



ISRAEL: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

November 2017

This report, submitted by Israel for discussion at the Working Group on Bribery's June 2017 plenary, provides information on the progress made by Israel in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of, and conclusions regarding, this follow-up report were adopted on 17 November 2017.

The Phase 3 report evaluated Israel's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In June 2017, Israel presented its written follow-up report to the OECD Working Group on Bribery (Working Group). The report outlined Israel's efforts to implement the 27 recommendations that it received in June 2015 during its Phase 3 evaluation. The Working Group concluded that Israel fully implemented 18, partially implemented 4, and did not implement 5 recommendations. Combined with its enforcement efforts, Israel has shown considerable progress in addressing the Working Group's concerns.
2. In the Phase 3 evaluation, the Working Group expressed concern about Israel's overall level of enforcement and lack of investigative steps in specific cases. In December 2016, however, Israel obtained its first foreign bribery conviction after concluding a plea deal with an Israeli company that provides information technology services. Moreover, Israel enhanced its ability to detect foreign bribery allegations. While half of the foreign bribery allegations examined in Phase 3 were exclusively brought to Israel's attention by the Working Group, this was true for less than a quarter of the new allegations. Overall, out of 27 allegations that have arisen during or after the Phase 3 evaluation, Israel has opened 22 cases, including 13 formal investigations. Israel has 14 ongoing cases, including 4 preliminary examinations and 10 formal investigations. Finally, Israel has reported using a number of investigative techniques, including a demonstrated increase in the use of formal mutual legal assistance.
3. In line with these welcome developments, Israel has fully implemented a number of the Working Group's recommendations related to the detection, investigation and prosecution of foreign bribery. For instance, Israel has designated the Tel Aviv Taxation and Economic District to exclusively handle foreign bribery prosecutions (recommendation 3a). Israeli authorities have also taken measures to ensure that credible foreign bribery allegations are investigated using a range of techniques and prosecuted, where appropriate (recommendation 3b). In addition, Israel has fostered better detection of allegations through media sources and the anti-money laundering authority (recommendations 3d and 6d) and increased its use of formal requests for mutual legal assistance to investigate allegations (recommendation 5b). Israel also considered whether to require auditors and accountants to report suspicions of foreign bribery to law enforcement. While it ultimately decided not to impose such a requirement, this fulfilled recommendation 7c. Moreover, Israel has improved its ability to maintain statistics on sanctions applied in foreign bribery and related money laundering offences and on requests for mutual legal assistance, which will help the Working Group during its Phase 4 evaluation of Israel (recommendations 2b and 5a).
4. Furthermore, Israel implemented a number of recommendations to strengthen the role of its tax and anti-money laundering frameworks in the fight against foreign bribery. In the tax area, Israel acceded to the Convention on Mutual Administrative Assistance in Tax Matters (recommendation 8c). Israel also considered using language from the OECD Model Tax Convention permitting the use of tax information for criminal investigations. This implemented recommendation 8d, even though Israel ultimately decided not to systematically include such language in its tax treaties. Furthermore, Israeli tax authorities harmonised the standard for denying tax deductions for bribe payments and provided guidance for tax examiners on detecting foreign bribery (recommendations 8a and 8b). In terms of anti-money laundering, Israel provided training to both the Israeli Money Laundering and Terrorism Financing Prohibition Authority (IMPA) and to the entities obliged to make suspicious transaction reports (recommendation 6b). It also took steps to ensure that the IMPA provides more frequent feedback to obligated entities to help improve the quality of reports concerning suspicions of foreign bribery (recommendation 6c).
5. Israel took noticeable steps to raise awareness about foreign bribery and related issues. For example, Israeli authorities organised and participated in a training event for accountants and auditors on their role in detecting possible foreign bribery and reporting suspicions to company management (fully implementing

recommendation 7b). In the public sector, Israel's Export Insurance Corporation Ltd. (ASHRA) also provided training and awareness raising for its staff, and encouraged them to consider applicants' internal controls and compliance programmes when deciding whether to provide export credit support (fully implementing recommendation 11c). Israel trained law enforcement authorities on the conduct of foreign bribery investigations (recommendation 3c) and provided some training for law enforcement on the false accounting offence (partially fulfilling recommendation 7a). Similar trainings were provided to various groups throughout the public and private sectors (fully implementing recommendation 9). In addition, Israel provided training for judges on corporate liability as well as raised awareness about whistleblowing in the private sector (partially implementing recommendations 1 and 10).

6. Despite its progress in these other areas, Israel needs to pursue its efforts to implement recommendations requiring legislative or administrative reforms, including in the area of public advantages such as support for defence exports and public procurement. While Israel's Defence Export Controls Agency did raise awareness of the foreign bribery offence through its compliance guidance, it did not establish formal guidelines on conducting due diligence on applicants, including the use of international debarment lists or provide sufficient training of its officials on foreign bribery risks (partially implementing recommendation 11d). In addition, Israel has not adopted an express policy permitting procurement authorities to deny contracts on the basis of a foreign bribery conviction (not implementing recommendation 11a). Israel has also not encouraged its public procurement authorities to consider applicants' internal controls and compliance programmes or to refer to international debarment lists (not implementing recommendation 11b).

7. Finally, Israel has not implemented the Working Group's recommendations to amend specific articles in the Israeli Penal Law which apply to crimes committed abroad. In particular, Israel is still at the stage of developing draft legislation to address the dual penalty requirement regarding sanctions (recommendation 2a) as well as the dual criminality limitation on Israeli criminal jurisdiction (recommendation 4). Likewise, Israel has not amended the monetary threshold that applies to its anti-money laundering offence (recommendation 6a), although a bill that would reduce the threshold to approximately EUR 10 000 has passed the first reading in the Knesset. There is no expected time frame for adoption of any of the proposed draft bills.

Conclusions of the Working Group on Bribery

8. Based on these findings, the Working Group concludes that Israel has fully implemented recommendations 2b, 3a, 3b, 3c, 3d, 5a, 5b, 6b, 6c, 6d, 7b, 7c, 8a, 8b, 8c, 8d, 9, and 11c; partially implemented recommendations 1, 7a, 10, and 11d; and not implemented recommendations 2a, 4, 6a, 11a and 11b. In the absence of case law and practice, the Working Group also agreed to continue to monitor follow-up issues 12a–12f and 12h–12k. Following changes to the agencies regularly involved in Israel's Inter-Ministerial Team, the WGB concluded that there is no longer any need to follow up issue 12g.

9. Israel has been asked to report back orally in June 2019 on whether it has amended its Penal Law to address Recommendations 2a and 4. The Working Group will further assess Israel's implementation of the Convention and its enforcement efforts during Israel's Phase 4 evaluation, which is currently scheduled for June 2023.

PHASE 3 EVALUATION OF ISRAEL: WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress Israel has made in implementing certain recommendations of its Phase 3 evaluation report. Israel is asked to respond to the recommendations as completely as possible.

Responses to the question about “action taken” should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat by 11 May 2017

Name of country: ISRAEL

Date of approval of Phase 3 evaluation report: June 2015

Date of information: 11 May 2017

1. Recommendations of the Working Group

Text of recommendation 1:

1. Regarding the criminal liability of legal persons, the Working Group recommends that Israel ensure the judiciary is fully aware of and trained on the application of bribery offences to legal persons, including any future legislative amendments to the legal person liability regime [Convention, Article 2; 2009 Recommendation III and Annex I.B].

Action taken as of the date of the follow-up report to implement this recommendation:

Over 60 judges, most of whom specialize in criminal matters, attended a training session that took place in February 2017. The training session included a lecture delivered by the Deputy Director of the Tax and Economic Department in the Office of the District Attorney of Tel Aviv – Securities Department, on the criminal liability of legal persons in bribery offences (see *Appendix I*).

Text of recommendation 2(a):

2. Regarding sanctions and confiscation in cases of transnational bribery, the Working Group recommends that Israel:

- (a) Amend the law to ensure that sanctions for foreign bribery are not subject to the dual penalty requirement under article 14(c) of the Penal Law [Convention, Article 3].

Action taken as of the date of the follow-up report to implement this recommendation:

Since Israel's Phase 3 report, the Criminal Department at the Office the of Legal Counsel and Legislative Affairs held comprehensive discussions regarding the possibility to amend articles

14(b)(2) and 14(c) of the Penal Law. Following comparative law research and meetings with the relevant authorities, a draft bill was drawn up to amend these articles and has been referred to the Public Defence for comments. Following the work described, it will be decided in the near future how to proceed with the amendments.

Text of recommendation 2(b):

2. Regarding sanctions and confiscation in cases of transnational bribery, the Working Group recommends that Israel:

(b) Maintain comprehensive statistics on sanctions and confiscation measures applied in foreign bribery cases and related money laundering offences [Convention, Article 3].

Action taken as of the date of the follow-up report to implement this recommendation:

All criminal sanctions, including those imposed in foreign bribery cases, are regularly reported to the Israeli Police, which maintains updated records regarding all convictions and verdicts in the country. All criminal sanctions, including those imposed in foreign bribery and related money laundering offences, are also reported to the TNUFA computerized system maintained by the State Attorney's office, which was gradually implemented since 2014 in all State Attorney Criminal Departments. This is a case management software system in which all important information regarding the stages of the case is updated and can be easily evaluated and utilized for managerial decision making purposes. A specific inquiry can be made regarding the sanctions that were imposed by the courts on each convicted defendant (whether natural or legal person).

In addition, the Tel Aviv Taxation and Economic District Attorney Office, as the office who is responsible for handling foreign bribery cases, maintains statistics regarding all sanction and confiscation measures applied in foreign bribery and related money laundering cases.

Furthermore, the Deputy State Attorney for Economic Enforcement maintains updated statistics regarding all economic enforcement actions in criminal cases handled by the prosecution, including foreign bribery cases. To this end, representatives from every department of the State Attorney's Office provides data regarding three main stages of each relevant case: a) the total amount of the property which was seized and frozen during the investigation; b) the total amount of the property included in the confiscation request filed at the indictment stage; c) the total amount of the property which was confiscated due to court orders upon conviction of natural and legal persons.

In addition, IMPA regularly maintains statistics on investigations, prosecutions and convictions, categorized by predicate offences, for money laundering and terrorist financing offences. These include data regarding sentences and sanctions, including freezing, seizures and confiscations of property. In 2016, following the FATF guidance paper on AML/CFT-Related Data and Statistics, published in October 2015, IMPA initiated a National Data Collection Project, in full cooperation with all the key law enforcement agencies in the country, aimed to produce a comprehensive platform which will facilitate the collection, compilation and presentation of a harmonized set of AML/CTF related data. This project is underway and is due to be completed in July 2017.

Text of recommendation 3(a):

3. Regarding the detection, investigation and prosecution of foreign bribery, the Working Group recommends that Israel:

(a) Pursue its expressed intention to assign foreign bribery cases to either the Economic Department of the State Attorney's Office or the Tel Aviv Taxation and Economic District, in order to enhance expertise and specialisation in foreign bribery [Convention, Article 5; 2009 Recommendation V].

Action taken as of the date of the follow-up report to implement this recommendation:

In order to enhance expertise and specialization, at the end of 2015 the State Attorney decided that the Tel Aviv Tax and Economic District Attorney Office is exclusively responsible for handling all foreign bribery cases. Prosecutors from this Office accompany all foreign bribery cases from the investigative stage through the prosecutorial stage, up until closure. The Deputy District Attorney is also a member of the Inter-Ministerial Team.

Text of recommendation 3(b):

3. Regarding the detection, investigation and prosecution of foreign bribery, the Working Group recommends that Israel:

(b) Take all necessary measures to ensure that (i) credible foreign bribery allegations are fully and promptly assessed with a view to progressing cases to formal investigation and prosecution, as appropriate, and are not prematurely closed, (ii) foreign bribery allegations are proactively investigated, and the broad range of investigative measures are used in conducting examinations and investigations, including special investigative techniques and access to financial information, and (iii) corporate liability is thoroughly assessed in all relevant cases [Convention, Article 5; 2009 Recommendation V].

Action taken as of the date of the follow-up report to implement this recommendation:

The following response refers together to all three subsection:

As stated in Israel's oral follow-up report, The Israeli Ministry of Justice in collaboration with the Israeli Police and other law enforcement agencies, continues to take all measures to ensure that foreign bribery allegations are fully and promptly assessed and are thoroughly and proactively investigated. Investigations are conducted in line with the "Attorney General Guideline No. 4.1110: The Investigation and Prosecution of the Foreign Bribery Offence", dated November 2009.

Since Israel's Phase 3 report, Israel prosecuted its first foreign bribery case, convicting NIP Global Ltd. in December 2016 (*Nikuv*). This case involved a foreign bribery committed by Nikuv, a company incorporated under the laws of Israel. Nikuv hired the services of a local agent who had close connections with a senior official of the Kingdom of Lesotho, to promote its interests in the Kingdom of Lesotho. In early 2012, Nikuv reached an understanding with the agent and the official, according to which the official would advance Nikuv's interests in return for over \$500,000. The Israeli Court convicted and sentenced Nikuv in accordance with the terms of a plea agreement. Pursuant to the agreement, a fine and forfeiture was imposed upon Nikuv in the total sum of 4,500,000 NIS (approx. 1,250,000 USD). Of this sum – half was as a fine and the other half a criminal forfeiture. For further

information regarding this case see *Appendix I* and the attached Foreign Bribery Enforcement Actions update.

In addition to the *Nikuv* case, as of today, 10 criminal investigations are being conducted by the IP in collaboration with the State Attorney's Office. The increase in such investigations is evident when compared to number of investigations underway just two and one years ago (4 and 5 respectively).

As previously reported, the Attorney General Guideline determines a specific policy regarding the handling of foreign bribery allegations. This policy is executed by an Inter-Ministerial Team, headed by the Director of the Department of Criminal Affairs in the State Attorney's Office. The Inter-Ministerial Team discusses all suspicions of foreign bribery to exhaust all necessary investigative measures. The Team convenes at least once every three months, and includes representatives from the Criminal Department, the Tel Aviv Taxation and Economic District Attorney Office and the Department of International Affairs, all of the State Attorney's Office; the Counsel and Legislation Department; the IP; Israeli Money Laundering and Terror Financing Prohibition Authority and the Tax Authority.

The discussions of the Inter-Ministerial team focus on detailed enforcement actions, and therefore in the past year and a half or so the Ministry of Foreign Affairs and the Ministry of Defence representatives no longer participate in team meetings on a regular basis.

In addition to the abovementioned meetings, the Team also convenes more frequently in smaller forums in order to allow in-depth discussions regarding certain aspects that are mostly in the interest of the enforcement representatives (i.e. IP and prosecution). These meetings include discussions regarding the precise investigative actions that should be taken in a specific case, so as to ensure that allegations are thoroughly examined. When needed, follow-up meetings are held. Ongoing communication between the various representatives (either by phone or email), regarding the different cases, is common practice and held on daily basis if needed.

As previously reported, since late 2015 foreign bribery cases are assigned to The Tel Aviv Taxation and Economic District Attorney Office. Throughout the years this office gained unique expertise in fighting corruption and other financial crimes, including related money laundering offences, and has led the most complex and high profile cases prosecuted in Israel. Experienced attorneys from this office are accompanying all foreign bribery cases that are being handled. Since July 1, 2016 The Deputy District Attorney, a prominent member of the Inter-Ministerial Team, personally handles the most complex foreign bribery cases. Other experienced prosecutors are assigned to handle foreign bribery cases as well. The District Attorney and her Deputy supervise all cases, working with full cooperation with The Director of Department of Criminal Affairs at the State Attorney's Office. All attorneys work in close collaboration with a special squad in the National Unit for Fraud Investigations in the IP which handles most of the cases. These accompanying prosecutors advise and oversee the investigations' progress and cooperate with foreign authorities on a regular basis. The Deputy District Attorney is in daily contact with the squad leader and if needed, with the Head of the National Unit for Fraud Investigations in the IP.

In order to reassure all credible foreign bribery allegations are not prematurely closed, and due to the importance of enforcement in this field, as previously reported, a decision to open an investigation or to shelve information or complaints concerning foreign bribery without conducting an investigation is made by the Head of the Investigation and Intelligence Unit of the IP. Such decision is reported to the Director of the Department of Criminal Affairs or to the State Attorney. The IP and the State

Attorney's office work in unity and in full understanding of the importance of these investigations.

According to the AG Guideline, upon the completion of each investigation the file is referred to the Deputy State Attorney (Special Functions), an authority that has been delegated to the Director of the Department of Criminal Affairs at the State Attorneys' office, who submits a reasoned recommendation to the AG (through the State Attorney), as to whether to file an indictment.

As required by the AG Guideline, both the State Attorney's Office and the IP thoroughly and proactively assess, in every relevant case being examined, the aspect of potential corporate liability. As described in the Foreign Bribery Enforcement Actions update attached, corporate liability is considered in all relevant cases involving legal persons.

As elaborated in the attached Foreign Bribery Enforcement Actions update, a wide variety of investigative measures are being pursued in the course of the examinations and investigations. These measures include, *inter alia*, the following:

- Inspection of classified intelligence information and media reports, as well as databases of the Companies Registrar, Land Registry, and the Registrar of Mortgages.
- Interrogation of suspects and witnesses.
- Court orders for seizure of documents (including bank records), electronic devices (including computers) for evidentiary purposes and other evidentiary items.
- Seizure of all the above pursuant to court orders.
- Seizure of assets for purpose of future confiscation.
- Issue of Mutual Legal Assistance requests to relevant countries, for receiving evidential materials and interrogations.
- Executions of MLA requests sent to the Israeli authorities by other countries.
- Contact and collaboration with foreign law enforcement authorities. This includes conference calls, video conferences and meetings between representatives of the IP and State Attorney and respective foreign agencies representatives.
- Investigation by intelligence measures, including by IMPA.
- Cooperation with the tax authorities.
- Detainment and arrests.
- Conducting relevant searches.
- Recruiting and operating state witnesses.

AG Guideline regarding the matter of preliminary examination:

As noted in previous reports, a number of foreign bribery cases began as an examination. In these cases, the existing evidence did not yet establish a reasonable suspicion that an offence was committed, and therefore did not justify a formal investigation. However, such suspicions were not simply discarded; but rather, an examination was conducted in which a number of actions were taken by the IP to exhaust investigative possibilities. As recalled, at the time of the Phase 3 report, four cases were in the status of a preliminary examination. Since then, one case developed into an investigation, one remains in the status of a preliminary examination and two have been closed.

In December 31, 2015, an AG Guideline No. 4.2204: "Preliminary Examination" was issued. The object of this Guideline is to clarify the status of the procedure of preliminary examination, to present its normative basis and purpose, and to outline the guiding principles for the conduct of the examination procedure.

The Guideline stipulates that the preliminary examination does not constitute a replacement for an investigation where such is warranted. Thus, where there is public importance to examine the facts of the case to their full extent, yet the evidentiary basis does not establish a reasonable suspicion of a criminal offence, there is justification to carry out the procedure of a preliminary examination.

A significant consideration in the decision to conduct a preliminary examination prior to an investigation is the scope of the initial evidentiary basis and its probative weight, as well as the public interest in exhausting the factual examination of the case.

As noted in the Guideline, another consideration in conducting a preliminary examination pertains to the system-wide public and functional implications, if any, that could be entailed in the decision to initiate a criminal investigation. At times, the mere decision to initiate a criminal investigation may carry such implications, beyond the matter of the specific suspect. For instance, initiating a criminal investigation against an individual serving in public office may carry implications for the functional system in which he serves, the governance order in the State, or political and social policies.

Such implications may at times justify conducting a preliminary examination prior to making the decision to initiate an investigation. In a place where according to the results of the examination the evidentiary basis formulates reasonable suspicion that justifies initiating a criminal investigation, an investigation will be initiated.

The Guideline also discusses the scope of the preliminary examination and the actions that may be taken within it. The Guideline makes clear that many of the investigative measures available in a criminal investigation are also available in a preliminary examination. These include, *inter alia*, the issuance of mutual legal assistance requests to foreign states. This contributes to the ability to effectively and proactively assess accusations of foreign bribery.

Israel Securities Authority - a directive to detect and report on suspected acts of bribery of foreign public officials

On April 6, 2017, an Internal Directive regarding ways to examine information regarding suspected foreign bribery acts taken by public companies (hereinafter the Directive), was issued by the Israel Securities Authority. This Directive is part of the nationwide efforts to proactively combat bribery of foreign public officials.

This Directive was issued pursuant to a decision made by a Committee which was established pursuant to Government Decision 4618 from January 1, 2006. The Committee is led by the Attorney General and includes the State Attorney, the Israel Police Commissioner, the Israel Tax Authority Director and the Israel Securities Authority Director. The Committee meets periodically to outline an integrated policy for the struggle against serious and organized crime, approve a multi-year working plan and define its priorities.

Text of recommendation 3(c):

3. Regarding the detection, investigation and prosecution of foreign bribery, the Working Group recommends that Israel:

(c) Provide regular training to law enforcement officials on the Convention and the foreign bribery offence, including the practical aspects of foreign bribery investigations [Convention, Article 5; 2009 Recommendation V].

Action taken as of the date of the follow-up report to implement this recommendation:

In the past two years, law enforcement officials in Israel have continued to undergo intensive training and awareness-raising activities regarding various aspects of economic crimes, such as cooperation between enforcement entities, confiscation, involvement of prosecutors in investigations, and the utilization of information discovered by the Israel Money Laundering and Terrorism Financing Authority, with increased emphasis on foreign bribery and related offences.

For example, the Israeli Police organizes annual conferences with the participation of the State Attorney's Office, the IMPA, the Israel Tax Authority, the Israel Securities Authority, the Israel Anti-Trust Authority and the Legislation and Counsel Department (Criminal Law) of the Ministry of Justice, in order to enhance cooperation among these bodies. The recent conference took place in January 2017 and included a panel session on issues relating to international cooperation in foreign bribery offences. The panel was led by the Head of the National Unit for Fraud Investigations, the legal advisor of the Israeli Securities Authority, the Deputy Manager of the IMPA's research division, and the Head of the the International Department in the State Attorney's Office.

Several trainings specifically focusing on the subject of foreign bribery have also been conducted since Israel's Phase 3 report. In February 2017, the Director of the Criminal Department at the State Attorney's Office lectured on the subject of matter at the IMPA. On March 2017, The Tel Aviv Taxation and Economic District held a full day training session on this subject (see the agenda attached in *Appendix D*). In addition, approximately 100 members of The National Unit for Fraud Investigations participated in a training that took place in May 2017, which included a lecture given by the Director of the Department of Criminal Law in the State Attorney's Office (who heads the Inter-Ministerial Team). An additional lecture was given by the Deputy Director of the Tax and Economic Department - Securities Department, on the subject of criminal liability of legal persons for bribery offences.

Finally, a large delegation from Israel participated in the Foreign Bribery and Corruption Conference held in Washington, D.C on October 31-November 3, 2016, organized by the United States DOJ, SEC and the FBI. The Israeli delegation consisted of high-level professionals, including the Director of the Criminal Department at the State Attorney's Office; the Tel Aviv Taxation and Economic District Attorney; the Legal Advisor to The National Unit for Fraud Investigations and a representative from the Israeli Security Authority.

Text of recommendation 3(d):

3. Regarding the detection, investigation and prosecution of foreign bribery, the Working Group recommends that Israel:

(d) In relation to using media reports to detect foreign bribery: (i) review and improve existing mechanisms within the Israeli Police for gathering such information, and (ii) raise awareness among the Ministry of Foreign Affairs of the importance of searching the media and reporting allegations to

the appropriate authorities [Convention, Article 5; 2009 Recommendation V, VIII, IX(i)&(ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

(i)

Since the end of 2015, the National Unit for Fraud Investigations, which handles the vast majority of foreign bribery suspicions, has assigned an experienced investigations officer to focus on foreign bribery offences, in addition to other investigators from the Unit who deal with these offences as needed. As part of his role, this investigator regularly scans media reports and classified intelligence information.

Moreover, there are currently plans to establish a team within the Unit, comprised of an officer and three investigators, who will deal solely with the enforcement of the foreign bribery offence.

(ii)

The Ministry of Foreign Affairs (MFA) has recently appointed an official from the MFA's Legal Department to act, in addition to her ongoing duties, as a point of contact (POC) for MFA officials abroad, to which they are required to report suspicions of foreign bribery against Israeli citizens.

MFA officials are periodically reminded of their duties to report such suspicions via classified internal telegrams sent to all MFA employees and missions abroad. This duty was recently broadened to include a new explicit obligation to actively search the local media for foreign bribery allegations involving Israeli nationals and to report such allegations to the POC.

Additionally and as reported in Israel's Phase 3 report, before being posted abroad, Israeli officials are required to declare that they are aware of the provisions of the Convention, of the MFA's Code of Conduct regarding its implementation and the fulfilment of Israel's obligations thereunder. In addition, such officials are required to affirm their obligation to report without delay suspicions concerning foreign bribery.

Finally, MFA officials departing abroad attend a training program, which takes place regularly two or three times a year, depending on the number of appointments. These trainings are provided by the Legal Department of the MFA and include a session discussing Israel's obligations in accordance with the Convention. Israel intends to improve these sessions by including specific instructions regarding the obligation of Israel's representatives abroad to report to the MFA regarding any foreign media report or information regarding allegations of bribery involving an Israeli national.

Text of recommendation 4:

4. Regarding Israel's jurisdiction over foreign bribery, the Working Group recommends that Israel amend the law to ensure that the limitations to jurisdiction that exist under article 14(b)(2) of the Penal Law do not apply to exercising jurisdiction over foreign bribery [Convention, Article 4].

Action taken as of the date of the follow-up report to implement this recommendation:

Since Israel's Phase 3 report, the Criminal Department at the Office of Legal Counsel and Legislative Affairs held comprehensive discussions regarding the possibility to amend articles 14(b)(2) and 14(c) of the Penal Law. Following comparative law research and meetings with the relevant authorities, a draft bill was drawn up to amend these articles and has been referred to the Public Defence for comments. Following the work described, it will be decided in the near future how to proceed with the amendments.

Israel would like to update that in Supreme Court decision 5717/15 *State of Israel v. John Doe* (published 22/10/15), article 14(b)(2) of the Penal Law was interpreted such that the term "criminal liability restriction" referred to therein, could also include impediments to the imposition of legal liability in addition to the criminal liability defences, and in this case the statute of limitation. Thus, the defendant in this case was acquitted because the sex crimes he was accused of took place in New York, where the statute of limitation of sex crimes is shorter than that in Israel. That being said, the proposed amendment should in any case exempt the foreign bribery offence from all the conditions derived from article 14(b)(2).

Text of recommendation 5(a):

5. Regarding mutual legal assistance (MLA) in foreign bribery cases, the Working Group recommends that Israel:

(a) Proceed with its expressed intention to establish a computerised system to maintain statistics on incoming and outgoing MLA, including information on the types of offences involved, the time required to execute requests, and the reasons for not granting assistance where applicable [Convention, Article 9].

Action taken as of the date of the follow-up report to implement this recommendation:

The MLA Unit in the Israeli Police manages a computerized system with data regarding all incoming and outgoing requests for mutual legal assistance, including those that address foreign bribery offences. This system enables an immediate and ongoing follow-up of such requests and of the actions taken in response to them. The system also enables compilation and analysis of relevant descriptive statistics.

Additionally, the personnel within the Department of International Affairs of the State Attorney's Office who deal with foreign bribery matters maintain a detailed and constantly updated database of all files that it handles relating to foreign bribery, including full details regarding all requests for mutual legal assistance submitted or received by Israel in this area.

Text of recommendation 5(b):

5. Regarding mutual legal assistance (MLA) in foreign bribery cases, the Working Group recommends that Israel:

(b) Increase its use of formal mutual legal assistance processes in foreign bribery cases, as appropriate, and continue to utilise informal means of international cooperation [Convention, Article 9; 2009 Recommendation XII].

Action taken as of the date of the follow-up report to implement this recommendation:

Legal Assistance Requests are used by Israel as a crucial tool for obtaining investigative assistance on a routine basis in investigations involving foreign bribery. Under the International Legal Assistance Law 1998 and under the relevant treaties, requests for MLA are issued in the context of

investigations, prosecutions or other proceedings (as noted above, under the recent AG Guideline, it is now clear that such requests can also be issued in preliminary examinations).

Formal MLA requests and informal means of cooperation are crucial measures utilized by law enforcement officials in their ongoing duties. These requests are regularly considered by the Inter-Ministerial Team, which constantly seeks to utilize the most appropriate and effective procedures of international cooperation in every case in order to improve enforcement and investigative efforts relating to foreign bribery.

In the last two years, since Israel's Phase 3 report, there has been an extensive and proactive use of MLA requests in foreign bribery investigations. During that period there have been 17 requests submitted (eight to Convention countries and another nine to non-Convention countries.) The increasing use of this mechanism in foreign bribery cases is made even clearer when it is considered that, of those 17 requests, 11 formal MLA requests have been submitted by Israel just in the last year since Israel's oral follow-up report (six to Convention countries and five to non-Convention countries). It is planned to submit at least three further requests in the coming month (two to Convention countries and one to a non-Convention country).

As was already the case when Israel submitted its written comments in the context of its oral follow-up in June 2016, and as is fully evident from Israel's Foreign Bribery Enforcement Actions update, in addition to the growing use of formal MLA requests, Israel has continued to proactively, creatively and judiciously utilize informal means of international cooperation in order to gather information relating to allegations of foreign bribery. The use of such informal mechanisms often precedes and serves to fully complement the effective use of the formal MLA process.

To this end, representatives of the relevant Israel law enforcement authorities (State Attorney's Office, Israeli Police and Israel Money Laundering and Terrorist Financing Provision Authority) maintain regular and fruitful contacts with colleagues in other countries, which contacts produce information crucial for the consideration, opening and carrying out of investigations of foreign bribery. In the light of information received and consultations conducted through such contacts, further international cooperation mechanisms may be utilized, including the submission of MLA requests. It should be noted that Israel's participation in the WGB continues to play an effective role in facilitating the initiation and maintenance of informal contacts in some cases.

It is noted that the above statistics do not include MLA requested by Israel in cases where Israeli public officials have been bribed by foreign companies. Israel has issued in the past year several requests to different states in such circumstances and has also been in contact with the prosecution authorities in those states, where relevant, to assist in the examination, investigation or prosecution of the foreign bribery offence in those jurisdictions.

Text of recommendation 6(a):

6. Regarding money laundering, the Working Group recommends that Israel:

(a) Proceed with its expressed intention to remove or reduce the monetary threshold under article 4 of the Prohibition on Money Laundering Law 2000 [Convention, Article 7].

Action taken as of the date of the follow-up report to implement this recommendation:

A bill to amend the Prohibition on Money Laundering Law was approved by the Knesset in first

reading on December 12, 2016. It is proposed in the bill to terminate the limitations on types of property listed in section 4 of the Law and to reduce the threshold set in Article 4 to 50,000 NIS (approximately 10,000 EUR).¹

Text of recommendation 6(b):

6. Regarding money laundering, the Working Group recommends that Israel:

(b) Ensure that reporting entities, supervisory authorities, and the Israeli Money Laundering and Terrorism Financing Prohibition Authority (IMPA) continue to receive appropriate directives and training, including guidelines and typologies where appropriate, on the identification and reporting of information that could be linked to foreign bribery [Convention, Article 7].

Action taken as of the date of the follow-up report to implement this recommendation:

Various actions are adopted to provide reporting entities, supervisory authorities, and the Israeli Money Laundering and Terrorism Financing Prohibition Authority regular guidance and trainings, in order to enhance detection and identification of information that may be related to bribery of foreign public officials.

In February 2017, IMPA's employees attended a lecture focusing on bribery of foreign officials. The lecture was given by Adv. Joey Ash, Head of the Criminal Department of the State Attorney's Office and the Head of the Inter-Ministerial Team which deals with foreign bribery allegations.

The IMPA is in constant and close contact with the supervisory authorities and they convene on a regular basis. The IMPA provides the supervisory authorities with ongoing updates regarding developments in the field of money laundering and the financing of terrorism, and joint discussions are held in order to find solutions to the difficulties and current problems that arise. In addition, the IMPA conducts training for these entities and the supervised entities, focusing, among other things, on issues that can contribute to detection of foreign bribery, such as: requirements regarding PEP, customer recognition, activity with countries at risk, types of industries with high levels of corruption, and activities that raise suspicions that should be reported.

In addition, in October 2015, IMPA published a guidance document titled *Money Laundering from Sources of Corruption and Bribery of Politically Exposed Persons*. The guidance includes typologies, measures to identify whether the customer is a PEP (at the establishment and during the business relationship) and "red flags" alerting unusual activity related to PEPs. The guidance is available on IMPA's website

¹ As of today, Article 4 of the PMLL applies criminal liability on a person performing any transaction of property, knowing (for the purposes of this section, "knowing" does not include 'wilful blindness') that it is prohibited property, and that such property is:

✓ Funds in excess of the amount of 500,000 NIS, whether within a single property transaction or a several property transactions, together totalling the aforesaid amount, within a period of three months. or –

✓ Categories of property (objects d'art; ritual objects and Judaica; means of transportation, including vessels and aircraft; precious stones and precious metals; securities; real estate; antiquities; carpets) provided that the value of the property is 150,000 NIS or more, whether in a single property transaction or several property transactions, together totalling the aforesaid amount, within a period of three months.

<http://www.justice.gov.il/Units/HalbantHon/docs/PEPBriberyCorruptionGuidlines291015.pdf>

On March 2017, the Bank of Israel published an amendment to Directive 411 that will enter into force on January 1, 2018, which deals with money laundering and terror financing risks. One of the purposes of the directive is to amend the previous regulation in this area in order to be in line with the amended 2012 FATF recommendations. The new directive includes an updated definition for PEP that defines also domestic PEPs and prominent members of international organizations. The new directive also includes guidelines for banking corporations to implement a risk-based approach in their internal procedures, including for the "know your client" procedure, and also provides guidelines for determining risk, including in relation to customers who are PEPs. As part of the list of factors that will be seen as high risk, the directive includes, *inter alia*, foreign residents with no apparent connection to Israel. The directive lists actions that should be taken in cases when the client or the account was classified as high risk, including when the client is a PEP.

On October 2015 the Israeli Securities Authority published guidelines for stock exchange members and portfolio managers regarding their AML/CFT obligations, including implementation of a risk-based approach according to international standards. The circulars published give the example of an account opened for a foreign or domestic PEP as an account that may be classified as high risk. Similar guidelines were published by other financial regulators.

Details of significant AML/CFT training and other awareness-raising activities undertaken with the private sector and non-profit organizations can be found in *Appendix III*. It should be noted that these are general initiatives which includes, *inter alia*, subjects that could contribute to the detection of foreign bribery allegations. Additional training concerning financial enforcement and confiscation issues are provided continuously by the Institute of Legal Training for Attorneys and Legal Advisers and Training concerning the AML regime in Israel was also provided by the Ministry of Justice and the Supervisor of Business Service Providers (lawyers and accountants) and in conjunction with IMPA (see *Appendix III*).

Text of recommendation 6(c):

6. Regarding money laundering, the Working Group recommends that Israel:

(c) Ensure that IMPA provides better feedback to reporting entities regarding Unusual Activity Reports (UARs) with a view to improving the quality of foreign-bribery related reports [Convention, Article 7].

Action taken as of the date of the follow-up report to implement this recommendation:

Since Israel's Phase 3 report, IMPA continues to conduct routine feedback meetings with the reporting entities (banking corporations, credit card companies, insurance companies and members of the stock exchange), on the quality and quantity of the Unusual Activity Reports (UARs) and Currency Transaction Reports (CTRs) received by IMPA.

In order to carry out the feedbacks, various quantitative and qualitative data regarding the reports is collected and analyzed, such as details of the report, whether documents were attached, missing details, linked entities, and closed cases.

The topics that were discussed during the feedback meetings included the number of UARs that were disseminated; causes for sending UARs; the use of "key phrases" in UARs (including PEP); the time it

took for IMPA to receive the UAR since it was noted in the reporting entity; effectiveness of UARs – the number of UARs received against the number UARs disseminated to the Police. In addition, IMPA presented several examples of UARs and discussed their quality and possible ways to improve them. IMPA presented UARs which contributed to cases in which money laundering and terror financing offences were investigated by the law enforcement agencies. One of these examples dealt with bribery of a local PEP which was reported to IMPA in a UAR.

As can be seen from the statistics in *Appendix III*, the number of the feedback meetings has increased and in 2016, 18 feedback meetings were held with different reporting entities. IMPA's position is that there is an overall increase in the quality of the UARs received from reporting entities.

In addition, as was mentioned above, in October 2015, IMPA published guidelines to the reporting entities on the subject of "*Money Laundering from Sources of Corruption and Bribery of Politically Exposed Persons*". The guidelines include red flags that are intended to assist reporting entities to detect cases that require reporting to IMPA in relation to corruption, bribery and PEPs and to improve the quality of the reports.

(See *Appendix III* for all feedback meetings held during 2013-2016 with reporting institutions regarding Unusual Activity Reports (UARs) and Currency Transaction Reports (CTRs) with a view to improving the quality of reports including related to foreign-bribery.)

Text of recommendation 6(d):

6. Regarding money laundering, the Working Group recommends that Israel:

(d) Take all appropriate steps to ensure that police and IMPA cooperate effectively to detect bribe payments through money laundering transactions and continue to share information potentially connected to bribery [Convention, Articles 5 and 7].

Action taken as of the date of the follow-up report to implement this recommendation:

The Israel Police and IMPA work in cooperation, sharing information, in preliminary examinations and investigations of the foreign bribery offence. Such activity is conducted in cooperation with IMPA, while providing mutual feedback on a regular basis.

As noted in reference to our response to recommendation 3, the deputy head of research and another representative of IMPA have joined the Inter-Ministerial Team in order to institutionalize the cooperation between the various authorities that enforce this offence.

Their participation in the team discussions ensures that they are updated regarding all foreign bribery cases. When appropriate, they offer ways to advance those examinations or investigations. Their experience with the cases enables them to effectively locate relevant information that can be put forward to the police.

In one case, the information that IMPA delivered to the police triggered an investigation, and in another case to an examination. In addition, IMPA routinely delivers information

Before every meeting of the team, the IMPA representatives examine whether new information was received with regard to the relevant cases, in addition to the ongoing follow up. In order to improve the work of the interface between the police and IMPA regarding the work of the team, a written working

procedure is being formulated.

In addition to the above, the following methods are taken by IMPA:

- (1) IMPA regularly initiates meetings with the Israeli Police regarding the subjects of its interest. Ongoing meetings are arranged with the relevant ML officer and unit investigators in order to discuss the specific intelligence reports – their potential contribution to ongoing investigations, clarifications and emphasis.
- (2) As reported in previous stages, in May 2013 an in-house designated IP working station was established at IMPA, as an extension of the Financial Enforcement Unit of the Israeli Police. The working station received all necessary approvals and it is already installed at IMPA's offices and is fully operating. The working station is staffed with a designated police officer and equipped with a computer with direct access to all relevant police databases. This working station significantly improves the effectiveness of IMPA, as it ensures timely access to all relevant law enforcement information, including PEPs. Moreover, the working station improves both the timeliness and the quality of exchange of information between IMPA and the IP and would further stimulate proactive dissemination of information. The working station assists IMPA in performing its ongoing duties: prioritizing its efforts while addressing police requests, preparing more detailed and tailored intelligence reports that answers to the IP's needs and assists the task forces.

Text of recommendation 7(a):

7. Regarding accounting and auditing requirements, the Working Group recommends that Israel:

- (a) Raise awareness among relevant authorities of the false accounting offence under article 423 of the Penal Law [Convention, Article 8].

Action taken as of the date of the follow-up report to implement this recommendation:

As a matter of policy, the Israel Securities Authority (ISA) continues to apply its authority such that when it conducts an investigation of an alleged breach of the Israel Securities Law 1968, it also examines possible conducts which are in violation, *inter alia*, of article 423 of the Israeli Penal Law. Such policy also ensures that ISA officials are mindful of the false accounting offence as an integral part of the fulfilment of their ongoing duties.

Text of recommendation 7(b):

7. Regarding accounting and auditing requirements, the Working Group recommends that Israel:

- (b) Encourage accountants, external auditors and internal auditors of non-state-owned companies to detect suspicions of foreign bribery and report those suspicions to company management and corporate monitoring bodies, including through training and awareness-raising for these professionals [Convention, Article 8; 2009 Recommendation III.i and X.B(iii)].

Action taken as of the date of the follow-up report to implement this recommendation:

As part of the ongoing awareness raising efforts towards accountants and auditors, a specific training

has been organized for these professionals on the matter of the foreign bribery offence and the relation to the performance of the professional duties of accountants and the OECD recommendations on the matter. The training was organized by the Israeli Accountants Council (IAC) on July 19, 2016, and was attended by approximately 100 accountants. An official from the Ministry of Justice (who was also a delegate to the WGB) presented the Convention, the offence and the importance the WGB attaches to the role of the accountants in identifying and reporting suspicions of foreign bribery. Several discussions held on the matter of reporting duties of accountants within the framework of the IAC meetings, including representatives of the Institute of Certified Public Accountants in Israel (ICPAS), also serve to raise awareness of the matter among the heads of the profession.

Aside from these trainings and as previously reported in Israel's Phase 3 report, the IAC makes relevant sources publicly available on its website in order to ensure easy access to documents regarding the foreign bribery offence, the negative effects thereof and the WGB's reports of Israel (available at <http://www.justice.gov.il/Units/MoezetRoeiHasbon/Pages/AmanaOECD.aspx>). These documents are also easily accessible by way of a banner link that appears on the homepage of the IAC website (available at <http://www.justice.gov.il/Units/MoezetRoeiHasbon/Pages/default.aspx>).

Text of recommendation 7(c):

7. Regarding accounting and auditing requirements, the Working Group recommends that Israel:

(c) Consider requiring external auditors to report suspected acts of foreign bribery to external competent authorities, in particular where management of the audited company fails to act on internal reports by the auditor, and ensure that auditors making such reports reasonably and in good faith are protected from legal action [2009 Recommendation III(iv) and X.B(v)].

Action taken as of the date of the follow-up report to implement this recommendation:

In light of the WGB recommendation, in-depth internal discussions on the matter took place within the Ministry of Justice as well as together with the IAC, including representatives of the Institute of Certified Public Accountants in Israel (ICPAS). Following these deliberations, it was decided at this stage not to promote legislation requiring the external auditors to report suspected acts of foreign bribery to external competent authorities.

Text of recommendation 8(a):

8. With respect to tax-related measures, the Working Group recommends that Israel:

(a) Ensure that the level of suspicion required in order for a tax examiner to deny a deduction is clear and consistent across relevant guidance documents and legislation [2009 Recommendation III(iii) and VIII(i); 2009 Tax Recommendation I].

Action taken as of the date of the follow-up report to implement this recommendation:

Since Phase 3, the annual work plan of the Tax Authority Assessment Department has been modified in order to eliminate the inconsistency detected by the examiners regarding the required level of suspicion for the denial of deduction of bribery payments. Thus, the work plans for 2016 and 2017

define the level of suspicion as requiring a "reasonable basis to believe that the deduction is illegal", in line with the requirement set forth in article (16) of the Income Tax Ordinance.

Text of recommendation 8(b):

8. With respect to tax-related measures, the Working Group recommends that Israel:

(b) Continue to provide guidance and training on foreign bribery to tax examiners, including on the importance of detecting foreign bribery and the priority given to this offence [Convention, Article 5; 2009 Recommendation III(i)&(iii) and VIII(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors, remains a core tool for the guidance of ITA's employees and relevant practitioners. This handbook has been translated to Hebrew and is available online on the Israel Tax Authority website (at <https://taxes.gov.il/IncomeTax/Documents/IntTaxation/internationalTax-OECDHanbook.pdf>).

The Israeli Tax Authority (ITA) continues to hold annual training sessions, and since Israel's Phase 3 report, training sessions have been conducted in all five regional investigative offices of the ITA, as well as in the "Yahalom" unit, which is a joint unit of the ITA and of the Israeli Police charged with investigating financial crimes. The sessions were attended by approximately 250 tax examiners (investigations) from all ranks. These included detailed guidance on the subject of foreign bribery.

Additionally, *all* new tax examiners (whether assigned to one of the 24 regional income tax assessment offices or to one of the five aforementioned investigative offices) undergo targeted training sessions on the topic of foreign bribery as part of their preliminary training.

Text of recommendation 8(c):

8. With respect to tax-related measures, the Working Group recommends that Israel:

(c) Pursue its intention to accede to the Convention on Mutual Administrative Assistance in Tax Matters [2009 Recommendation III(iii) and VIII(i); 2009 Tax Recommendation I].

Action taken as of the date of the follow-up report to implement this recommendation:

Israel ratified the Convention on Mutual Administrative Assistance in Tax Matters on August 30, 2016. The Convention entered into effect for Israel on December 1, 2016.

Text of recommendation 8(d):

8. With respect to tax-related measures, the Working Group recommends that Israel:

(d) Consider systematically including the language of Article 26.2 of the OECD Model Tax Convention (on the use of information for non-tax purposes) in all future bilateral tax treaties [2009 Recommendation III(iii) and VIII(i); 2009 Tax Recommendation I].

Action taken as of the date of the follow-up report to implement this recommendation:

As reported in Israel's Phase 3 report, as a matter of policy and with very few exceptions, Israel does not include in its bilateral tax treaties provisions which allow for the sharing of information received

for tax purposes with law enforcement or for non-tax purposes. This policy is based on privacy considerations and, after further consideration given to the matter, such policy is not expected to change in the near future.

Text of recommendation 9:

9. The Working Group recommends that Israel continue to raise awareness across the public and private sectors, especially in high risk industries, of the corrosive effects of foreign bribery [2009 Recommendation III(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

Since Israel's Phase 3 report, Israel continues to undertake numerous and varied activities to comprehensively raise awareness among public and private sectors to the Convention, the foreign bribery offence, and their implications thereof.

Ministry of Justice

The Ministry of Justice (MOJ) continues to maintain a webpage (accessible in both Hebrew and English) within the website of the MOJ which contains detailed information relating to the Convention, Israel's foreign bribery offence and Israel's progress in implementing the Convention and combating foreign bribery. The webpage also contains links to the updated Anti-Bribery brochure in English, Hebrew and Arabic. We know that various organizations link to the website of the MOJ on this matter. In addition to the links on the website, the MOJ has continued to distribute hard copies of its brochure within the private sector.

Manufacturers Association of Israel

The Manufacturers Association of Israel (MAI) continues the ongoing activities of its Corporate Responsibility and Anti-Bribery Business Forum, with several of the forum's meetings focusing on implementation and enforcement of the Convention.

In one of the recent meetings of the forum, in January 2017, the title of the meeting was "Corruption and National Security". In addition to a lecture on that topic by former Head of the Investigative Branch of the Israel Police, there was a lecture given by Adv. Tadmor, the leading attorney for the prosecution (Taxation and Economic Department in the State Attorney's Office), on the case of *Nikuv*. Attached in *Appendix II* are translations to invitations to the 18th and 19th meeting of the forum.

Accountants

As elaborated in Israel's response to recommendation 7(b), a specific training was organized by the Israeli Accountants Council for accountants and auditors on the matter of the foreign bribery offence and its relation to the performance of the professional duties of accountants and the OECD recommendations on the matter. The training, which took place in July 2016, was attended by approximately 100 accountants. Several discussions held on the matter of reporting duties of accountants within the framework of the IAC meetings, including representatives of the Institute of Certified Public Accountants in Israel, also serve to raise awareness of the matter among the heads of the profession.

In addition, the IAC makes relevant sources publicly available on its website in order to ensure easy access to documents regarding the foreign bribery offence, the negative effects thereof and the WGB's reports of Israel (available at

<http://www.justice.gov.il/Units/MoezetRoeiHasbon/Pages/AmanaOECD.aspx>). These documents are also easily accessible by way of a banner link that appears on the homepage of the IAC website (available at <http://www.justice.gov.il/Units/MoezetRoeiHasbon/Pages/default.aspx>

Directors from the Business Sector

In May 2017, a conference organized by a prominent accounting firm (Fahn Kanne & Co., Grant Thornton Israel) together with a leading law firm (Gronitzky & Co.) and the Israeli Directors' Union took place. This is a bi-annual conference in which there are lectures on various professional issues relating to external directors in the business sector. Approximately 150 directors participated in this conference. During this conference, Adv. Tadmor, the Deputy Director of the Tax and Economic Department in the Office of the District Attorney of Tel Aviv, lectured on the enforcement of the foreign bribery offence, with special emphasis on prevention and compliance measures, including compliance programs and "red flags".

Judges

As mentioned in our response to recommendation 1, More than 60 judges, most of who specialize in criminal matters, attended a training session that took place in February 2017. The training session included a lecture delivered by the Deputy Director of the Tax and Economic Department in the Office of the District Attorney of Tel Aviv – Securities Department, on the criminal liability of legal persons in bribery offences (see *Appendix I*).

Law Enforcement Authorities

As extensively detailed in our response to recommendation 3(b), law enforcement officials in Israel have continued to undergo intensive training and awareness-raising activities regarding various aspects of economic crimes, such as cooperation between enforcement entities, confiscation, involvement of prosecutors in investigations, and the utilization of information discovered by the Israel Money Laundering and Terrorism Financing Authority, with increased emphasis on foreign bribery and related offences.

For example, the Israeli Police organizes annual conferences with the participation of the State Attorney's Office, the IMPA, the Israel Tax Authority, the Israel Securities Authority, the Israel Anti-Trust Authority and the Legislation and Counsel Department (Criminal Law) of the Ministry of Justice, in order to enhance cooperation among these bodies. The recent conference took place in January 2017 and included a panel session on issues relating to international cooperation in foreign bribery offences. The panel was led by the Head of the National Unit for Fraud Investigations, the legal advisor of the Israeli Securities Authority, the Deputy Manager of the IMPA's research division, and the Head of the the International Department in the State Attorney's Office.

Several trainings specifically focusing one the subject of foreign bribery have also been conducted since Israel's Phase 3 report. In February 2017, the Director of the Criminal Department at the State Attorney's Office lectured on the subject of matter at the IMPA. On March 2017, The Tel Aviv Taxation and Economic District held a full day training session on this subject (see the agenda attached in *Appendix I*). In addition, approximately 100 members of The National Unit for Fraud Investigations participated in a training that took place in May 2017, which included a lecture given by the Director of the Department of Criminal Law in the State Attorney's Office (who heads the Inter-Ministerial Team). An additional lecture was given by the Deputy Director of the Tax and Economic Department - Securities Department, on the subject of criminal liability of legal persons for bribery offences.

Finally, a large delegation from Israel participated in the Foreign Bribery and Corruption Conference held in Washington, D.C on October 31-November 3, 2016, organized by the United States DOJ, SEC and the FBI. The Israeli delegation consisted of high-level professionals, including the Director of the Criminal Department at the State Attorney's Office; the Tel Aviv Taxation and Economic District Attorney; the Legal Advisor to The National Unit for Fraud Investigations and a representative from the Israeli Security Authority.

Ministry of Defence

As elaborated below in Israel's response to recommendation 11(d), the Ministry of Defence and the Defence Export Controls Agency continue to undertake awareness-raising activities and to develop and implement anti-corruption measures.

In the framework of the annual conference held by Israel's Defence Export Controls Agency (DECA), which took place in September 2016, the head of DECA raised the issue of foreign bribery, including compliance programs. Approximately 800 participants took part in this conference, among them senior representatives of the Israeli defence export community, as well as relevant government officials from various ministries and authorities, among these the MOD, the Ministry of Foreign Affairs, the Ministry of Economy and the Customs Administration. The issue of foreign bribery is also expected to be raised in the framework of the 2017 annual DECA conference. The issue of foreign bribery is also routinely raised in the framework of smaller, more focused seminars held periodically for representatives of defence exporters.

In addition, the MOD Director General continues to issue annual letters to all of Israel's defence exporters, in March 2016 and again in May 2017, stressing the importance the MOD attributes to anti-bribery efforts and to the adoption and implementation of anti-bribery compliance programs. The letters also refer to the DECA "Guidelines Regarding Anti-Corruption Compliance Programs", adopted in November 2010 and recently updated, as detailed in Israel's response to 11(d).

Finally, preparation courses for defence attachés conducted by the MOD or the Israeli Defence Force also include presentation of the foreign bribery offence and foreign bribery risks. Furthermore, the MOD is currently taking measures to provide training of relevant MOD management and officials on the issue of foreign bribery.

Ministry of Foreign Affairs

As elaborated in our responses to recommendation 3(d)ii and to follow-up item k, the Ministry of Foreign Affairs (MFA) has implemented awareness-raising measures regarding the Convention and its implications thereof as an integral part of its trainings and ongoing activities. These measures, which include declaration obligations, annual telegrams, trainings and targeting seminars, stress the duties of MFA officials to detect and to report foreign bribery suspicions. These measures are also implemented among employees and professional affiliates of the MFA's Agency for International Development Cooperation (MASHAV).

ASHRA

As reported in our response to recommendation 11(c)(i), ASHRA invests efforts in providing training to its staff in order to increase their awareness of issues related to foreign bribery and prevention of such conduct. These programs are all provided by ASHRA's Legal Advisor, which reflects the high priority this matter is given by ASHRA. Since the adoption of Israel's Phase 3 report, ASHRA conducted two general training programs for all employees, in June 2015 and in April 2017. The

trainings comprised of the relevant aspects of the foreign bribery offence and the Convention, the detrimental effects of foreign bribery, ASHRA's internal procedure regarding the prevention of foreign bribery and the enforcement of the offence in Israel and globally. These trainings aim to raise awareness of the topic among the staff of ASHRA as well as the importance of their role in the combined effort to eradicate foreign bribery. An additional, more focused training, took place in February 2017, targeted at employees of the underwriting division, whose role is, *inter alia*, to examine the requests for insurance submitted to ASHRA. This training touched upon the topics raised in the general trainings but also dealt in depth with the tasks of the underwriters as stipulated in the internal procedure - what they should pay attention to, red flags, and the stages of the examination, including the in-depth examination which takes place when a suspicion of foreign bribery has been identified. Finally, in February 2017, ASHRA's Legal Advisor presented ASHRA's activities regarding foreign bribery and the importance assigned to its role in combatting foreign bribery to the company's new board of directors (as of September 2016).

In addition, media reports regarding suspicions of foreign bribery and convictions of foreign bribery are circulated to ASHRA's employees, as part of the ongoing efforts for raising awareness to the matter.

Tax Authority

As indicated in our response to recommendation 8(b), the Israeli Tax Authority continues to hold annual training sessions, and since Israel's Phase 3 report, training sessions have been conducted in all five regional investigative offices of the ITA, as well as in the "Yahalom" unit, which is a joint unit of the ITA and of the Israeli Police charged with investigating financial crimes. The sessions were attended by approximately 250 tax examiners (investigators) from all ranks. These included detailed guidance on the subject of foreign bribery. Additionally, all new tax examiners (whether assigned to one of the 24 regional income tax assessment offices or to one of the five aforementioned investigative offices) undergo targeted training sessions on the topic of foreign bribery as part of their preliminary training.

As also noted in our response to recommendation 8(b), the Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors, remains a core tool for the guidance of ITA's employees and relevant practitioners. This handbook has been translated to Hebrew and is available online on the Israel Tax Authority website (at <https://taxes.gov.il/IncomeTax/Documents/IntTaxation/internationalTax-OECDHanbook.pdf>).

Israel Securities Authority

The ISA ensures that investigations of foreign bribery offences by listed companies are brought to the attention of investors. To this end, in the course of an investigation the ISA's Corporate Department reviews the company's financial statements and examines, *inter alia*, whether disclosure was made therein of any matter related to a criminal procedure, including the foreign bribery offence.

In addition, in any case of an Israeli court ruling under the Israeli Securities Law 1968, the judgment is uploaded to the ISA's website.

Furthermore, the ISA website (<http://www.isa.gov.il/Pages/links.aspx>) includes a link to materials concerning bribery of foreign officials.

The ISA also continues to maintain the hotline described in Israel's Phase 3 report, through which individuals can report information on suspicions of alleged violations of the law in the capital market or related to activity in the capital market, which may also include suspicions of foreign bribery.

Finally, as elaborated in the response to recommendation 3(b), the ISA has recently implemented a new internal procedure regarding suspicions of foreign bribery.

IMPA

IMPA undertakes significant training and awareness-raising activities, as reported in our response to 6(b) and detailed in *Appendix III*.

Text of recommendation 10:

10. Regarding the reporting of foreign bribery, the Working Group recommends that Israel take steps to encourage whistleblowing in foreign bribery cases, for example, by raising awareness of the protections and reporting channels available to private sector whistleblowers [2009 Recommendation IX(iii) and Annex I.A].

Action taken as of the date of the follow-up report to implement this recommendation:

Since the adoption of Israel's Phase 3 report, there were a number of developments regarding protection of whistleblowers, including steps taken to raise awareness of the protection of whistleblowers and to encourage whistleblowing. The measures and actions detailed below address whistleblowers' protections in general, and are subsequently also relevant to whistleblowing in cases of foreign bribery.

Following the 2011 amendment to the Encouragement of Integrity in the Public Service Law 1992, first reported in Israel's Phase 2 written follow-up, the first ceremony for granting Recognition Certificates to whistleblowers took place at the official residence of the President of Israel on December 31, 2015. At the ceremony, the President, Mr. Reuven Rivlin, granted certificates to three whistleblowers. In his speech, posted on the President of the State of Israel website, the President stated his appreciation of the actions of the whistleblowers and their contribution to society:

..."dear distinguished whistleblowers, your actions are a true demonstration of patriotism. You did it for the State of Israel, for the sake of the Israeli society. Your struggle was not against the public sector, but for it, and for all of us. You have exposed embezzlement in the extent of millions of shekels, illegal salary benefits, nepotism, illegal use of funds, as well as other injustices that a civilized society cannot tolerate, you have led us to a cleaner, more moral and ethically noble place."

The Minister of Justice and the Ombudsman were present at this ceremony, a testament to the importance Israel attributes to the fight against corruption in its many channels, including to the protection of whistleblowers. The ceremony and the stories of the three whistleblowers were widely reported in the Israeli media. The attention given to the ceremony by the media speaks volumes of the change in the perception of whistleblowing in Israel, and such publicity will hopefully serve to encourage people who have been exposed to corruption to blow the whistle.

Moreover, the Office of the State Comptroller and Ombudsman engages in activities to protect whistleblowers as well as to raise awareness to its role in providing such protection. Regarding protection measures, the Ombudsman's Annual Reports show an overall uptrend in the number of complaints submitted to the Ombudsman's Office regarding measures taken against whistleblowers. Thus, for example, the number of complaints submitted in 2015 was 83 and 109 in 2016 - an increase

of 31% in one year. Israel believes that this indicates a rise in the awareness of employees to the protection available to whistleblowers, as well as a continuous improvement in the social climate regarding whistleblowing.

In addition, currently there is an attempt to extend the protection offered to whistleblowers in the public sector by the Office of the State Comptroller and Ombudsman, for example by providing a holistic treatment to whistleblowers. In applying this approach, which was recently tested in a successful pilot plan, the Office is striving not only to address the problems that whistleblowers face at their work place but also to help them deal with the difficulties they sometimes encounter in their personal lives as a result of their whistleblowing activities.

Regarding its awareness-raising activities, the Office of the State Comptroller and Ombudsman holds seminars, on a regular basis, for workers in the public sector. These seminars address, among other things, the variety of protections the Office offers to whistleblowers. The Office also produced a video clip, available on the YouTube website, discussing its mission and responsibilities in the Israeli democracy, including its role in protecting whistleblowers. In addition, in the last year and a half, the Office of the State Comptroller and Ombudsman has made available on its website its complete decisions regarding whistleblowers.

With regards to legal aid, Israel's Phase 3 report addressed the 2014 amendment to Israel's Legal Aid Law 1972, by which free legal representation is provided to all eligible whistleblowers. The amendment stipulates that all public or private sector whistleblowers will be exempt from the need to demonstrate a lack of personal funds in order to be provided with legal aid. Such aid is made available in all proceedings conducted under the Protection of Employees (Exposure of Offences of Unethical Conduct or Improper Administration) Law 1997, the State Comptroller Law 1958, as well as internal employment proceedings at the work place and any relevant appeals on the decisions in those procedures. Over the last two years, the Legal Aid Department in the Ministry of Justice represented eight whistleblowers in a variety of proceedings. In addition, aiming to increase the assistance offered to whistleblowers, a meeting between representatives of the Legal Aid Department and the Office of the State Comptroller and Ombudsman took place during June 2016 during which they discussed their activities in this matter as well as possible cooperation.

Finally, as reported in Israel's Phase 2 and Phase 3 reports, the Protection of Employees Law (Exposure of Offences of Unethical Conduct or Improper Administration) 1997 prevents public and private sector employers from taking retaliatory action in response to a complaint by an employee. The law provides employees who are dismissed or mistreated as a result of whistleblowing with legal remedies, including the possibility of compensation or reinstatement (provided the employer has over 25 employees). Article 3 of the law stipulates that the court can award compensation amounting to 50,000 NIS without the proof of damages and in certain cases of serious or repeated breaches of the law, the court can award up to 500,000 NIS in damages. Implementation of this law can be found, for example, in a court decision granted on March 28, 2015 (Fried v. Beit Yaara), in which the court awarded the plaintiff 50,000 NIS without proof of damages, as compensation for being fired from a retirement home after reporting regulation violations to the Health Ministry. This amount was awarded to her in addition to other types of compensation, such as compensation for unlawful dismissal. Israel

believes that awarding compensation to whistleblowers without proof of damages, especially to those from the private sector, is an important step towards improving the protection given to these whistleblowers.

Text of recommendation 11(a):

11. Regarding public advantages, the Working Group recommends that Israel:

(a) Adopt an explicit policy for public procurement authorities to consider the denial of contracts on the basis of a foreign bribery conviction, for example through the proposed Takam Administrative Ordinance [Convention, Article 3 and Commentary 24; 2009 Recommendation XI(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

As reported in Israel's Phase 3 report, the existing legal framework allows for consideration, in appropriate cases, of the criminal record of a supplier in a public tender proceeding. However, in order to enhance this legal framework and adopt an explicit policy in this regard, since Israel's Phase 3 report, the Ministry of Justice has continued its work on the drafting of both the amendment to the relevant Mandatory Tenders Regulations, 1993 and the Takam Administrative Ordinance, in collaboration with the Ministry of Finance and the Ministry of Public Security. An inter-governmental meeting headed by the Attorney General regarding this issue is expected to be held in at the end of June.

Text of recommendation 11(b):

11. Regarding public advantages, the Working Group recommends that Israel:

(b) Encourage public procurement authorities to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics and compliance programmes or measures and the debarment lists of the multilateral development banks in their decisions to grant public advantages [2009 Recommendation X.C(vi) and XI(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

Since Israel's Phase 3 report, the Ministry of Justice has approached relevant officials in the Ministry of Finance to encourage public procurement authorities to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics and compliance programmes or measures and the debarment lists of the multilateral development banks in their decisions to grant public advantages. As a result, the Ministry of Finance intends to examine this subject, including its implications as well as common practices in other countries. Following such examination, relevant officials from the Ministries of Finance and Justice will consider this subject.

Text of recommendation 11(c):

11. Regarding public advantages, the Working Group recommends that Israel:

(c) With respect to export credits, (i) provide regular and ongoing training and awareness-raising for staff of the Israel Export Insurance Corporation Ltd (ASHRA) on foreign bribery and its policies to prevent and deter such conduct, and (ii) encourage ASHRA to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics and compliance programmes or measures in their decisions to grant export credit support [2009 Recommendation XI.i; 2006 Export Credit Recommendation].

Action taken as of the date of the follow-up report to implement this recommendation:

(i) ASHRA invests efforts in providing training to its staff in order to increase their awareness of issues related to foreign bribery and prevention of such conduct. Since ASHRA is a small company with an average of 23 employees and a low turnover rate of employees, such training programs are expected to be particularly effective. These programs are all provided by ASHRA's Legal Advisor, which reflects the high priority this matter is given by ASHRA.

Since the adoption of Israel's Phase 3 report, ASHRA conducted two general training programs for all employees, in June 2015 and in April 2017. The trainings comprised of the relevant aspects of the foreign bribery offence and the Convention, the detrimental effects of foreign bribery, ASHRA's internal procedure regarding the prevention of foreign bribery (reported upon in Israel's Phase 2 report and elaborated below) and the enforcement of the offence in Israel and globally. These trainings aim to raise awareness of the topic among the staff of ASHRA as well as the importance of their role in the combined effort to eradicate foreign bribery. An additional, more focused training, took place in February 2017, targeted at employees of the underwriting division, whose role is, *inter alia*, to examine the requests for insurance submitted to ASHRA. This training touched upon the topics raised in the general trainings but also dealt in depth with the tasks of the underwriters as stipulated in the internal procedure - what they should pay attention to, red flags, and the stages of the examination, including the in-depth examination which takes place when a suspicion of foreign bribery has been identified. Finally, in February 2017, ASHRA's Legal Advisor presented ASHRA's activities regarding foreign bribery and the importance assigned to its role in combatting foreign bribery to the company's new board of directors (as of September 2016).

ASHRA also continuously refers its employees to its internal procedure regarding the prevention of foreign bribery among its employees and the proper application thereof.

In addition, media reports regarding suspicions of foreign bribery and convictions of foreign bribery are circulated to ASHRA's employees, as part of the ongoing efforts for raising awareness to the matter.

(ii) In view of this recommendation, it should be noted that the existence of compliance programs is systematically taken into consideration as part of the in-depth examination (elaborated below) that takes place when a suspicion of foreign bribery arises. In addition, on its website ASHRA also recommends applicants to develop, apply and document its internal control mechanisms for prevention of foreign bribery (available at <http://www.ashra.gov.il/eng/?CategoryID=859>). That being said, ASHRA's management deliberated whether, and to what extent, it should adopt a permanent policy of taking into account such programs or measures in its decisions regarding provision of export credit support. Following consideration, it was decided that on a general basis, such programs are not required but may be positively considered. This is, however, a requirement in the specific case of

defence export companies, as elaborated in Israel's response to recommendation 11(d).

ASHRA continues to attach great importance to the need to make sure that the insurance provided by it is not given in relation to transactions involving foreign bribery or applicants who have been, or are, involved in foreign bribery. To this end, the legal department of ASHRA accompanies ASHRA's activities, while paying close attention to the need to prevent foreign bribery. Particularly, ASHRA utilizes its internal procedure regarding the prevention of foreign bribery, which prescribes that the examination process of each application submitted to ASHRA include an inspection of elements that may relate to foreign bribery.

As briefly reported in Israel's Phase 3 report, upon receipt of an initial application for insurance and before the application is discussed by ASHRA's internal committee, the legal department examines whether any of the parties involved in the transaction appear in debarment lists of international financial institutions referred to in article 1(c) of the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits. In addition, the applicant is requested to submit certain declarations regarding involvement in foreign bribery, as part of the preliminary scanning in the initial stage as reported in Phase 3. If reliable information is found that gives rise to a suspicion that foreign bribery has been given as part of the transaction, the application is forwarded for an in-depth review in the underwriting department before further processing thereof. Red flags that may raise suspicion, can be, for example, when one of the parties involved in the export transaction appears in one of the aforesaid debarment lists; or when one of the parties involved was convicted of foreign bribery in the course of the five years preceding the application (as consistent with article 1(f)(ii) of the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits).

In addition, as a significant period of time can pass from the initial stage until the issuance of an insurance policy, prior to issuing an insurance policy, a reexamination takes place which includes rechecking of whether any of the parties to the transaction appears in one of the international debarment lists, as well as a request for an additional statement regarding bribery. If further information is obtained prior to issuing the policy that may raise suspicion of bribery, or if there are gaps between early reporting and the new statement, the concerns will be further examined in depth.

Finally, ASHRA also continues requiring anti-bribery declarations in its application forms and insurance policies for exporters. The statements of the exporters refer to the past as well as to future prospects, whereby the exporter declares that no bribery has been given directly or indirectly, and that a suspicion of future bribery will be reported immediately.

Text of recommendation 11(d):

11. Regarding public advantages, the Working Group recommends that Israel:

(d) With regard to defence exports and licences: (i) make full use of the Defence Export Controls Agency's guidance on compliance in awareness-raising and communications activities for defence exporters; (ii) establish formal guidelines on the conduct of due diligence in the granting of defence export and marketing licences (including the consultation of international debarment lists and the verification of a defence exporter's statement that a compliance programme has been enacted); and (iii) train relevant officials on the guidelines and foreign bribery risks [2009 Recommendation X.C and Annex II].

Action taken as of the date of the follow-up report to implement this recommendation:

(i) Since the adoption of Israel's Phase 3 report, the Israel Ministry of Defence (MOD) has continued to perform awareness-raising activities aimed at defence exporters. In the framework of the annual conference held by Israel's Defence Export Controls Agency (DECA), which took place in September 2016, the head of DECA raised the issue of foreign bribery, including compliance programs. Approximately 800 participants took part in this conference, among them senior representatives of the Israeli defence export community, as well as relevant government officials from various ministries and authorities. The issue of foreign bribery is also expected to be raised in the framework of the 2017 annual DECA conference. Additionally, the issue of foreign bribery is routinely raised in the framework of smaller, more focused seminars held periodically for representatives of defence exporters.

The MOD Director General continues to issue annual letters to all of Israel's defence exporters, in March 2016 and again in May 2017, stressing the importance the MOD attributes to anti-bribery efforts and to the adoption and implementation of anti-bribery compliance programs. In this respect, as reported in Israel's Phase 3 report, adoption and implementation of compliance programs are a precondition for receiving marketing and export licenses for Israel's major defence exporters. Such exporters account now for approximately 96% of Israel's total defence exports, following the expansion of this obligation to additional exporters (in accordance with the intention conveyed during the onsite visit). In his letters, the Director General also encourages the remaining defence exporters to adopt compliance measures, and advises all exporters to make their anti-bribery policies public. The most recent letter (available at <http://www.exportctrl.mod.gov.il/ExportCtrl/WhatsNew/OECD.htm>), also advises exporters who have compliance programs in place, to update them as necessary and to ensure appropriate implementation thereof. In addition, the letters include a reference to the DECA "Guidelines Regarding Anti-Corruption Compliance Programs", adopted in November 2010 and recently updated, as detailed below. The Guidelines, which include a reference to the provisions of Annex II to the 2009 Recommendation on Further Combating Bribery (Good Practice Guidance on Internal Controls, Ethics, and Compliance) are posted on the DECA website (at <http://www.exportctrl.mod.gov.il/ExportCtrl/Information/ForbiddenBribery/Hanhayot/>.)

(ii)

The MOD has continued to take steps to enhance and improve its due diligence process in the granting of marketing and export licenses, as well as its verification efforts.

The due diligence process continues to be undertaken in accordance with the Defence Export Control Law 2007, as reported previously in Israel's Phase 2 follow-up report. Additionally, in the framework of DECA's on-site inspections, conducted in accordance with the Defence Export Control Law, DECA verifies the existence of anti-corruption compliance programs for those exporters who are obligated to adopt these programs. With respect to the additional exporters who were obligated to adopt compliance programs, DECA furthermore requires written assurances regarding such adoption and implementation. Finally, for exporters who are not obligated to adopt compliance programs, DECA makes use of its on-site inspections to reiterate its encouragement for the adoption and implementation of such programs.

In addition and as reported in Israel's Phase 3 report, the DECA guidelines are intended to assist and guide defence exporters in their efforts to form and adopt anti-corruption compliance programs that are on par with the accepted international standards for such programs. As mentioned above, the Guidelines have been recently updated to stress to exporters the importance of consulting international debarment lists, including the World Bank Debarment List and regional development banks debarment lists, as well as to taking into account corruption indexes, as part of their due diligence processes in relation to export transactions.

(iii)

In regard to training of relevant officials, the annual DECA conferences referred to in section (i) are also attended by government officials from the various ministries and authorities, among these from the MOD, the Ministry of Foreign Affairs, the Ministry of Economy and the Customs Administration. Additionally, preparation courses for defence attachés conducted by the MOD or the Israeli Defence Force also include presentation of the foreign bribery offence and foreign bribery risks. Furthermore, the MOD is currently taking measures to provide training of relevant MOD management and officials on the issue of foreign bribery.

2. Follow-up by the Working Group

Text of follow-up item 12(a):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(a) The application of the corporate liability system in practice, including with regard to the outcome of the appeal in the Charney case, and any changes resulting from proposed legislative amendments [Convention, Article 2; 2009 Recommendation, Annex I].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There were no cases since June 2015 that had an impact on the application of the corporate liability system in Israel. The outcome of the appeal in the *Charney* case, described below, has had no effect on the application of the corporate liability regime.

Although certain legal persons in the *Charney* case that were found liable by the District Court were acquitted on appeal by the Supreme Court, that ruling did not include a legal discussion on the issue of liability of legal persons. The Supreme Court found that the liability of Kelner and Charney was not fully established by the evidence that was presented before it, and acquitted the legal persons respectively, as elaborated below.

All of the convictions of Holyland Vacation Services, a company owned by the Charney family and controlled and managed by Charney, were upheld by the Supreme Court. Some of the convictions of Holyland Tourism Company, also owned by the Charney family and controlled and managed by Charney, were upheld by the Supreme Court. Holyland Tourism Company was partially acquitted, due to lack of sufficient evidence against Charney.

Holyland Park Company was convicted by the District court due to Kelner's liability, even though he did not hold an official office in the company and was not an authorized signatory. The court found that his conduct triggered the liability of the legal person because he had been vested with executive powers regarding the parent company of Holyland Park. Due to Kelner's acquittal, Holyland Park Company was acquitted as well, with no discussion on the principle issue of the possibility to trigger liability of legal persons in such instances.

Text of follow-up item 12(b):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(b) The proposed legislative amendments to consolidate into the Penal Law the current case law which suggests flexibility in the level of natural persons whose conduct may trigger legal person liability.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Ministry of Justice is continuing to hold internal discussion regarding the proposed legislative amendments.

Text of follow-up item 12(c):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(c) The application of the corporate liability system in practice, to ensure the need to identify a natural person does not prevent effective investigation, prosecution and sanctioning of legal persons [Convention, Article 2; 2009 Recommendation Annex I].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We are not aware of new developments on this issue.

Text of follow-up item 12(d):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(d) Israel's proposed legislative amendments to the confiscation regime [Convention, Article 3].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Since Israel's Phase 3 report, discussions on the comments to the memorandum were held in the Ministry of Justice. The Criminal Counsel and Legislation Department prepared a draft bill for the Criminal Procedure Law (Forfeiture and Proceeds of a Crime) and it was submitted to the approval of the Minister of Justice.

Text of follow-up item 12(e):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(e) The introduction of any investigative time limits for foreign bribery cases [Convention, Article 5].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

To date there is no change in the legal situation as presented in the Phase 2 and 3 reports regarding investigative time limits. However, we would like to update that a draft bill to amend the Criminal Procedure Law which pertains to the statute of limitations was recently approved by the Ministerial Committee for Legislation, but has not yet been brought before the Knesset.

As reported, the statute of limitation for felonies, and among these the foreign bribery offence, is 10 years from the date on which the offence was committed. The statute of limitations is stopped by any

investigatory action carried out by law enforcement (including an incoming or outgoing MLA request), the issuing of an indictment or a court proceeding regarding the offence ("the last action"). In these events, the limitation period would restart on the date of the last action (whichever is the latest).

The proposed amendment is meant to address criticism raised that the possibility to stop the statute of limitations by carrying out investigatory actions may render the considerations that support the existence of the statute of limitations null. The amendment aims at balancing the considerations that support the existence of a statute of limitation when no exceptional circumstances prevail, with the need for leeway when investigating complex or severe offences, while acknowledging that Israel has comparatively long limitation statutes.

The proposed amendment prescribes that with regards to felonies, including foreign bribery offences, the last action carried out within the original 10 year statute of limitation would extend the statute of limitation by three years since the date of that action. The Head of the Investigations and Intelligence Division in the IP would be authorized to extend the limitation period by an additional six months, and the Attorney General may extend the limitation period from time to time in exceptional circumstances in order to enable the completion of investigation and prosecution proceedings. In view of the importance of prosecuting foreign bribery offences, the complexity of these offences and the commitments of Israel on the international level, extensions would most plausibly be granted as needed in the context of foreign bribery offences.

The Ministerial Committee for Legislation approved the proposed amendment in December 2016, and awaits for the approval of the Minister of Justice, after which it will be brought to the Knesset and will go through the regular legislation process

Text of follow-up item 12(g):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(g) The involvement of the Ministry of Defence and the Ministry of Foreign Affairs in the Inter-Ministerial Team to ensure that factors prohibited under Article 5 of the Convention do not influence foreign bribery investigations or prosecutions [Convention, Article 5].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As elaborated in our response to recommendation 3(b), the discussions of the Inter-Ministerial Team focus on detailed enforcement actions, and therefore the representatives of the Ministry of Foreign Affairs and the Ministry of Defence no longer participate in the team meetings on a regular basis. The Team refers to these representatives when the need arises.

Text of follow-up item 12(h):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(h) The application of Israel's jurisdiction provisions in foreign bribery cases, including (i) the principles applicable to the exercise of jurisdiction over legal persons, and (ii) the effectiveness of territorial jurisdiction over offences committed in whole or in part abroad, in particular with regard to acts involving foreign subsidiaries or a legal person incorporated abroad when its controlling owner is Israeli [Convention, Article 4 and Commentary 25].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We are not aware of new developments on these issues – there was no change in the legal framework and we are not aware of new relevant case law.

We would like to note that Supreme Court decision 4111/14 *Kurd v. the State of Israel* echoed the interpretation by which territorial jurisdiction would be established over an offence even if it was wholly committed elsewhere, if its derivative offence (aiding or soliciting) took place in Israel.

Text of follow-up item 12(i):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(i) The application of the money laundering offence, specifically the interpretation of the dual criminality requirement under section 2 of the Prohibition on Money Laundering Law [Convention, Article 7].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

We are not aware of developments regarding this issue and the enforcement authorities in Israel did not encounter any specific difficulties in this regard.

In one case which dealt with this issue – in *C.C 40036-06 (Tel Aviv- Jaffa) Israel v. Bnierashvili*, the defendant was convicted following a plea agreement for a money laundering offence where the predicate offence was a customs offence which was committed abroad (i.e. a predicate offence which benefits a foreign country).

Text of follow-up item 12(j):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(j) The practical application of the non-deductibility of bribes, including the application of Income Tax Circular 2/2012, to ensure that foreign bribery payments cannot be deducted as undocumented expenses [2009 Recommendation VIII(i); 2009 Tax Recommendation I(i)&(ii)].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The application of the non-deductibility of bribes was recently put into practice regarding the aforementioned *Nikuv* case. In this instance, the bribery payments, which amounted to 505,893\$ as determined in the plea bargain, were not recognized as a deductible expense for tax purposes. The convicted company has submitted an objection to this decision, which is currently being examined by the relevant tax assessment office, in accordance with section 150 of the Israeli Income Tax Ordinance 1961.

* Please note that that relevant Income Tax Circular is 2/2011 (and not 2/2012).

Text of follow-up item 12(k):

12. The Working Group will follow up the issues below as case law, practice and legislation develops:

(k) The nature and extent of official development assistance undertaken by Israel and whether measures are adopted, if necessary, to prevent, detect and report foreign bribery, and to encourage MASHAV to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics and compliance programmes or measures in their decisions to grant official development assistance [2009 Recommendation X.C(vi) and XI(ii); 1996 DAC Recommendation].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Agency for International Development Cooperation (MASHAV), a division within the MFA, is strongly committed to prevention of corruption within the framework of its activities, and invests efforts in mitigating possibilities that its actions may be entangled with instances of foreign bribery. It should be noted, however, that the nature and extent of MASHAV's official development assistance has not changed since Israel's Phase 2 and 3 reports. Its main objective remains the transfer of knowledge and trainings, and MASHAV does not provide financial support, loans or transfers in any forms.

As mentioned in Israel's Phase 3 report, all of MASHAV's employees and professional affiliates undergo targeted training sessions. These trainings are conducted under the supervision of the MFA's Legal Department, and they also address the foreign bribery offence, the Convention, and their implications for MASHAV staff. Two large-scale such conventions are planned for 2017 – one is to be held in June for professional experts contracted by MASHAV to provide training activities abroad, and a second seminar is scheduled for the fourth quarter of 2017, in which over 100 of MASHAV's staff

and affiliated partners are expected to attend.

In addition, MASHAV's employees and professional affiliates are also subject to the awareness-raising measures undertaken by the MFA in relation to all its officials, which stress their obligations to detect and report allegations of foreign bribery against Israeli nationals (as elaborated in our response to recommendation 3(d)(ii).