the Chancellery, Claudio Troncoso, about the issues that the Chilean diplomatic sector might have to face as a consequence of the implementation of the regulation.

An essential part of the ambassadors' work is to meet, either privately or publicly, with authorities, political leaders, opinion leaders, businessmen and other prominent figures from a wide variety of sectors in the countries or international organizations in which they carry out their activities. In these meetings, attendants exchange their views, address enquiries and requests, talk about the political, economic or social context or conduct negotiations. If a diplomat strives for excellence, he must establish the widest possible networks in the countries in which he performs his duties. Ambassadors must subsequently inform their chancelleries, privately and confidentially, about these actions. However, pursuant to this new provision, unless an issue affecting the national security is addressed at the meeting, both the names of the attendants and the discussed issue must be registered in a public form.

THE NATIONAL ADVISORY COUNCIL AGAINST THE CONFLICTS OF INTERESTS, INFLUENCE-PEDDLING AND CORRUPTION

The National Advisory Council, also known as Engel Commission, is formed by a team of 15 specialists carrying out their tasks in an entirely autonomous manner, with the aim of improving the Chilean legal system, ensuring the effective compliance with the ethical principles of transparency and integrity in all legal aspects. This ensures an efficient control of influence-peddling, prevents

corruption and conflicts of interests affecting all political areas such as the public and private sector, among others.

Claudio Fuentes, Director of the School of Political Science of the Diego Portales University and member of the Anti-Corruption Advisory Council, highlighted that the disciplinary measures to report the conflicts of interests between regulators and regulated companies resulted in all kinds of incompatibilities and inabilities. Fuentes noted that the priority is to strengthen the High Public Management. "If a new Government comes into office today all executives from the previous Government will be replaced. We suggest a public financing of political parties and new civic education and integrity requirements both in the business and political arena".

Concerning the work developed by the Engel Commission, its chairman, Eduardo Engel, stressed at the time that "what the next Government should do is to move forward on further items that are equally important to enhance the quality of politics. One option would be to create a legislation to regulate and finance political parties and another option would be a transparent financing of politics".

TYPE OF REGULATION	CHILE	USA	CANADA	AUSTRALIA	GERMANY	THE EU PARLIAMENT	POLAND
ENFORCEMENT	Comptroller, self-regulatory organizations.	No independent agenda, although Congress exercises some powers in this regard and can refer cases to	Yes, Federal Office of the Commissioner of Lobbying.	No	-	No	No, and the registration and its regulations have been ignored by many lobbyists.
MAXIMUM SANCTIONS	50 UTM	Up to 50.000 US$ in civil action for violations, and up to five years in prison for lobbyists who intentionally hide information.	Up to two years in prison, but sanctions in general have been	Expulsion of registration (Ban from doing lobbying).	-	Removal of the pass.	Up to 16.000 € for each offense
PUNCTUATION (0-100)	15-21 (estimation)	62	50	33	17	15	27
LEVEL OF REGULATION (0-29:LOW; 30-59: MEDIUM; 60-100: HIGH)	Low	High	Medium	Medium	Low	Low	Low

Source: "Una Ley de Lobby para Chile" Facultad de Gobierno, Universidad Adolfo Ibáñez

"This law provides for imprisonment and financial penalties depending on the case"

5. INTERNACIONAL PERSPECTIVE

THE U.S. MODEL

In the U.S., lobbying is defined as the regulation of relations between lobbyists and the public apparatus, and it is tightly regulated by a legal status called Lobbying Disclosure Act (LDA). This entity establishes the necessary requirements for the inscription of lobbyists, who must in turn submit a report on their financial activities twice a year.

Lobbyists representing foreign Governments or political parties must be registered in the Foreign Agents Registration Act (FARA), while lobbyists for foreign private interests must do it in the LDA.

This law provides for imprisonment and financial penalties depending on the case, although only severe cases are punished with imprisonment.

The registration process of all lobbyists must be made through the Honest Leadership and Open Government Act (HLOGA), which strengthens the requirements for public information in relation with the lobbying and financing activities. It also lays down restrictions on the presents that MPs may receive.

THE EU MODEL

The European Union defines the lobbying activity as the transparency of the activity carried out by pressure groups with public authorities.

There is no institution that coordinates and supervises the lobbying activity as in the U.S. It only delivers information to the public on the relations between interest groups and commissions for external control. Furthermore, it establishes certain rules on the integrity governing the conduct of pressure groups and the public entities subject to them.

No codes of conduct have been established, the current system is based on self-discipline. The European Parliament (EP) has established a mandatory code of conduct for those who wish to obtain accreditation. Any infringement will lead to an eventual loss of accreditation, namely the authorization to access EP buildings.

However, there is a Lobbyists register called CONNECT, a database in which lobbyists may voluntarily register.

4. CONCLUSSIONS

Once the main points and opinions of the participants in the drafting of the Lobby Act have been gathered, there is a broad consensus that a project of this nature was of paramount importance, regardless of the specific discrepancies the stakeholders might have.

"That a project of this nature was of paramount importance, regardless of the specific discrepancies the stakeholders might have"

Firstly, very few countries in the world have been able to develop and implement this kind of laws, hence the special merit of Chile, willing to enhance its democratic mechanisms, thereby fostering a more transparent system.

Lobbying is a legitimate activity and this law provides the public opinion the opportunity to change the negative view that is deeply rooted in the Chilean population. Therefore, active and passive stakeholders, by means of their commitment with probity, are the ones in charge of enhancing the reputation of this kind of practices.

Given the nature of this Act, some questions have arisen concerning its effectiveness and the fact that it will not become just a registration of meetings, as is happening in Peru, where there is a law regulating lobbying activities. However, there is no institution in charge of monitoring its development. This necessity consists on implementing provisions forcing MPs and State officials to publish their daily agendas, thus giving transparency to the activities undertaken with lobbyists.

The adaptation and implementation processes of any project of this kind take a significant amount of time and this law is no exception, since, several months after its implementation, the Government has drawn conclusions to implement potential amendments.

These changes must be based on the origin of the project, focusing on a tighter control or regulation of active stakeholders (lobbyists), since they are only encouraged to register on a voluntary basis whereas the authorities are forced to submit this report of their meetings.

Additionally, the regulation that applies in our country is considered as lax in comparison to that of other countries such as the U.S., Canada and Poland and we believe it would be beneficial to assess the standards of sanctions.

According to the data consolidation center of the Lobby Act, 20,948 meetings between lobbyists or interest managers and MPs have been registered up to December 2015. Meetings are homogeneously distributed among the different political

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parties. Some of the issues addressed in the requested meetings were street sexual harassment, advances in water supplies, the law establishing minimum rates of national music and the Labor Reform bill.

As regards donations, 4,501 presents were given by lobbyists to legislators, mainly books, Chilean movies, mangers and wines.

The Transparency Council highlighted in its last report on the lobbying activity in the Lower House that energy and mining projects were the topics that generated the most meetings, amounting to 11. Moreover, various meetings for contingent issues were also registered, namely the debate on the Civil Union Agreement (AUC), in which MPs met with different groups ranging from representatives of the Movement for Homosexual Integration and Liberation (Movilh) to Christian organizations.

After the recent political scandals, such as the Penta case (financing of political campaigns through ideologically false invoices) and the one involving the President's son, Sebastián Dávalos (windfall profits for the purchase and selling of lands with a bank loan granted to an insolvent company), President Bachelet herself mandated the creation of an institutional framework to efficiently and strictly regulate the relations between the public and private sphere, between politics and business, with a particular emphasis on toughening the current Lobby bill.

This project was originally considered as innovative. However, we now know its limitations and weaknesses that the Government needs to address.

In short, the lobbying activity is not only legitimate in terms of citizens' democratic rights, but can also be a plural manifestation of the interests inherent to any complex society. That is why contributing to democratic deliberation now makes sense.

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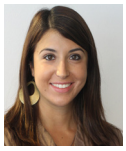

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