



POR EL CUIDADO Y BUEN USO
DE LOS RECURSOS PÚBLICOS

OFFICE OF THE COMPTROLLER GENERAL AUDIT DIVISION

The Foundations Case

Introduction

The Chilean State, like in other countries in the world, does not have the sufficient capacity or structure to provide the full and necessary services which are demanded by the citizens, reason it turns to the private sector and delivers the required resources to non-profit institutions for them to contribute to this important task.

The allocation and use of the assigned resources was the object of review by the Chilean SAI during 2023 and 2024, noting various facts that may imply cases of corruption throughout the national territory.

The Office of the Comptroller and its oversight role of resources transferred to private entities

In fact, the Chilean SAI performed a national programme that considered twenty-nine audits to public entities of the housing sector, which transferred resources to private entities for implementing initiatives in slums or precarious settlements, and different observations were made, such as:

- Selection of implementing partners with no bidding process.
- Unjustified costs of projects.
- Lack of securities for the agreements compliance.
- The people hired by the foundations work in the same public facilities in which they were hired.
- Lack of experience of the private organizations in the entrusted initiatives.
- Lack of abstention when there were conflicts of interest.
- Fractioning of projects with the same objective.
- Lack of objective reporting mechanisms for the background required in the application process and for the assignment of an evaluation score, resulting in the allocation of resources to foundations with pending accountabilities.
- Some other inconsistencies were detected such as: differing economical activities in the Internal Revenue Service, and differing objectives between those in the statutes of the foundations and the ones presented in the project.
- About the agreements, general instructions were detected on the documents entered with missing specifications of the projects. It was also identified the omission of a reimbursement clause, lack of workplan requirements, as well as the specifications for the selection of supervisors for the funded projects. Lack of controls in the progress of investment and the activities execution, lack of reportability and traceability in the transfer process, and lack of control in the progress reports established in the agreements and undelivered reports to the Regional Government by the private institutions.
- As to accountability, it was evidenced the lack of proof of income of the transfers performed. In addition, there were pending and not rendered accountabilities, and lack of accountability of the resources returned to the Regional Government by the agreement with the private institution.



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Furthermore, it was observed degrees of discretion in the budgetary modifications by posting resources under the investment transfer modality in the definition of the projects that are funded in this manner, as well as in the use of “direct allocation” and “nomination allocation” to private legal persons, in addition to not all programmes and projects required a social profitability assessment (RS).

From the transactions perspective, it was observed a traceability problem of the resources delivered to third parties. This is depicted by the case of a transfer made from a Regional Government to a municipality at the year-end. By the non-existence of a possibility to spend those resources within the period these are accounted as extrabudgetary resources. The Major then is not required to have the approval of the Municipal Council for their use. This situation is aggravated by the non-existence of an obligation to keep these resources in separate bank accounts.

Then, there is a need for strengthening the internal control and audit mechanisms in the different entities, as well as the evaluation of projects or the programmes that require the social profitability assessment (RS)

In addition to the above, it was detected the absence of transparency rules, conflicts of interest and of probity related to those receiving public resources.

On the other hand, under the modality of transfers to third parties, specially to private parties, the resources are delivered to a legal person who may have organizational weaknesses (e.g., No control of bank accounts, bookkeeping, administrative capacity and that sometimes “outsources”). These are also not obliged to comply with established control mechanisms for the public sector, for example, they are not compelled to keep an information system that records all the transfers or other complementary systems or databases where it is possible to contrast information. In this regard, it is seen an absence of regulations to which contrast those resolutions submitted to a control of legality process or that establish control actions that serve as a standard to perform the audits.

Proposal for improvements

Pursuant to the work performed, the CGR made a series of proposals trending to bridge the information gaps, degrees of discretion and that enhance the oversight function during 2023.

Within the legal and regulatory area, it was proposed during 2023 to suppress the expressions “flow of resources to private institutions” of article 23 of Law No. 21.516 of Budgets of Public Sector, as well as encouraging the issuance of an instructive for its general application on behalf of the Treasury Ministry regarding the content of transfer agreements, including the accountability obligation through the SISREC platform of the CGR and its requirements that the agreements have certain securities starting from established amounts.

Likewise, it was emphasized the application of the probity statute, which, at that time, was the law that modified the procurement law. It was also proposed to develop a legal framework for the State’s transfers.



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From a management and administrative perspective, it was proposed to establish the obligation of accountability through the SISREC Platform (Electronic System for Accountability) or through the electronic platform validated by the Office of the Comptroller General; to require that the agreements have certain securities starting from established transferred amounts; to strengthen the recording of Law No. 19.862 “Registry of Legal Persons Receiving Public Resources”; and finally, to design an information system, which details all the transfer of resources made by the State to private entities.

Conclusion

The situations described above related with transfers of public resources to foundations have revealed issues in the structure of the State regarding the addressal of public needs by delegating the fulfilment of such duties to private entities, which do not always comply with the minimum standards to achieve the goals set by the authorities.

In this regard, the importance of the several public entities executing programmes and projects under the transfer modality has been revealed. The role played by these public services shows breaches in the management and permanent control that these should keep in order to decrease the level of risk of misuse of resources for purposes different from those agreed with the private sector which, by the way, must strengthen the management process to ensure the achievement of goals of such initiatives, which are aimed to the communities.

In this context, it is revealed the importance of the Office of the General Comptroller as a Supreme Audit Institution as an autonomous and impartial entity, which has the capacity to undertake an oversight task at a national and coordinated level and that detects and alerts financial and regulatory violations being duplicated across the country to develop a national vision of what happened in the case of transfers and to inform of eventual crimes to the competent authorities (Public Prosecutor’s Office) to ascertain the citizens of the work performed.

The lessons and challenges are focused on introducing amendments to the State, both institutional and managerial, by assigning a more present role to public entities, and with regards to management, raising the control standards of public entities and the requirements to private institutions. In this respect, the Chilean State has the opportunity to provide the CGR with new legal, budgetary and technological tools so that it enhances its oversight mechanisms.