

Evidence-Based Governance in the Electronic Age

Case Study The Management of Financial Records in Chile

This case study has been prepared by the International Records Management Trust and does not reflect the views of the World Bank nor the Government of Chile.



*A World Bank/International Records Management Trust
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INTRODUCTION

- 1 *Evidence-Based Governance in the Electronic Age* is a three-year project delivered in partnership between the World Bank and the International Records Management Trust. It involves coordinating a global network of institutions and organisations to facilitate the modernisation of information and records systems.
- 2 Records, and the information they contain, are a valuable asset that must be managed and protected. Records provide the essential evidence that a particular action or transaction took place or that a particular decision was made. Records support all business functions and are critical to the assessment of policies and programmes, and to the analysis of individual and organisational performance. Without reliable records, government cannot administer justice and cannot manage the state's resources, its revenue or its civil service. It cannot deliver services such as education and health care. Without accurate and reliable records, and effective systems to manage them, governments cannot be held accountable for their decisions and actions, and the rights and obligations of citizens and corporate bodies cannot be upheld.
- 3 New technologies provide great potential to improve services and efficiency, but the evidence base upon which governments depend must continue to be protected and preserved. For initiatives such as e-government and e-commerce to be successful, governments must have access to information that possesses certain crucial characteristics: the information must be available, accurate, relevant, complete, authoritative, authentic and secure.
- 4 The aim of the *Evidence-Based Governance* project is to make records management a cornerstone of the global development agenda. The challenge is to rebuild and modernise information and records management systems in parallel with complementary measures to improve the broader environment for public sector management. The project represents a major opportunity to integrate records management into global strategies for good governance, economic development and poverty reduction.
- 5 During the first phase of the project, studies were carried out within the World Bank and in a range of countries to explore the requirements for managing personnel, financial and judicial records in a hybrid, electronic/paper environment. This report is one of thirteen case studies that illustrate the issues involved. The studies have been supplemented by findings derived by a global discussion forum involving senior officials and records and archives professionals. The knowledge gathered through these means is providing the basis for the development of assessment tools to measure the quality of records and information systems in relation to clearly defined functional requirements and benchmarks. The project will develop tools for use in the three areas of study: personnel, financial and judicial records systems. Ultimately, the information gathered will also help to define the requirements for global capacity building for managing of electronic records.

- 6 The case studies have been chosen to represent differences in geographic regions, administrative structures and resource environments. The countries chosen to examine the management of financial records were Nigeria, Tanzania, Chile and Vietnam. These countries give a broad geographical spread and represent different degrees of development in financial reform and the use of electronic records.

Terms of Reference and Methodology

- 7 This report covers a visit to Chile by Ray Bennett from 27 to 31 May 2002, to examine the management of financial records and the implementation of the Public Expenditure Management Project (PEMP) and to test a prototype of the assessment tool.
- 8 The report is based on observations made and interviews conducted during the visit, as well as on a review of relevant laws and reports relating to financial records and the PEMP. This report does not cover the management of financial records by the municipal and regional government.
- 9 The case study represents a snapshot in time. The observations it contains were current as of May 2002. Since then, new developments and improvements have taken place on a regular, basis and therefore the case study does not represent the situation at present. It is hoped that the findings in this report will highlight issues that will continue to arise in many other situations.

Acknowledgements

- 10 Grateful thanks are extended to Mr Roberto Cerri, Project Co-ordinator, SIGFE (Sistema Integrada de Gestion Financiera del Estado) Project, Ministry of Finance, and Mrs M Eugenia Barientos, Director of the National Archives, for facilitating this visit. Appreciation is also expressed to Mr Antonio Alubar, Finance Consultant, SIGFE Project, who provided assistance with translation. Finally, sincere thanks are expressed to all the officials who kindly made themselves available and provided much valuable information during the visit. A full list of people consulted is at Appendix A.

EXECUTIVE SUMMARY

- 11 Chile, which is a multiparty democracy, has pursued economic reforms and a programme of solid fiscal management since the 1990s. These have encouraged a favourable investment climate in Chile and improved the resilience of the economy. Despite these successes, there has remained a need to reform public sector expenditure management in order to introduce further efficiencies in the face of competitive pressures and the country's susceptibility to external economic shocks. The World Bank as part of its Country Assistance Strategy for Chile is funding the Public Expenditure Management Project which addresses the need for an integrated financial management system, budget reforms, an upgraded civil service management

information system and strengthened capacity in line agencies for financial and human resource management. (paras 23 to 31, 42 to 48, Appendix E)

- 12 In the Government of Chile there is no clear management responsibility for financial records. The National Archives has the right to inspect and supervise all public sector archives, including those for financial records, but in practice this does not occur frequently or systematically. (paras 35 to 37)
- 13 The Controller General's Office is responsible for establishing accounting principles and procedures and for the audit of all public accounts of the nation. The Controller General issued a circular in 1981 covering the disposal of public documents, but this does not cover electronic documents. Comments from the National Archives, however, suggest that financial records are kept far longer than specified. The Controller General's staff stated that, in general, financial record keeping was good, with few problems in locating and verifying documents in support of the accounts. (paras 38 to 41, Appendices B and C)
- 14 The Public Expenditure Management Project (PEMP) aims to improve efficiency, transparency and cost-effectiveness by establishing a modern and integrated financial management and resource allocation system that complements e-government, decentralisation and civil service reforms. The SIGFE (*Sistema Integrada de Gestion Financiera del Estado*) project is developing a modern integrated financial management system. The system is progressing well, but there are issues that need to be considered further, including the need to ensure that there is an audit trail through the system. (paras 42 to 48, Appendix E)
- 15 The *Archivos Histórico y General de Gobierno*, which became known as the National Archives, was established in 1927. The *Archivo Regional de la Araucaria* was established in 1997 as the first regional archive in the country. Archival education remains limited in Chile: there is as yet no university-level programme specifically for archivists. (paras 49 to 53)
- 16 Under current archival law, all financial records of the Government of Chile should be transferred to the National Archives once they are five years old. In reality, departments transfer records in an irregular and unsystematic way. This situation has arisen partly because the National Archives is regarded as an historical archive rather than a depository for all public documents. Nevertheless, since 1994 the National Archives has been working with a number of ministries to achieve greater uniformity in the management of records. (paras 54 to 55, Appendix C)
- 17 To establish its record-keeping role within the administration, the National Archives has created a new administrative unit responsible for a National Archival Network (NAN). It aims to develop new systems and procedures to ensure the preservation of archival documents and to create a distributed information network linking the National Archives and ministerial archives. The Archives plans to establish standards for preserving, classifying and describing archival documents. (paras 56 to 59, Appendix D)
- 18 The National Archives is aware that NAN will require a new legislative framework to give it legal authority. The Director has acknowledged that the current legal

framework is amongst the oldest in Latin America and in need of revision. The Archives also recognises a need to develop new regulations covering the classes of documents that must be preserved. (paras 60 to 63)

- 19 Electronic government is a key area for modernising the state. Chile has been a pioneer in this area, in part because of its reforms in the telecommunications sector and improved competitiveness in the local IT industry. There is currently a gap in legislation and jurisprudence concerning the probative value or legal admissibility of electronic documents which needs to be addressed. (paras 64 to 72, Appendices F and G)
- 20 Equally pressing is the need for an electronic records management and preservation plan. Although the Government wishes to move toward a paperless environment, as yet there has been no attention to how electronic archives will be managed and preserved over time. Unless such a plan is in place, the Government is unlikely to be able to ensure the integrity and long-term accessibility of records that it creates and keeps in electronic form. This could lead to administrative chaos in the future. (paras 73 to 75)
- 21 The National Archives has not played a key role in the move toward electronic Government, but it could be established as a pivotal agency for developing and implementing electronic records management and preservation policy. Other government agencies will also be critical to this process. If the National Archives is to fulfil a policy-making role effectively, its legislative mandate and capacity to manage electronic records will need to be strengthened. (paras 76 to 81)
- 22 In the current reforming and modernising agenda, the management of public records, and financial records in particular, has largely been overlooked. Some key issues need to be addressed to strengthen this area, particularly the need for new legislation and regulations, the need to build capacity in the National Archives and the need to designate an agency with responsibility for developing and implementing an electronic records management and preservation plan. (paras 82 to 90)

BACKGROUND INFORMATION

The Economy¹

- 23 Chile is located south of Peru and west of Argentina and has a surface area of 757 thousand square kilometres. Its population is approximately 15.2 million people with a growth rate of 1.3% per annum. The country's ethnic composition is 95% European or European-India; 3% Indian and 2% other ethnic groups. Twenty-one percent of the population is below the national poverty line, with gross national income per capita resting at \$US 4,950 and gross domestic product at \$US 70.5 billion. The official language is Spanish.
- 24 Solid fiscal management and reforms initiatives in the 1990s encouraged a favourable

¹ World Bank website www.worldbank.org and Public Expenditure Management Project (PEMP) Project Appraisal Document on a Proposed Loan to The Republic of Chile, Report No: 23380 CH, 22 January 2002

investment climate and improved the resilience of the economy. Trade liberalisation triggered significant export diversification into forestry, fishing, wines, fruits and other agro-based products. As a result, Chile decreased its dependence on copper and grew at an unprecedented 6.8% per year (GDP) until 1999, when it was affected by the East Asian crisis. Since then, the country has avoided recession and restored growth, though at lower levels (5.4% in 2000 and 3.1% in 2001).

- 25 The Government has pursued economic reforms with objectives such as privatisation, deregulation, trade liberalisation and tighter fiscal and monetary policies. It has improved fiscal management through tight controls on spending and reforms in revenue policy and administration. As a result Chile has had budget surpluses in nine of the last ten years. Public sector employment has been kept proportionately low. The Government also has managed to achieve significant innovations in the areas of health and education service delivery, pensions and social security, and e-government. Chile ranks positively in international surveys of business competitiveness and in the level of corruption.
- 26 Despite these successes, there has remained a need to reform public sector expenditure management in order to introduce further efficiencies in the face of competitive pressures and the country's susceptibility to external economic shocks. Line agencies are weak in financial and human resource management and are not acting as full partners in planning and executing their operations. A lack of adequate and timely information and a limited planning and evaluation capacity undermine service delivery, especially measured against the standards of Chile's global competitors. Specific problems include:
- the lack of a fully modern integrated financial system
 - limited medium-term financial planning
 - weak human resources management information system
 - weak financial and human resources units in public agencies.
- 27 The World Bank's Country Assistance Strategy for Chile targets poverty reduction as its primary goal. To this end the Bank is supporting selective public sector modernisation efforts, including modernising the state and the legal, administrative and institutional framework; supporting full implementation of social and economic development programmes and reforms; and building an integrated framework for strengthening municipal and regional government.

Government Structure

- 28 Chile is governed under the constitution of 1981 as amended in 1989. It is a multiparty democracy with a directly elected president who serves a six-year term and has a cabinet of 20 ministers. Below the level of the president, the executive branch of government consists of a number of ministries. The administrative head of each ministry is the under secretary.

- 29 The legislative branch of government consists of the bicameral National Congress with a 48-seat senate of both elected and appointed members and a 120-seat elected chamber of deputies.
- 30 For the purpose of local administration, Chile is divided into 13 regions (12 numbered regions and the Santiago Metropolitan region). Regions are subdivided into fifty-one provinces, each headed by a governor appointed by the President of the Republic. Provinces are further divided into 300 municipalities, each headed by a mayor appointed by the municipal council (in towns with fewer than 10,000 inhabitants) or by the President (in towns with more than 10,000 inhabitants).
- 31 This includes developing a Public Expenditure Management Project to address the need for an integrated financial management system, budget reforms, upgrading a civil service management information system and strengthening line agencies' capacity for financial and human resource management. This Project, discussed in paragraphs 45 to 49, is the first of up to six projected investment operations in Chile under the CAS for Chile, representing total lending of \$250-300 million through to 2006.

MANAGEMENT OF FINANCIAL RECORDS

- 32 Many countries around the world are in the process of strengthening their democratic institutions. More generally, public awareness of widespread corruption on virtually every continent has focused attention on the need for institution building, especially the need for greater financial accountability.
- 33 Well-maintained financial records help accountants to prepare meaningful financial reports for managing resources and for communicating their use to the public. They provide a basis for independent auditors to give the public assurance that financial reports are credible. Well maintained financial records, reports and audits thus constitute a bridge between the politician, the bureaucracy and the citizen that must exist to provide good financial management, information and accountability in a democratic state.
- 34 Public sector accountability, particularly financial accountability, is also a high priority on the bilateral and multilateral donors' aid agenda. Donor agencies are *de facto* stakeholders in financial management reforms through the provision of funding in the form of grants or loans for many public sector projects. However, donor and development agencies are just beginning to recognise the need to strengthen financial records management systems as part of wider institutional capacity building and policy reforms.
- 35 In Chile, there is no clear management responsibility for financial records. The National Archives has the right to inspect and supervise all public sector archives, including those for financial records, but in practice this does not occur frequently or systematically. Along with other public records, financial records older than five years should, by law, be deposited in the National Archives (the only exceptions are certain Defence and Ministry of Foreign Affairs' records).

- 36 Within the National Archives, the Archive of Public Administration has responsibility for government records, including financial records. However, none of the staff of the Archives specialises in financial records or has specific responsibility for them. The Archives is not aware of any law or regulation governing exactly which financial documents must be maintained, or for how long.
- 37 The National Archives has not specified any specific control systems or procedures, such as retention and disposal schedules. Each ministry has its own archive where financial and other records are kept. The National Archives states that the public institutions and ministries destroy records according to their own policies 'unofficially'. This situation will become critical in an electronic environment. The role of the National Archive is discussed in greater detail in paragraphs 49 to 63.
- 38 The Controller General's Office (Controlatoria General de la Republica) is the other key agency involved in managing financial records. The Controller General is responsible for auditing all the accounts of public bodies: approximately 200 central government services and public universities, 19 public enterprises and 341 local authorities. The Controller General receives financial reports from each publicly funded body and aggregates these into consolidated information for publication. His reports cover the budget, financial and accounting information. The Controller General is also responsible for establishing accounting principles and procedures, and for the technical supervision of the publicly accountable bodies.
- 39 The Controller General issued a circular 1981 (28071) covering the Disposal of Public Documents (Appendix C). This circular does not cover electronic records. The periods for disposal include:
- documents of public debt are destroyed two years after audit by the Controller General
 - documents relating to financial accounts are destroyed three years after audit by the Controller General
 - other documents from ministries are transferred to the National Archives after five years
 - documents relating to tax are governed by special rules issued under tax regulations.
- 40 Comments received from National Archives staff and observations made during visits to government departments suggest that financial records are kept far longer than is required by these disposal instructions.
- 41 The Controller General's staff stated that, in general, record keeping was good and that during audit there were few problems in locating and verifying documents in support of the accounts.

PUBLIC EXPENDITURE MANAGEMENT PROJECT (PEMP)

- 42 In February 2002, the World Bank approved a \$23.23 million loan to support the Government of Chile's efforts to modernise management of its public sector finances. The objective is to improve efficiency, transparency and cost-effectiveness by establishing a modern and integrated financial management and resource allocation system that complements e-government, decentralisation and civil service reforms. The project will be implemented in stages. The first stage is aimed at improving financial management. This will have major implications for financial records management. The system is to be expanded to become an integrated financial and personnel management system. A personnel module is being developed and should be running in several pilot ministries by July 2003. For further information on the project see Appendix E.
- 43 A modern integrated financial information management system (FMIS) is to be developed through consulting services, institutional capacity building of financial management units, staff training and information technology investments. The system to be known as SIGFE (*Sistema Integrada de Gestion Financiera del Estado*) will be created as a modular design integrated into a single homogeneous system for the entire public sector.
- 44 In preparation for the FMIS, a conceptual module and a basic operational prototype have been developed to test the main functionality of the system and to validate its design with stakeholders before launching full development efforts. A web-based budget formulation sub-system has also been successfully developed as a tool to help institutions in preparing the budget for financial year 2002.
- 45 The project will introduce modules as they become available in a pilot group of five institutions, beginning with the budgeting and accounting modules in early 2002. The other main modules, including treasury and financial planning, will be developed through mid-2002, and the complete system being available in early 2003. After testing the first version in the five pilot institutions, the system is to be expanded to twenty more institutions during 2003 and to the rest of the public sector during 2004/2005.
- 46 The system has now been introduced into the Budget Directorate, the Controller General's Office and the Ministries of Health, Housing and Telecommunication. The roll out to other ministries is imminent.
- 47 The SIGFE project team acknowledged that in the design of the system not much attention has been given to keeping manual records. They anticipate that the need for manual records (such as input forms) will diminish considerably when the new system is introduced. The type of document required and its unique identity number will be generated automatically by the system.

48 The technical component module, relating to document management and electronic document tracking, is planned for April 2003. It will be important during this phase to ensure that there is an audit trail through the system; the project team acknowledged that this aspect will need attention. Given the fact that legal and procedural provisions are not in place for electronic records, record keeping issues, paper and electronic, will need to be addressed.

THE ROLE OF THE NATIONAL ARCHIVES

49 The National Archives is the government agency with statutory responsibility for official records, whatever their form. The first initiative to found a National Archives was a proposal to create an Office of Statistics and National Archives under the Ministry of the Interior, submitted to the Congress in 1844. With the reorganisation of the ministries in 1887, a law was passed to create the *Archivo General de Gobierno*, under the Ministry of Justice. This was followed, in 1925, with the creation of the *Archivo Histórico Nacional*. Following this, by a decree in 1927, the Government established the *Archivos Histórico y General de Gobierno*, which became known as the National Archives.

50 The Directorate of Libraries, Archives and Museums (*Dirección de Bibliotecas, Archivos y Museos* DIBAM) was established in 1929 as an independent legal entity responsible for the administration of the National Archives. DIBAM itself is part of the Ministry of Education. Draft legislation, on the agenda of Congress in May 2002, proposes a Ministry of Culture, under which DIBAM would eventually be placed.

51 Since 1994, the National Archives, has had four main departments:

- *Archivo Nacional Histórico* – responsible for acquisition, selection, arrangement, description, preservation and access to historical documents from the 15th to the 19th centuries
- *Archivo Nacional Administrativo* – responsible for receiving, controlling and making accessible administrative and legal documentation
- *Servicio Nacional de Conservación y Restauración* – responsible for the conservation and restoration of archival documents.

52 The *Archivo Regional de la Araucaria*, the first regional archive in the country, was established in 1997 in the context of efforts to decentralise the Government of Chile.

53 A total of 54 staff work in these archival departments and repositories. Archival education remains limited in Chile. There is as yet no university-level programme specifically for archivists, although the University of Diego Portales offers history with a specialty in archives administration. Most National Archives staff study in Spain or France or undertake three-month attachments in Argentina or Peru.

54 The powers and responsibilities of the National Archives are set out in a Presidential Decree (No 5200) of 1929. This decree stipulates that ministries must send all documents older than five years to the National Archives. In practice, the decree has

never been fully implemented and ministries transfer records only sporadically.

- 55 The poor record of transfers from ministries results in part from the fact that, over time, the National Archives has come to be viewed only as an historical archive. Its influence over the administrative archives in the ministries has diminished. The situation is complicated further by the fact that the archives staff tend to be lower-level officers with no professional training, while those at higher levels are political appointees. Staff in ministerial archives also change continually, which makes it difficult for the National Archives to achieve lasting results with any of its training initiatives. Nevertheless, since 1994 the National Archives has been working with a number of ministries – including Education, Foreign Affairs, Public Property, the Interior and Defence – to achieve greater uniformity in the management of records.
- 56 To establish its record-keeping role within the administration, the National Archives has created a new administrative unit responsible for a National Archival Network (NAN), which is intended to be both a technological and an administrative network. See Appendix D for more information.
- 57 The purpose is twofold. Firstly, the network aims to develop new systems and procedures to ensure the preservation of archival documents. This new system may ensure that documents are transferred to the National Archives more regularly or, because space is an issue for the National Archives, it may lead to the establishment of standards to ensure that documents are properly maintained within the ministerial archives themselves. Secondly, it aims to develop a distributed information network linking the National Archives and all ministerial archives.
- 58 The National Archives is in the process of developing a plan for the NAN, which must be approved by the General Council of DIBAM (*Dirección de Bibliotecas, Archivos y Museos*). This will involve gathering information about archival documents, first in DIBAM and then in ministerial archives thus building a network of support. The Archives wishes to win the support of the under secretaries of the ministries who have overall responsibility for the ministerial archives.
- 59 Working with this network of individuals and other units in DIBAM, the National Archives plans to establish standards for preserving, classifying and describing archival documents.
- 60 The Archives is aware that the NAN will require a new legislative framework to give it legal authority. The Director acknowledges that the current legal framework of the National Archives is amongst the oldest in Latin America and in need of a major revision.
- 61 The National Archives also recognises a need to develop new regulations to give more specific direction to ministries about the categories of records that must be preserved or should be destroyed. At present, there is no systematic preservation or destruction. The current law specifies that records older than five years must be deposited in the National Archives, but the Archives does not have the capacity to receive the volume of records that would be expected if all ministries were to begin transferring documents regularly.

- 62 The Archives is fully aware that not all documents warrant preservation, but there are no criteria to guide ministries on what to preserve. Similarly, the destruction of records does not take place systematically because such destruction requires a presidential decree. In the past, two interdisciplinary commissions have been formed to decide on destruction but, as no consensus was reached, no official destruction has ever been carried out. Unofficial destruction of records has been a way of circumventing this cumbersome and outdated process.
- 63 Until a new legislative and regulatory framework is in place, it will be difficult to ensure that valuable records are protected and valueless record destroyed. The legislative agenda of Congress is very full at present, and passage of new archival legislation is unlikely to go forward until the new Ministry of Culture is established.

ELECTRONIC RECORDS MANAGEMENT

- 64 Electronic government, which is a key focus area for modernisation, presents substantial challenges for the management of financial and other official records. Chile has been a pioneer in electronic government, in part as a result of reforms in the telecommunications sector and improved competitiveness in the local IT industry. The SIGFE team will need to take account of electronic records issues in the next stages of system design.
- 65 The Government issued, in May 2001, a directive on electronic government (see Appendix F). The emphasis is on three broad objectives:
- *Improved service to citizens* – The goals include progressively introducing the use of information and communication technologies (ICTs) in the delivery of services to citizens; promoting access to services and government information to citizens through the use of ICTs; using ICTs to deliver services in a manner that better serves citizen needs; and providing services and information in a manner that assures privacy and security.
 - *Improved management of internal processes between government services.* The goals include improving of the operational efficiency of government services through the use ICTs; instituting programmes to teach civil servants about and train them in the use of ICT; progressively connecting all government departments and agencies through the state intranet managed by the Ministry of the Interior; establishing indicators to measure the government's effectiveness in realising electronic government objectives; and progressively integrating various systems on diverse platforms.
 - *Improved participation of citizens in democratic processes* – The goals include promoting a more transparent government through the use of ICT and using the Internet and the Web to deliver information to citizens.
- 66 The Government has already taken concrete steps to realise its vision for electronic government. It has been working since 1999, through the Ministry of the Interior, on developing of a state-wide Intranet system to link all government departments. It has

also established a public/private partnership to support this objective. The network itself is leased from and maintained by the private sector. The Ministry of the Interior sets policy on network structure, monitors network operation and use, and provides security. Monitoring network operation, use and security takes place at the Ministry of the Interior's data centre, which has been in operation since the end of 2000.

- 67 The Government is using state-of-the-art off-the-shelf network technology at the data centre. This includes Cisco Computer Associates network technology, for which the data centre has become a beta test site. The network conforms to level four ISO networking standards. Distributed data warehousing technology is being used to avoid the risk of data loss. Backup data centres also have been established at two different sites, and 63 operational units are connected through the government Intranet.
- 68 Another initiative to move the electronic government agenda forward has been the recent passage of a new law concerning electronic documents and the certification of electronic signatures. The National Archives, which has statutory responsibility for government records, paper and electronic, was not consulted on the development of this legislation. A translation of this legislation, the Electronic Signatures Act, is at Appendix G.
- 69 The Electronic Signatures Act establishes that documents and contracts bearing a digital signature will have the same validity as those bearing a physical signature, with certain exceptions, such as where it is explicitly required by law that there should be a physical signature, as in contractual documents and records concerning the rights of the family. The Act gives all government agencies the authority to execute official documents and contracts using electronic signatures.
- 70 The Government plans to use a public/private key infrastructure to guarantee the validity of electronic signatures. To that end, the new legislation authorises the establishment of registrars of electronic signatures and outlines their duties and powers. One of the duties of these registrars will be to maintain a register of public/private keys and of all documents executed using an electronic signature.
- 71 The Information Division of the Ministry of the Interior is to act for the Government as one of the registrars of electronic signatures. The Act stipulates that all certifications of electronic signatures must contain a unique certification code, data identifying the registrar, data identifying the signatory and identification of the place of execution. Under the new law there also will be a new government authority to accredit all registrars of electronic signatures and oversee their operations. There will need to be a system of managing these codes, which will have to be changed regularly over time. The Act also specifies the rights and responsibilities of users of electronic signatures. The Government is in the process of developing regulations under the Act.
- 72 Although the new Electronic Signatures Act serves to advance the Government's plans to move toward electronic government, other aspects of the country's legal framework remain to be addressed. There is currently a gap in legislation and jurisprudence concerning the probative value or legal admissibility of electronic documents. At present, electronic records, with the exception of customs records,

have no probative value. This gap needs to be filled in order for the Government to achieve its objectives with respect to electronic government.

- 73 Equally pressing is the need for an electronic records management and preservation strategy, for with the drive toward electronic government and the increased use of ICT, the Government handles more of its business electronically and creates more electronic records every day. For example, at present, the Under Secretary for the Ministry of the Interior physically signs all immigration papers, but with passage of the Electronic Signatures Act, electronic signatures will be used in future. Similarly, the Treasury's personnel division indicated that, by the end of 2002, it hopes to begin producing and executing contracts and resolutions using its computerised personnel management system and to eliminate the paper record.
- 74 Although the Government plans to move toward a paperless work environment, no attention has been given to how electronic records will be managed and preserved over time. This could lead to future administrative chaos, as many documents that will be required for lengthy periods may not be accessible or reliable if they are not managed systematically. For example, unless electronic resolutions are managed and preserved effectively, there will be no way to verify the career of civil servants, which may create severe problems for both the Government and for retirement-age employees. Likewise, contractual relations could deteriorate into disorder if electronic versions of employment contracts cannot be retrieved or verified.
- 75 The rapid move toward electronic government and the gravity of the consequences of failing to manage electronic documents means there is an urgent need to develop and implement a government-wide electronic records management and preservation plan.
- 76 Despite the fact that the National Archives has the legal mandate to oversee the operation of all government archives, including electronic records, it is not viewed as having a pivotal policy and coordinating role in electronic government plans. Nevertheless, just as there is a pressing need to develop an electronic records management and preservation plan, there is a need to designate an agency with responsibility for driving the development of the plan and coordinating and monitoring its implementation. The Archives could fulfil this role and, indeed, it is willing to do so.
- 77 This is not to suggest that the Archives should undertake these tasks on its own. It will need to work with other government agencies to develop and implement an electronic records management and preservation plan. These agencies, for instance the Information Division of the Ministry of the Interior, seem quite willing to work with the National Archives to address the need for such a plan.
- 78 Even though the National Archives is a logical agency to spearhead an electronic records management and preservation plan, its legislative mandate will need to be strengthened to give it explicit authority in this area. At the same time its capacity will need to be strengthened. Its staff will need to develop greater expertise in electronic records issues, which will require special training. There may even be a need to recruit additional staff to focus on the development and implementation of the electronic records management and preservation plan both in the Archives and in the ministries.

- 79 At present, the Archives does not have the capacity to keep electronic records and it cannot afford the infrastructure required to do so. Steps will need to be taken either to provide the Archives with the infrastructure needed to preserve electronic archives in-house or to develop standards for preserving electronic archives within ministerial archives or through private sector companies.
- 80 The National Archives has, however, introduced a related initiative. In 2001 it launched a project that is expected to take five years to complete. This involves establishing an automated system at the National Archives for managing archival documents relating to land titles (50,000), court proceedings (120,000) and historical documents concerning the regions (600).
- 81 The digitised documents will be linked to a database to permit simultaneous retrieval of the metadata and a digitised image of the document. The project will aid in the long-term preservation of original archival documents and promote greater access. The National Archives will use the PowerDoc document management system as the platform for the database and image bank. Currently, the Archives has 180,000 metadata records in an existing database. These records will be imported into the new system using XML. The Archives is using an external service to digitise the historical documents, which will be linked to their respective catalogue records in the database as they are scanned. The project will require the archives to gain expertise in managing electronic records.

RECORDS AND INFORMATION MANAGEMENT KEY ISSUES

- 82 The Government has made significant progress toward reforms to its public sector. The Public Expenditure Management Project seeks to improve further the effectiveness, efficiency and transparency of public administration by establishing a modern and integrated financial management and resource allocation system. The management of public records, and financial records in particular, has not yet featured in this reform and modernising agenda.
- 83 The National Archives has been attempting to develop and improve the management of public records. For example, the establishment of the National Archival Network should help to create some consistency in the maintenance, retention and destruction of public records.
- 84 The legal framework for the management of public records has not kept pace with the reforms. The National Archives is the only body with statutory power to manage public records, but is regarded more as a repository for historic documents of national interest. As a result, financial and other records have accumulated in the archives of public bodies or have been destroyed without proper authority. New legislation is needed to define the responsibilities of public bodies and to clarify the role of the National Archives. The legal retention periods for financial records also need to be reviewed.
- 85 The law that stipulates that ministries must send documents older than five years of age to the National Archives is generally not observed. The National Archives has

not had sufficient resources to implement this requirement nor to inspect and supervise all public sector archives. It has acted as a passive receiver of public records from ministries without any control over their preservation or security while they are in the ministries. This situation does not yet appear to have caused significant problems in the financial area, but it could cause real difficulties, particularly in the electronic environment, if it is not resolved.

- 86 There is a need to develop new regulations to give more specific direction to ministries about the categories of financial and other records that must be preserved, how they should be kept and for how long. There is also a need to ensure that financial records with no ongoing value are destroyed on a regular basis. This needs to be monitored regularly.
- 87 The National Archives needs to develop expertise in managing financial records so that it can make a significant contribution to ensuring that they are well managed.
- 88 The SIGFE project is progressing well. However it is important to ensure during the current phase that there is an audit trail through the system and that the functional requirements for creating, maintaining, preserving and destroying financial records are addressed.
- 89 As Chile moves rapidly toward electronic government, it will need to ensure that electronic records are well managed. Otherwise, there will be a long term loss of efficiency with associated problems. An electronic records management and preservation plan that will guarantee long-term integrity and access to electronic records is needed in the immediate future.
- 90 The Government needs to designate an agency to lead the development and implementation of an electronic records management and preservation plan. The National Archives has not been seen as a lead agency in electronic government planning, but it is a logical agency to play this role because it has an existing legislative mandate to preserve government records. The National Archives will have to work in collaboration with other key agencies, such as the Ministry of the Interior, Information Technology Division. In addition, there is an urgent need to strengthen the legislative mandate of the National Archives and increase its capacity for management and preservation of electronic records if it is to play a successful coordinating role.

LIST OF PEOPLE CONSULTED

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Mr H Llanos, Chief of the Auditing Division
Mr P Ortiz, Chief of Accounting Division
Mr J Pacheco, Subdivision Chief, Auditing Division
Mr L Tellez, Deputy Chief, Accounting Division

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Mrs E Gonzalez, Systems Engineer
Mrs A Jolly, International Relations

Department of Education

Mr J Weinstein, Under Secretary of Education

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Ministry of the Interior

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Mr I Santander, Section Head, Personnel Department

GOVERNMENT ACCOUNTING SYSTEM

Deed VI extracted from the State Finance Administration Law No. 1.263, 1975

(Translated by the International Records Management Trust)

Article 63

The government accounting system is a combination of rules, principles and technical procedures for codifying, measuring, processing, controlling and reporting on all investments, expenditures, costs and other financial operations of the State.

Article 64

The government accounting system will be applicable to all organisations in the public sector. Furthermore, it will be standardised in terms of rules, principles, procedures, accounting plans and financial reports.

Article 65

The Controller General of the Republic will have overall responsibility for the finance of the Nation, establishing principles, rules and basic accounting procedures which the financial system of the Government will implement.

Article 66

The registers and primary statements of account, which the Controller General assesses and reports on in terms of budget operations, funds and assets, must be prepared by Accounting Units assigned to government agencies in accordance with the conditions for managing operational functions.

Article 67

The Accounting Unit of each institution will send to Headquarters the necessary reports and statements on the economic and financial progress of the different sections in the service. The Controller General will be responsible for the control and technical supervision of these Units with aim of maintaining coordination and uniformity within the system.

Article 68

Each public service (or government agency) will be required to prepare, on 31 December each year, a balance of income and expenditure and a statement of the corresponding financial situation. These must be sent to the Controller General and to the Budget Directorate.

Article 69

The Controller General will be required to prepared consolidated statements about:

- the budget situation
- the financial situation
- the assets situation.

In addition to the above, the Controller General may prepare other financial statements and/or analyses which may be required for more comprehensive information.

**EXTRACTS FROM CIRCULAR ON THE DISPOSAL OF DOCUMENTS
1981 (Circular No. 28071)**

(Translated by the International Records Management Trust)

Due to the numerous consultations on disposal of documents between different bodies and the Controller General, this circular summarises the principal legal requirements on disposal which are contained in previous communications.

I General documents

- 1 Authorisation to dispose of documents from the public service administration is with the approval of the President of the Republic in accordance with the Constitution.
- 2 Authorisation to dispose of documents from organisations with administrative autonomy is conferred by the appropriate headquarters. In this case the corresponding measure which is adopted to carry out the decree is exempt. This is without prejudice to special forms which are listed hereafter.

II Special Varieties

- 1 *Documents of public debt, specially valued or other effects*

In accordance with what is laid out in Article 14 with relation to Article 42 Law No 10.336, it is for the Controller General or his delegate to intervene in the destroying and burning of public debt documents, specially valued and other effects. Bonds, IOU's, bills of exchange, etc paid or cancelled must be disposed of formally, after TWO years from being examined by the accounting organisation.

- 2 *Books, documents and approved accounts of bills*

In Clause 1 of Article 21 the Controlling Office has power to inspect books, registers and related documents of accounts. It will carry out a review of accounts of anyone who manages savings or assets, or as indicated in Clause 1 of Article 7 it can ask for reports, data and statements from any government officer who is given power to investigate. According to Clause 2, books, documents and approved bills will be burnt after THREE YEARS except when the general administrator thinks they are of special interest to keep.

In other words all documents relating to financial accounts, council and in general according to Decree No 1263 of 1975, bills relative to the administration of savings and assets of the state must be looked after by respective bodies for a period of THREE YEARS from their final review, unless the chief administrator says they should be left longer or if internal auditors or the financial body object, in which case they must be kept to the end of the period of review or scrutiny.

3 *Documents from the ministries older than five years*

In Article 14°, No 1 of DFL No 5200 of 1929, the Ministry of Public Education prescribes that documents from different ministries which are FIVE YEARS old must be sent to the National Archives.

Also as laid out in No 3 and 4 of the said Article they must send documents like administration papers, government papers books of acts and council documents which are over 60 YEARS old.

It is recommended that the services and bodies, before sending documents to the Archives, check if related corresponding material resources, such as circulars, exist which oblige people to abstain from making consignments if they haven't got sufficient financial capacity.

It must be recorded that Decree No 721 of 1980 from the Ministry of Education created a selection committee for discarding documentation, setting down rules of elimination or shredding part or all of official documentation which should go to National Archives.

Non-official documentation which is not useful is subject to decree 577 of 1978 from the ex-Ministry of Land and Colonisation.

4 *Tax documents*

The incineration and disposal of tax documents is ruled by special terms set out in Article 17, Clause 2 and 97, No16 of the tax code or by instructions given by the internal tax office.

5 *Forecasts*

These come under the supervision of Social Security with its responsibility of technical control of public institutions and provision of National Health Service. They are covered by Articles 3 and 25 of Law No.16.395.

6 *Other special situations*

Apart from other varieties previously mentioned, other documents also exist which are covered by the legislation or other governing authorities.

They are the following:

- documents from the University of Chile
- documents emanating from Executive Committee of the Central Bank
- document from Customs Offices.

These come under Articles 14 and 21 of Law No 10.336.

III Recommendations for Documents Described

Despite previous directives, following review each body must take into consideration the recommendations listed below in each case.

1 *Documents relating to personnel*

It is convenient to hold documents indefinitely, unless individuals are registered in separate books or have their own cards, then you can dispose of documents which are five years old, saving only those whose information is not found on the relevant form.

2 *Documents of operational areas*

It is recommended to keep these for five years.

3 *Documents representing pending obligations (bonds)*

These must be kept until duties (bonds) are carried paid. In this way corresponding controlling bodies can carry out examination. The final destination of such documents is conditional on the results of examination.

4 *Financial documents*

Their transfer should be authorised by the superior legal body when it is able to give them their consideration.

5 *Documents from the Office of Public Works*

These should be kept for five years. Copies of duties or decisions made should be kept indefinitely to facilitate consultation.

6 *Other documents not marked*

These are lower priority and the original issuing body from must decide.

IV How to Calculate Timescale

This should be calculated from the date of effect of corresponding documents.

Except for the timescale of three years referred to in Clause 2 of Article 21 of Law No10.336 originating from Controller General's office, this counts as the express prescribed rule for the ultimate checking of the document in question.

V Destruction of Material

This is subject to the arrangements of Section V of Decree No 577 of 16 August 1978 issued by the Ministry of Lands and Colonisation, now the Ministry of National Property (Assets).

This body considers destroyed material which is no longer useful for service with regard to paper, archives, celluloid or any other element which is not useful.

For an adequate interpretation, to analyse the rule you must conclude that material constituted as official documents is governed by the rules laid out in Number 3 of paragraph II.

In any case, this depends if the Ministry of National Property (Assets) thinks the material meets the aforementioned criteria. On a regional level including the metropolitan region, the relevant ministry can dispose of destroyed material by means of public auction or public/private proposal, judging each case by its particular conditions, and whether it seems favourable for financial interest. Cases that qualify can be dealt with by the Regional Directorate, authorised to sell non-useful material, or the Services themselves can be authorised directly to sell the material under conditions laid out by the Act, or order their destruction or incineration if necessary.

Finally it is down to the regional authority of the Secretary of State to see that the strict conditions imposed for destruction of material are adhered to and that there are no misuses of conduct or malpractices in the handover of waste material. Confidential documents are treated differently from the previous stated ones.

In effect, the appropriate responsibility for this lies with the administrative authority of each service and how they check their individual disposal of documents.

VI Other Formalities

Destruction of all documents must be authorised according to the relevant decrees and regulations.

Oswaldo Iturriaga Ruiz
Controller General of the Republic

NATIONAL ARCHIVES OF CHILE AND THE NATIONAL ARCHIVAL NETWORK (NAN)

(Translated by the International Records Management Trust)

Legal Framework

The National Archives was created in 1927 through an amalgamation of the General Government Archive (1887) and the National Historical Archive (1925). As directed by the Administrative Department of Libraries, Archives and Museums, Order of Law Number DFL 5,200 of 1929 refers to the Archives in Articles 13-18 inclusive. Its organisation is detailed in Supreme Act Number 14,735 of 1962 of the Public Education Ministry. These standards are complemented by legal ruling Number 1,306 of 1997 which dictates the actual organic structure by making the Sub-Directorate of the Archives subordinate to the Administrative Department of Libraries, Archives and Museums.

Historical Profile

In general terms the National Archives is the only public institution in Chile whose mission is to collect and preserve records created by government and judicial organisations. The only way to ensure the preservation of this documentation in perpetuity is by legislation. In accordance with the layout of Article Number 14 of DFL 5,200 the documentation of the National Archives must be retained and deposited in the National Archives according to the following schedule:

- ministries, after five years
- municipal management and government, after 60 years
- court tribunals, public notaries and preservation, after 80 years with the exception of documents from Tarapacá, Antofagasta, Bisen and Magallanes where they must be transferred after 30 years.

The National Archives has both a historical and legal role in the national documentary heritage. However, legislation does not always govern the transfer of documentation from the government bodies that produce it. From a legal perspective, in many cases transfer of documentation to the National Archives is quite precarious. There is also no provision for the way in which records are created or maintained before transfer, which increases the risk to integrity and security. Some areas have very limited security. In particular, there is no legislation which pertains to access to records.

However, Article number 18 of the aforementioned DFL establishes that the curator of the National Archives will have power to visit ministry archives, governmental legal and management departments and tribunals to obtain uniformity in the arrangement and preservation of documents. The curator can delegate this power to employees of the National Archive as he so wishes.

Historically the National Archives has not had the financial capacity to carry out this function. It has acted as a passive receiver of documents which have been transferred to it without an opportunity for the Archives carry out the basic records management procedures which would ensure the integrity and security of the records.

There is evidence that the current legislation of the Archives is insufficient, fragmentary and anachronistic. For most of the 20th century, there were no regulations governing the protection of state documents, but these have now been brought in. However, following the promulgation of the regulations, the Executive Power experimented with the creation of a diversity of organisations. These organisations are largely unaware of the role of the National Archives with the result that their records are not being transferred in a complete and systematic way. The National Archives is seen as a body disconnected from its government records creators.

Apart from the case of ministries, the legal time acceptable for transference of documents has not been generally observed. Some archival records have been lost through fire, flood or simple misunderstanding of the law which protects public documents.

Current Situation

In accordance with the current government's programme to strengthen democracy and civil society, one of the main objectives that the National Archives has proposed for 2000-2006 is to constitute a National Archival Network to assist with the preservation, organisation and public access to the country's national heritage documents. New legislation on archives, 'Ley de Archivos', will help bring this into place.

Recent technologies now available for creating, controlling and preserving information have given rise to a new vision of the Archives as a primary agency for managing information, rather than just one of document preservation, whose main priority will be to guarantee user access to information. Now preservation is required not only to ensure access to information but also to guarantee transparency in public sector management.

The new vision for the National Archives is that it will be integrated with other systems in the management of public records. It will provide the link in this large network which unites the various institutions which administer public documents. Of vital importance is the role in which the National Archives can play in the exchange of information between institutions so that users know where to go and how to access records. The consolidation of a National Archival Network will give each institution the responsibility of guaranteeing the conservation of and access to national heritage documentation.

This recognition implies that the Sub Directorate of Archives will create an Office of National Archive Systems whose objective will be to administer and co-ordinate joint actions with other archives, to develop and implement standard procedures, and to prepare and disseminate technical guidelines.

Initially, the programme will be established in regional archives such as La Araucaria and Tarapacá, areas which are organised in a similar way but which currently have few standards following the model of the National Archives.

A pilot project will be established with other sections of the Sub Directorate of Archives to facilitate the organisation of an integrated system of information for the central archives of state ministries. This presupposes that it will be possible to adopt a common method of managing documents. The amount of training provided and the quality of record management in the ministries in previous years gives a different picture. It will be advisable to closely monitor the entire process, particularly in respect to records keeping in ministries which may have specialised human resources to bring to the project and who show a clear interest in improving their performance. It is suggested therefore that the pilot project should consider working with the Ministries of Education, Home Office and Public Works. Additionally the archives of the Ministry of Finance could be included, due to the Ministry's primary role in the financing of the implementation of electronic government, a project which constitutes one of the main challenges for the immediate future of the National Archives of Chile.

EXTRACT FROM A WORLD BANK PROJECT APPRAISAL DOCUMENT ON A PROPOSED LOAN TO THE REPUBLIC OF CHILE FOR A PUBLIC EXPENDITURE MANAGEMENT PROJECT January, 2002²

Component 1 - Financial Management Modernisation

This component will support a comprehensive effort to modernise and integrate the Government's financial management information system through related information technology and sub-system reform components.

Financial Management Information System (FMIS)

Under the PPF, the project developed a conceptual module and a basic operational prototype to test the main functionality of the final system, engage end-users in the process, and validate its design before launching full development efforts. The project has also supported, under the PPF the development of a budget formulation sub-system on the web as a tool to help institutions in formulating the FY 2002 budget. This was a substantial success as all but one ministry used this tool.

This sub-component would support the design, testing, and installation of a modern integrated financial management system through consulting services, institutional capacity building of financial management units, training of staff, and information technology investments. The core of the component would be the development of a unified information management system with the following characteristics: (i) modular design and integration into a single homogeneous system for the entire public sector, in accordance with the established budgetary and accounting standards, and the needs and management characteristics of the institutions; (ii) validation of transactions and instantaneous recording of data where and as the operations take place, avoiding the re-entry of data; (iii) extensive use of advanced means of data-communications (in particular, the Government Intranet, which will support on-line processing of transactions), as required by each of the project's components and institutions, with adequate security levels and audit trails; (iv) availability of special modules to aid in the analysis of alternative scenarios to help in decision-making during financial planning, budget formulation, and budget execution; (v) early identification of overlaps and potential areas of coordination among entities conducting independent activities with similar goals, and better targeting of beneficiaries through "virtual" institutions or services (multi-sectorial and/or multi-institutional programs); (vi) maximum transparency, through provision of information over the Internet, so that every citizen and authorised personnel, based on access levels, may navigate among the various public services, identifying programs, projects, products, inputs, performance levels, goals, and objectives of institutional budgets at the national, regional and sectorial levels; (vii) continuous evolution and improvement of the system, through, among

² The World Bank Report No: 23380 CH, Poverty Reduction and Economic Management, Argentina, Chile, and Uruguay Country Management Unit, Latin America and Caribbean Region

others, the establishment of authorisation levels and relations among users, implementation of security systems, the establishment of links to others sub-systems (such as procurement, public credit, fixed assets and inventory management, public investments and human resources) and development of additional functionality to respond to new information requirements or to support new means or forms of access to the information.

The overall development strategy is based on the now standard three-tier information systems model, brought about by the revolution caused by the Internet and Internet-related technologies, by which users will access the system through Web-like interfaces. The development and implementation technology is standard and well-proven. Given the tradition of different institutions of using diverse database management systems, and the reluctance of some of them to move towards a centralised database system, the applications developed will support multiple database management systems from different vendors, and a 'virtual' central database system will be created with standards-based exchange of information (such as through XML). The system will be adapted to individual agency needs, but will have the ability to produce consistent information at three major levels of aggregation: central, sectorial or ministerial, and institutional. The project will deploy modules as they become available in a pilot group of five institutions first, beginning with the budgeting and accounting modules in early 2002. Other main modules, on treasury and financial planning, among others, will be developed through mid-2002. The final version will also include auxiliary modules on mid-term programming and information reporting, among others, which will be available by early 2003. After the first version has been tested in the five pilot institutions, the system will be expanded to twenty more institutions during 2003 and to the rest of the public sector during 2004-2005.

Related Sub-Systems Reform

The IT systems will be developed simultaneously and in close collaboration with reforms in policies and norms and business process reengineering in accounting and cash management in order to maximise gains in efficiency, effectiveness, and transparency. In accounting the project will support: (i) review and updating of the accrual based public accounting system including the national Chart of Accounts to ensure its compliance with generally accepted international standards; (ii) improved recording of budget commitments, execution, and contingent liabilities; (iii) more explicit identification of cost centers, by program, project, and/or public services to facilitate results evaluation; (iv) development of financial performance indices and coefficients to better estimate and monitor general expenditures (overheads); and (v) improved accounting for state assets (property and real estate) laying the basis for applying capital charges to agencies for use of those assets.

In cash management, the project will support (i) improved policies and procedures for cash planning (involving better reporting on budget commitments and analysis of past cash flow); (ii) simplification and standardisation of payment processes; (iii) faster and more automatic reconciliation of bank accounts (comparing public accounts balances reported by banks with Treasury's information); (iv) strengthened guidelines and procedures for short term investments, debt, and seasonal cash surpluses in order to increase returns on government funds; and (v) improved reporting to senior officials to facilitate timely decision-making.

To complement the major progress being achieved in government procurement reform, the project will finance: (i) a compilation and review of the existing public procurement regulations (which vary among agencies) and comparative analysis with international best practices; and (ii) on the basis of that review, preparation of draft regulations to the new procurement law now before the Congress, if and when enacted.

**GOVERNMENT OF CHILE DIRECTIVE ON ELECTRONIC
GOVERNMENT, MAY 2001**

(Translated by the International Records Management Trust)

**From the President of the Republic
Santiago 11 May 2001**

I

In recent years, information and communication technology (ICT) has developed significantly. It has generated a strong impact in different fields of people's work and economic activity, it has aided daily life and has achieved better efficiency and effectiveness in the development of various types of processes.

The development of these technologies opens new and interesting channels, not only in the provision of public services but also to increase the quality and opportunity for citizens to access information.

Today we talk about 'Electronic Government'. This is the use of information and communication technology to enhance the means of administering better services and information offered to citizens, to heighten efficiency and effectiveness of public management and to increase substantially the clarity of the public sector and the participation of the citizens.

The Government has defined various actions to develop better relations between State and Citizen by supporting information technology. With this in mind, last October an agenda for Electronic Government was passed by the Committee of Ministers of the New Technologies of Information and Communication.

At the moment it is in a phase of development with a group of initiatives which are going in the right direction.

II

In reference to the above and with the object of defining clearly the essential components of Electronic Government, I have prepared what follows.

First, the fields in which Electronic Government will be developed will be the following:

- **Service to the Citizen.** In this aspect, new forms of relationships between the Government and citizen/business/investors will be established, taking into account the use of information and communication technology, permitting the State to provide efficient and effective services in an independent way.

- **Good Government.** New forms and internal processes in the administration of the state will be established and introduced which will allow for the integration of systems of the different services, to share resources and to facilitate the internal working of the same services.
- **Development of Democracy.** The creation of mechanisms will be considered using information and communication technology, permitting the citizen to play a more active role in the management of the country, opening new areas and forms of participation.

Second, the early stages of direction, which must govern all plans for Electronic Government, will be the following:

- **Transformation.** To promote the establishment, in the Administration of the State, of a new form of operation, creating and modifying substantially the present procedures and functions and the relationship with the citizen, using the introduction information and communication technology.
- **To be accessible by everyone.** It will result in ensuring that all citizens will have access to systems provided in electronic format by the state, and will take into account the geographic location (where it can be accessed) social (who can access it) and time (when it can be accessed) and ensuring that these measures are fair.
- **Easy to use.** It is proposed that the information technology used by the state be simple and easy to understand for citizens.
- **Greater Benefit.** It implies that the benefit to citizens ensures a service, through information and communication technology, which is superior to that which they will receive by obtaining it through public offices.
- **Security, privacy and registration.** The object is to make available adequate levels of security and standards with respect to people's privacy in retrieving information and in the transactions which are carried out.
- **Role of the private sector.** It sets out that the implementation of services, as well as the formation and training of civil servants and citizens, is reliant on the private sector. This will be done using competitive processes. However the ownership and use of the information will always be reserved for the State and the citizen who owns it.
- **Decentralisation.** It points out that the administration, maintenance and updating of information and communication technology will be the responsibility of each Service, except in those situations which involve the participation of various Services. In any case, joint operation inside the public sector must be assured.
- **Electronic competence.** It is laid out that the transactions can take place from anywhere in the country so the competence level of the Services must be adaptable to take this possibility into account.

Third, the development of Electronic Government must be the responsibility of the bodies of administration as an evolutionary process and this has four parts to it.

- **Presence.** In this part basic information about the Service is provided to the citizen.
- **Interaction.** Simple communications are covered between the Service and the citizen with the incorporation of plans for basic searches/retrieval.
- **Transaction.** It includes the provision for electronic transactions with the citizen by way of the Service, as an alternative to personal attention by that section of the organisation.
- **Transformation.** To consider changes in the way Services provide help to citizens by introducing applications which administer the delivery of help to the citizens electronically.

Fourth, the heads of the Services (as much in the processes of modernisation as well as strategies for the use of information and communication technology to implement the development of Electronic Government in the State), must follow the guidelines below, concentrating on three areas.

The first area is the relationship between the Services and the citizens. In this respect they must:

- Introduce progressively the use of information and communication technology in all processes associated with the presentation of help to the citizens, taking into account the interrelation which they have with other public divisions.
- Promote and advance the access citizens have to services and government information, by using information technology. To achieve this, they must create incentives for the citizens to use these methods without there being a reduction in the existing quality of the service.
- Provide citizens with a complete service to meet their needs, in the same way that they provide personal attention to the citizen. For this they must achieve integration with those who have the task of internal provision of services.
- Attend to citizens via unique windows, preferably, where possible, with these being developed and operated by private firms. The plans that are drawn up and the bidding processes that are called for must establish requirements regarding trustworthiness, security and speed, as well as indicators of quality of service to the citizen, usage of standards which assure compatibility, database protection, privacy online and management monitoring systems for citizens.
- Ensure that the use of electronic authorisation in the relationship between the citizen and the Services maintains a direct relationship with the level of security which each citizen requires or which the law establishes for the case.

The second area of work of the Electronic Government is the improvement of the management and internal processes and the relationship between Services. In this area, the Heads of Service must:

- Improve operational efficiency within the Services, using information and communication technology, simplifying and redesigning the processes that they implement.
- Develop continuous technology teaching programmes for all levels of service positions. These programmes must include teaching methodologies using information technology.
- Include an information system designed to support internal functions and service to citizens, as well as pay attention directly to information systems of other public departments.
- Ensure that the Services which have a previous role of internal provision tend towards making them accessible and in line with all Government departments which have a direct service to the citizen. Where appropriate, these should connect progressively with other institutions using the system of administration of the Home Office. Those institutions which are directly connected must be functioning fully within the next six months. Other services must be connected in the next twelve months.
- Evaluate the advance of Electronic Government in each Service, using a time indicator that measures percentages of electronic procedures that the Services have conducted with citizens and other public departments.
- Check all software products that are used in the institution. The Services will each select and use software products which suit their needs and which can be adapted for their own use.
- Develop mechanisms that permit, facilitate and promote the interior of the department, so that communications are implemented using information technology. At the same time State institutions must be the first to use electronic services which another public department provides.
- Consider the impact of development plans, using information technologies, on the organisation and the staff that develop them. With this in mind, include as part of these plans, the change management issues that will bring about its application. Special emphasis must be put into effect when the development involves civil servants of the institution.
- Adopt, progressively, industry standards for information and communication technology, which allow connections and interconnections between different systems and diverse stages, so that they are open and not private.
- Present a unified image on the internet. In the space of not more than six months subscribe to the domains gov.cl and gov.cl.in in addition to those which they currently possess.

- Promote the recent request to obtain better prices and conditions for buying and to use the financial resources available more wisely. This strategy is also valid in the cementing of projects which use information technology whose development does not result as feasible for a practical Service.

The third area of work for Electronic Government is the strengthening of the participation of citizens in political processes. In this area the Heads of Service must:

- Consider and adopt extensive measures to impart to the community the relevant information, considering its opinions and its suggestions, facilitating community participation and clarity.
- Keep a look out for information through the development of web pages with easy and understandable access. Likewise, they must link this information to search engines, through the Government and privately to facilitate access to information.

Fifth, the Ministry of the Secretary General of the Government will keep an eye on content standards of the web pages of various Ministries and Services, ensuring that citizens have general and specific information on government actions.

Sixth, the Treasury must publish records to allow people to know the budget of income and expenditure of new information and communication technologies which the Government implements annually.

Seventh, the Ministry of the General Secretary of the Republic will implement the co-ordination and carry out the preceding instructions in future in relation to the development of Electronic Governance.

Finally, the Services must present, no later than the 15 August 2001, a plan which lays out this directive to the Ministry of the Secretary General of the Republic.

Yours sincerely

Ricardo Lagos Escobar
President of the Republic

ELECTRONIC SIGNATURES ACT, APRIL 2002

(Translated by the International Records Management Trust)

Section 1: General Layout

Article 1

This Act regulates electronic documents and their legal effects, the use in them of the electronic signature, the offering of *services* of certification of these signatures and the procedure of accreditation which the providers of these certifying services must abide by, with the aim of guaranteeing the security of their use.

The activities regulating this Act are subject to the principles of freedom of loans of services, free competitiveness, technological neutrality, international compatibility and equality of electronic support to paper support.

All interpretation of the rules of this Act must remain in concordance with the principles that are laid out here.

Article 2

In terms of this Act the following meanings are understood.

- a) **Electronic:** The characteristics of the technology which has an electrical, digital, magnetic, cordless, optical, electromagnetic capacity or similar.
- b) **Certificate of electronic signature:** Electronic certification which faithfully links between the signatory or bearer of the certificate and the data of the creation of the electronic signature.
- c) **Certificate holder or provider of certification services:** Offering body of services of certification of electronic signatures.
- d) **Electronic document:** Every representation of a fact, image or idea that may be created, sent, communicated or received by electronic means and stored in a suitable way to allow for later use.
- e) **Accrediting body:** The Vice Secretary of Economy, Public Works and Reconstruction.
- f) **Electronic signature:** Any mark, symbol or electronic process, which allows the receiver of an electronic document to identify the person responsible for drawing it up.

- g) **Advanced electronic signature:** That which is certified by an accredited person who offers services (hereby known as provider of services) which has been created using means that the bearer has exclusive control of, in a way that links uniquely to the same and to the data to which it refers, allowing the subsequent detection of any modification, checking the identity of the bearer and preventing him from not recognising the whole content of the document and its originator.
- h) **User or bearer:** A person who uses under his exclusive control a certificate of electronic signature.

Article 3

The acts and contracts granted or enjoyed by normal or legal persons, public or private, signed by the electronic signature, will be valid in the same way and will produce the same effects as those officially received in writing and by the medium of paper. The said acts and contracts will be considered in writing, in cases where the law requires that the same ones are written down in recorded form, and in all those cases in which the law predicts legal consequences when they are recorded in writing.

That which is laid out in the previous clause is not applicable to acts or contracts granted or celebrated in the following cases:

- a) Those in which the law requires a formality that it is not able to comply with using an electronic document;
- b) Those in which the law regulates personal attendance in some parts;
- c) Those relative to the right of the family.

The electronic signature, whatever its nature, will be looked upon as a handwritten signature for all legal effects, without prejudice as to what is established in the following Article.

Article 4

Electronic documents which have the quality of a public deed must be registered using advanced electronic signature.

Article 5

Electronic documents can be presented in a law case and in the event of them being used as proof, the following rules have to be observed:

- 1 Those laid out in the previous Article will have full proof of agreement with the general rules;

- 2 Those which possess the quality of a private document will have the same evidential value as laid out in the previous point when they have been submitted by advanced electronic signature. On the other hand, they will have the evidential value they deserve in accordance with general rules.

Section II: Use of Electronic Signatures by State Bodies

Article 6

State bodies can carry out or put acts into effect, conclude contracts and draw up any document, within their field of competence, subscribing them by means of electronic signature.

They exclude those legal proceedings by which the Political Constitution or the law requires a solemnity or those which are notable to be put into effect using an electronic document, or which require the personal presence of the authority or the civil servant that must intervene in them.

That which is laid out in this section is not applicable to public firms created by law, they will be put into force by previous standards by the issuing of private documents and electronic signatures.

Article 7

The acts, contracts and documents of the bodies of the State, submitted using electronic signatures, will be valid in the same way and will produce the same effects as those sent out in handwriting or by paper support.

With all this, so that they have the quality of a public document, they must be submitted in advanced electronic form.

Article 8

The people can relate to State bodies through technical and electronic means by using electronic signature, only when they can be adjusted to that of the procedure described in the law and that such techniques and means are compatible with those used by the said bodies.

In using electronic signatures, State bodies must avoid unjustified restrictions on access to provisions, and the reporting and transparency which governs its proceedings, which could cause arbitrary discrimination.

Article 9

The certifying of the advanced electronic signatures of the authorities or the civil servants of the bodies of the State will be brought about by the respective loyal ministries. If this cannot be found laid down in law, the ruling which is referred to in Article 10 will indicate the way in which a civil servant is designated to perform these objectives.

The stated certification, must contain besides the references which correspond to it, the date and time of the issue of the document.

The evidential effects of the certification practised by the relevant ministry will be equivalent to those of the certification carried out by an accredited provider of services of certification.

Without prejudice of what is laid out in the first clause, the Bodies of State can contract the services of certification of electronic signatures with accredited, certified bodies if it is more convenient, technical or economic, under the conditions as laid out in the respective document.

Article 10

The rulings applicable to the corresponding Bodies of State will regulate the way of guaranteeing publicity, security, integrity and efficiency in the use of electronic signatures and anything else necessary for the application of the rules of this Deed.

Section III: The Providers of Certification Services

Article 11

Authorised people, whether national, foreign, public or private are providers of the services of Certification who authorise certificates of electronic signature without prejudice of other services that they could carry out.

Likewise, the authorised people whether national, foreign, public or private or resident in Chile are accredited providers of services of certification, accredited in accordance with Section V of this Act which authorises certificates of electronic signature, without prejudice of the other services that they could carry out.

Article 12

These are the obligations of the provider of services of certification of electronic signature.

- a) To agree by the rules about practice of certification which will be objective and not discriminating and communicate them to the users in a simple manner and in the Castilian language.

- b) To maintain a register of public access of certificates, in which there will be evidence of those issued and those that are no longer in use, in the terms laid out in the ruling. To be able to access the said register by electronic means in a regular and continuous manner. To maintain this register, the certified person will be able to handle the supplied data through the bearer of the certificate with the data needed for that purpose and not to use it for any other purpose. The said data must be conserved at least for six months from the initial issue of the certificate. For the rest, the provisions of the Law Number 19.628 will be applied about Protection of People's private affairs.
- c) In the case of ceasing voluntarily in their activity, the providers of the services of certification must communicate beforehand to each one of the bearers of electronic signatures certified by them, in a manner that will establish the ruling and they must, if there is no opposition from the latter, transfer the data from their certificates to another provider of services, on the date that the termination takes place. In case of any opposition, they will curtail certificates with respect to the ones that the bearer had opposed transfer of ownership. The communication mentioned will be completed with a minimum notice of two months from the effective ceasing of the activity.
- d) To publish in the electronic domain sites the decisions of the Accrediting Body that effects them.
- e) In the granting of legal documents of advanced electronic signature certificates, to check reliably the identity of the applicant, for which the provider will require beforehand, before himself or before a public notary or official of the civil register, the direct, personal appearance in court of the applicant or his legal representative if it refers to a legal person.
- f) To pay the supervision fee, which is fixed annually by the Accreditation Body and to understand the cost of the specialists report and the system of accreditation and inspection of the providers.
- g) To request the cancellation of the inscription in the register of accredited providers carried by the Accreditation Body, with a minimum of no less than one months notice of when they are going to cease their activity, and inform the fate that they are going to give to the data of the certificates, specifying, in their case, if they are going to transfer them and to whom, or if the certificates are going to remain void.
- h) In case of any cancellation of the inscription in the register of accredited providers, the certificate holders will immediately inform this matter to each of the users and must, in the same way as with the voluntary stopping of the activity, pass on the data of the certificates to another provider, if the user does not oppose this.
- i) To indicate to the Accreditation Body any other relevant circumstance that could hamper the continuation of its activity. Especially, as soon as it is known, to inform the beginning of a procedure of bankruptcy or stoppage of payments.
- j) To comply with other legal obligations, especially those laid down in this Act and its ruling and the Law Number 19.496 about Protection of the Rights of Consumers and number 19.628 about Protection of Peoples Private Lives.

Article 13

The fulfilment, on behalf of the non-accredited providers of services of certification of electronic signatures, of the obligations laid out in letters a) b) c) and j) of the previous Article will be considered by the judge as a record to determine if the correct due diligence existed, for the purpose predicted in the first clause in the following Article.

Article 14

The providers of certificates of service will be responsible for any harm or damage that happens in the exercise of their certification of electronic signatures. In such cases, it will be the responsibility of the service provider to demonstrate that they acted with due diligence.

Without prejudice of what is laid out in the previous clause, the providers will not be responsible for any harm which originated in the improper or fraudulent use of a certificate of electronic signature.

For the purpose of this Article, the accredited providers of the services of electronic signature must take out and maintain an insurance, which covers their eventual civil responsibility for an amount equivalent to five thousand units of public work, minimum, not only their own certificates but also those held, by reason as laid down in the final clause in Article 15.

The certificate of electronic signature provided by a certified body can establish limits with regard to its possible uses, as and when the limits are recognisable by a third party. The provider of services of certification will remain exempt from responsibility for any harm or damage caused by the use that exceeds the indicated limits of the certificate.

In no case does the responsibility that can originate from a certification carried out by a private accredited provider, compromise the monetary responsibility of the State.

Section IV: Certificates of Electronic Signature

Article 15

The certificates of the electronic signature must contain, at least the following comments:

- a) A personal identification code of the certificate;
- b) Identification of the provider of the service of certification, with an indication of his name or social address, national insurance code, electronic mail address and, in this case, the previous records of his accreditation and his own advanced electronic signature;
- c) The data of the identity of the bearer, in which must necessarily be included his name, e-mail address and insurance code;

- d) The password.

The certificates of advanced electronic signature can be sent out by non Chilean bodies and they will be equivalent to those granted by the providers established in this country, when they were endorsed by the latter, under their responsibility and fulfilling the fixed requirements in this Act and its ruling, or in virtue of the international treaty ratified by Chile and which can be found here applicable.

Article 16

The certificates of electronic signature will remain without effect in the following cases:

- 1) With the expiry of validity of the certificate, which cannot exceed three years from the date of issue;
- 2) On reversal by the provider, which would take place under the following circumstances:
 - a) On application of the bearer of the certificate;
 - b) In the case of death of the bearer or dissolution of the legal person who represents him in his case;
 - c) By way of legal judgement;
 - d) By way of non-fulfilment of obligations of the user as laid down in Article 24.
- 3) By cancellation of the accreditation and the inscription of the provider in the register of accredited providers which is pointed out in Article 18, with regard to what is laid out in Article 19 or with the curtailment of activity of the provider, unless it can be verified here has been a transference of data of the certificates, conforming with what is laid out in the letters c) and h) of Article 12;
- 4) By the voluntary curtailment of the non-accredited provider unless it is verified that the data of the certificates has been transferred to another provider, conforming with letter c) of Article 12.

The repeal of a certificate in circumstances as in letter d) of number 2) of this Article, like the postponement when it occurs by technical means, will be communicated beforehand by the provider to the bearer of the certificate, indicating the reason and moment when the repeal or postponement will take place. In any case neither the repeal nor the postponement will diminish the value of the certificates until the exact moment when they are checked by the provider.

The validity of a certificate of electronic signature for any of the previously mentioned reasons can not be used by a third party whilst it has not been eliminated from the register of public access.

Section V: Accreditation and Inspection of Providers of Certification Services

Article 17

The accreditation is a process by reason of which the provider of services of certification shows to the Accrediting Body that he is in agreement with the installations, systems, information programmes and human resources necessary to guarantee the certificates in the terms of contract as they are set down in this Act and in the ruling, allowing the inscription in the register as pointed out in Article 18.

To be accredited, the provider of services of certification must comply, at least with the following conditions:

- a) To demonstrate the necessary reliability of his services;
- b) To guarantee the existence of a secure service of consultation of the register of certificates sent out;
- c) To employ qualified staff to lend out the services offered in the field of electronic signatures and the processes of security and appropriate management;
- d) To use reliable systems and products which guarantee the security of the processes of certification;
- e) To have an appropriate insurance as in the terms mentioned in Article 14;
- f) To rely on the technological capacity necessary for the development and activity of the certification.

Article 18

The procedure of accreditation will begin by putting forward an application to the Accreditation Body, which must be accompanied by the previous relative points for the requirements of Article 17 which the ruling mentions, and also the receipt of payment of costs for the accreditation. The Accreditation Body must decide seriously about the application over a period of twenty days starting from, at the request of the interested party, it is certified that the application is in a correct state to be decided upon. If the interested party makes an accusation that there has been a breach in this period of time to the correct authority, and the authority does not make a pronouncement within the following month, the application will be taken as being accepted.

The Accreditation Body can contract experts with the aim of checking the fulfilment of the requirements laid out in Article 17.

Once the accreditation is granted, the provider will be added to the public register and to such an effect will be presented to the Accrediting Body, this can be accessed by electronic methods. During the validation of his inscription in the register, the provider must inform the Accrediting Body of any modification of the conditions which may affect his accreditation.

Article 19

Using the legal ruling established by the Accreditation Body the accreditation can be rendered without effect and the inscription cancelled in the register mentioned in Article 18, for any of the following reasons:

- a) The application of the accredited provider;
- b) Failure in conditions which serve the basis of the accreditation, which will be examined by the civil servants or experts of the Accreditation Body used in the inspection which is referred to in Article 20;
- c) Serious non- fulfilment or repetition of the obligations that establish this Act and its ruling.

In the case of the letters b) and c) the resolution will be adopted subject to a hearing of the affected party and a formal complaint can be made to the Ministry of Economy, Public Works and Reconstruction within a period of five days starting from its notification. The Ministry will have a period of thirty days to decide upon it. Within the next ten days from when the resolution was notified and pronounced or in the case that it can be proved that the administrative claim was not dealt with in the allowed time, the interested party can lodge a legal claim before the Court of Appeal in his hometown. The claim must be with grounds and, for its aggregation to the board, without mistake, governed by the appropriate rules of appeal of protection. The decision of the Court of Appeals will not be open to any appeal.

The certificate holders whose inscriptions have been cancelled, must communicate this fact immediately to the bearers of the electronic signatures certified by them. Without prejudice, the Accreditation Body will publish a warning giving notice of the cancellation at the expense of the certificate holder. From the date of this notice, the certificates will be rendered void, unless the data of the bearers is transferred to another accredited certificate holder in agreement with what is laid out in letter h) of Article 12. The damages that the cancellation may cause to the inscription of the certificate holder by the bearers of the certificates in force until the cancellation, will be the responsibility of the provider.

Article 20

With the aim of checking the fulfilment of the obligations of the accredited providers, the Accrediting Body will execute the inspecting authority of the same and will be able to, to such an effect, request information and arrange visits to installations using specially contracted civil servants or experts, conforming with the ruling.

Article 21

The Accrediting Body, as well as the staff who act under its section or report to it, must keep confidentiality and custody of documents and information that the accredited certificate holders give to them.

Article 22

The monetary resources that the Accrediting Body earn by way of the accredited providers of the services of certification will make up the personal investments of the said body and be incorporated to its budget.

Section VI: Rights and Obligations of the Users of Electronic Signatures

Article 23

The users or bearers of electronic signatures will have the following rights.

1. To be informed by the provider of services of certification about the general characteristics of the procedures of creation and checking of the electronic signature, as well as the rules on the practises of certification and the rest which they will promise to follow in the loan of the service, before it is put into effect.
2. To the confidentiality in the information supplied to the providers of certification. For this, they must use technical elements available to present security and privacy of information brought about and the users have a right to be informed, beforehand at the onset of the loan of the service about the general characteristics of the said elements.
3. To be informed, before the publishing of the certificate of the price of the services of certification, including additional charges and methods of payment, in such a way that the precise conditions for the use of the certificate and its limitations and processes of claims and resolution of predicted disputes in the law can be agreed.
4. So that the provider of services or whoever endorses its certificates, supplies information on sites in Chile and about all the ways which the user can present himself to find out explanations, giving account of any malfunction of the system or presenting claims.
5. To be informed, at least two months beforehand, by the providers of the services of the stoppage of their activity, with the aim of opposing the establishing of validity to the transference of data of its certificates to another certificate holder, in which case the said certificates will be wiped out in conformity with point number 4) of Article 16 of this Act, or else that they take note of the extinction of the effects of the certificates, if no possibility exists to transfer it to another holder.
6. To be informed immediately of the cancellation of the inscription in the register of the accredited providers, with the *aim* to oppose the establishing of validity of the transference of data of its certificates to another certificate holder, in which case the said certificates will be wiped out, conforming with point 3) of Article 16 of this Act, or else that they take note of the extinction of the effects of the certificates, if no possibility exists to transfer it to another holder.
7. To transfer their data to another provider of services of certification.

8. That the provider does not supply any more services of any other quality than that which he has already agreed, and not to receive any commercial publicity of any type by way of the provider, except by express authorisation of the user.
9. To access the register of accredited providers by electronic means which the Accrediting Body will maintain.
10. To be indemnified and to uphold the value of agreed insurance, conforming with Article 15 of this Act.

The users will take pleasure in these rights, without prejudice of those that derive from Law Number 19.628 about Protection of Private Life and Law Number 19.496 about Consumer Protection and they will be able to, with the proviso as laid out in number 10 of this Article practise them in accordance with the process established in the last rule.

Article 24

The users of the certificates of the electronic signature will remain, obliged at the moment of supplying the data of their personal identification or other circumstances, subject to certification, to present exact and complete declarations. Also they are obliged to adequately take care of the mechanisms and security of the functioning of the system of certification that the certificate holder supplies to them and to update the data as it changes.

TITLE VII: RULINGS

Article 25

The President of the Republic will put this Act into effect in the period of ninety days from its publication, using one or more supreme decrees of the Ministry of Economics, Public Works and Reconstruction, ratified also by the Ministries of Transport and Telecommunications and the Secretary General of The Republic.

The above is without prejudice of the other rules that correspond to its approval, to give fulfilment to that envisaged in Article 10.

Transitional Article

The major expense that the Vice-Secretary of the Economy, Public Works and Reconstruction incurs through the functions that this Act allots to it, during 2002, will be financed by the financial recourses raised in its budget.