



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS**

**ISRAEL: PHASE 2**

**FOLLOW- UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2  
RECOMMENDATIONS**

**APPLICATION OF THE CONVENTION ON  
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN  
INTERNATIONAL BUSINESS TRANSACTIONS  
AND THE 2009 RECOMMENDATION FOR FURTHER COMBATING  
BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL  
BUSINESS TRANSACTIONS**

*This report was approved and adopted by the Working Group on Bribery in  
International Business Transactions in March 2012.*

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### *a) Summary of Findings*

1. In March 2012, Israel presented its Written Follow-Up Report, outlining its responses to the recommendations and follow-up issues identified by the Working Group on Bribery at the time of Israel's Phase 2 examination in December 2009. Since Phase 2, Israel has neither prosecuted nor adjudicated any case of bribery of a foreign public official, therefore the follow-up issues remain open.

2. The Working Group welcomed the extensive information provided by the Israeli authorities in the course of this follow-up evaluation and recognised Israel's efforts to implement the Phase 2 recommendations. Following Israel's submission of its Written Follow-Up Report, the Lead Examiners sent a list of additional questions to Israel. The supplementary information received in response to these questions is included in Annex I. As concerns the Phase 2 examination, the Working Group considers that Israel has satisfactorily implemented 16 out of the 22 recommendations, while 4 recommendations have been partially implemented and 2 recommendations have not been implemented. In addition, 4 recommendations were considered to be satisfactorily implemented but converted to follow-up issues for evaluation once there are examples of application in practice.

3. With respect to raising awareness of the foreign bribery offence in the public and private sectors, the Working Group acknowledged significant efforts on the part of the Israeli government, including numerous seminars for public officials on the operation of the foreign bribery offence, as well as engagement of Israeli businesses operating abroad by Israeli overseas missions (*Recommendations 1 and 2(a)*). Relevant official documents had also been made available in three languages: Hebrew, Arabic, and English (*Recommendation 2(b)*). While Israel had taken steps to raise awareness of public sector whistleblower protection mechanisms (*Recommendation 3(b)*), there had been no attempt since Phase 2 to enhance protection for whistleblowers in the private sector (*Recommendation 3(a)*).

4. In relation to the detection and reporting of foreign bribery, the Deputy Attorney General (Criminal Affairs) has decided to propose an amendment of the Civil Service (Discipline) Law 5723-1963 to enact a reporting obligation for Israeli public officials (*Recommendation 4(a)*). Subject to the approval of the relevant government officials, a draft bill will be issued in this regard. In addition, the Deputy State Attorney issued a binding instruction requiring the Military Censor to forward any suppressed information raising suspicions of foreign bribery (*Recommendation 4(b)*). Given that no information had been forwarded to date, it was decided to follow-up the application of this instruction in practice. With regard to Israel's export credit agency, the Working Group heard that Ashr'a undertook training of its agents in relation to the foreign bribery offence, as required, and will engage with the OECD Export Credit Group in 2012 on the issue of requiring clients to incorporate anti-bribery clauses when engaging sub-contractors (*Recommendation 5*). In terms of detection within the defence industry, Israel had called upon defence exporters to adopt and implement anti-corruption compliance measures and to participate in anti-corruption seminars and conferences. The Ministry of Defence introduced a compulsory anti-corruption declaration by companies prior to granting defence export licenses and in one case had suspended a marketing and export licence following the laying of charges against an Israeli defence company in another jurisdiction (*Recommendation 6*). The Working Group decided to follow up practical implementation of Israel's mechanisms for considering defence companies' involvement in foreign bribery allegations indictments, prosecutions and convictions prior to and during defence export licensing.

5. With regard to the non-tax deductibility of bribes, the Working Group noted that Israel had issued binding Income Tax Circular 2/2011 clarifying this issue (*Recommendation 7(a)*) and had undertaken significant awareness raising activities with respect to tax officials (*Recommendation 7(b)*). Israel also reported that the Commentary to Article 26(2) of the OECD Model Tax Convention is included in bilateral tax treaties as a result of bilateral negotiations (*Recommendation 7(c)*).

6. Israel had taken steps to increase the capacity of its Police Legal Assistance Unit to respond to requests for mutual legal assistance (MLA): staff numbers were increased significantly, however only one of the six MLA requests relating to foreign bribery cases received since Phase 2 had been completed (*Recommendation 8(a)*). The Working Group therefore decided to follow up the issue of the adequacy of police resources necessary to provide prompt and effective legal assistance in future evaluations. In relation to investigating allegations, as part of preliminary examinations conducted by the Israel Police, Israel had made informal information requests in relation to two separate allegations of bribery of foreign public officials by Israeli companies, but had not opened any formal investigations since Phase 2 (*Recommendation 8(b)*). On this basis, the Working Group will continue to follow-up on Israel's progress in pursuing investigations into foreign bribery cases.

7. In relation to issues identified in Phase 2 in Israel's legal framework for combating bribery of foreign public officials, Israel has amended the Penal law to remove the dual criminality requirement for the foreign bribery offence (Article 15(b)), and include a political entity that is not a state, including the Palestinian Council within the definition of 'Foreign State' (Article 291A) (*Recommendations 9(a) and (b)*). On the issue of liability of legal persons, encouraging steps had been taken by Israel to raise awareness and to initiate a reflection on the liability of legal persons in Israel with a working team formed by the Minister of Justice to review the issue. However, enforcement of the liability of legal persons remained limited for intentional offences and Israel had not taken measures to ensure a broad scope for triggering corporate liability, so as to notably cover legal persons with decentralised decision-making processes and ensure that the need to identify a natural person does not prevent effective prosecution of legal persons (*Recommendation 10*).

8. The Working Group welcomed amendments to the sanctions regimes for natural persons (from 3.5 years to 7 years' imprisonment and from 202 000 ILS to about 1,100,000 ILS maximum fines) or four times the obtained or intended benefit- whichever is higher, and for legal persons (from a maximum fine of 202 000 ILS to about 2,200,000 ILS or four times the obtained or intended benefit- whichever is higher), but decided to follow-up on the application of these increased sanctions in practice, to determine whether they are effective, proportionate and dissuasive (*Recommendations 12(a) and (b)*). Israel has also implemented anti-bribery clauses and declarations in ODA and defence and export credit contracts, setting out the grounds for denial of these contracts to legal and natural persons convicted of foreign bribery. In relation to public procurement tender procedures, Israel reported that an Administrative Ordinance was being drafted to establish a procedure for preventing natural and legal persons convicted of foreign bribery from competing in tender processes (*Recommendation 12(c)*).

9. Israel had taken steps to encourage companies to continue to develop and adopt compliance programs and had taken steps to develop and strengthen monitoring bodies including by amending the Companies Law to apply reporting rules for public companies to some private entities (*Recommendation 11(a)*). In relation to the accounting and auditing profession, Israel repeated its assertion from Phase 2, that the statutory obligation to prevent an offence contained in Article 262 of the Penal Law applied to this profession. The Working Group considered that this remained to be clarified, and that guidelines and training for current members of the profession was still required (*Recommendation 11(b)*).

10. The Working Group noted that it was not possible to ascertain whether certain recommendations in Israel's Phase 2 report had been implemented in the absence of concluded cases involving the offence of bribery of foreign public officials.

***b) Conclusions***

11. Based on the findings of the Working Group on Bribery with respect to Israel's implementation of its Phase 2 recommendations, the Working Group concluded that Israel has satisfactorily implemented Recommendations 1, 2(a), 2(b), 4(b), 5, 6, 7(a), 7(b), 7(c), 8(a), 8(b), 9(a), 9(b), 11(a), 12(a) and (b); that Israel has partially implemented Recommendations 3(b), 4(a), 11(b) and 12(c); and that Israel has not implemented Recommendations 3(a) and 10. Recommendations 4(b), 6, 8(a) and 12(a) and 12(b) were converted to follow-up issues for evaluation once there are examples of practical application.

## WRITTEN FOLLOW UP TO PHASE 2 REPORT - ISRAEL

**Name of country: Israel**

**Date of approval of Phase 2 Report: 11 December 2009**

**Date of information: 13 February 2012**

**Note:** For ease of reference, the recommendations from the original Phase 2 Report have been re-numbered. Recommendation 1 of this report corresponds to Paragraph 1 on page 62 of the Phase 2 Report and so on.

The Working Group on Bribery invited Israel, in December 2009, to report in writing after two years on the implementation of the recommendations in the Phase 2 Report.

This written report presents Israel's progress in the implementation of the Working Group's recommendations set forth in the Phase 2 Report.

The numerous steps taken by Israel in the past two years, as detailed below, are evidence of the ongoing commitment of Israeli authorities to the fight against bribery of foreign public officials.

### **Part I: Recommendations for Action**

#### **Text of recommendation 1:**

1. Regarding awareness-raising in the public sector, the Working Group recommends that Israel take steps to continue to raise the level of awareness of the Convention and the foreign bribery offence, including further attention to the detrimental effects of foreign bribery, within the public sector generally as well as specifically within the Ministry of Foreign Affairs Center for International Cooperation (MASHAV) and the Defense Export Controls Directorate of the Ministry of Defense (Revised Recommendation I).

#### **Actions taken as of the date of the follow-up report to implement this recommendation:**

Israel shares the view of the Working Group that the public sector plays an integral role in the implementation of the Anti-Bribery Convention, enforcement of the foreign bribery offence and prevention of foreign bribery. Therefore, Israel is continuously engaging in awareness raising efforts to increase knowledge in the Public sector of the foreign bribery offence and the Anti-Bribery Convention and related documents, including such documents as the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (hereinafter: the 2009 Recommendation), with reference to the Good Practice Guidance in Annex II. Thus, relevant authorities are constantly seeking out new avenues for outreach activities to achieve this goal. Throughout these efforts, Israeli authorities particularly strive to highlight the detrimental effects of foreign bribery on

Israeli society, Israeli economy and the conduct of international business.

The Ministry of Justice (MOJ) continues to enhance ties with its partners in government to promote initiatives and programs aimed at facilitating better understanding of the foreign bribery offence and its consequences, as well as the Anti-Bribery Convention. This strategy is aimed at developing a basis for the public sector to pursue proactive policies with relevant target audiences in aim to decrease the prevalence of illicit practices. As Israel progresses in implementation of the Anti-Bribery Convention awareness raising efforts focus on a wider variety of its articles, and on encouraging public authorities to continuously develop methods and means to incorporate them into their policies and day to day operations.

In the past 2 years, these efforts included a wide range of activities targeted at raising awareness within the public sector. Most widely, the awareness activities within the public sector focused on officials most likely to be involved in the investigation and prosecution of the foreign bribery offence as well as officials that are likely to come in contact with Israeli businessmen and companies operating abroad. In this regard, presentations on the foreign bribery offence and the Anti-Bribery Convention were made by MOJ officials in conferences attended by attorneys from the State Attorney's office, lawyers from various government ministries, other governmental legal experts and law enforcement officers from the Israel Police. These presentations included a specific emphasis on official directives, applicable to public officials, issued as part of the enforcement of the foreign bribery offence and the implementation of the Anti-Bribery Convention. Such directives include the Attorney General Guidelines on the Investigation and Prosecution of the Foreign Bribery Offence, The State Attorney Guidelines to prosecutors on the Aggravation of Sanctions and Sanctioning Policy for Bribery Offences, and the Civil Service Commission Circular informing government employees on their duty to report on information relating to suspicions of payment of foreign bribery (referred to below regarding Recommendation 4(a)). Examples for such conferences include a seminar dedicated to the use of economic measures in law enforcement and a seminar focusing on different aspects of international criminal law.

Adding to these efforts, the Director General of the MOJ has made a presentation on the Anti-Bribery Convention and the foreign bribery offence, including a specific emphasis on the applicable sanctions and the importance of imposing such sanctions in foreign bribery offences, to judges from a wide variety of courts in Israel, as part of a special session conducted at a judges' conference held on April 2010.

The MOJ issued an updated version of the Anti-Bribery brochure, which includes updates on the issues of the increase in sanctions for the foreign bribery offence, the change in definition of "foreign country" and liability of legal persons. Copies of the MOJ Anti-Bribery brochure were distributed by the Ministry of Foreign Affairs (MFA) to its embassies and consulates abroad. The MOJ website dedicated to the battle against bribery and corruption has also been updated, to include, inter alia, the legislative amendments and specific references to the 2009 Recommendation and Annex II thereof. The website is available at [www.corruption.justice.gov.il](http://www.corruption.justice.gov.il) in Hebrew, English and Arabic (hereinafter "MOJ anti-corruption website").

Alongside these conferences and presentations, the foreign bribery offence, the Anti-Bribery Convention and the recommendations, are discussed in a wide variety of forums and professional meetings of public officials. Recognizing that awareness raising efforts can be successful only when accompanied by an understanding at top levels of government of the basic principles of the international anti-bribery regime, the MOJ routinely updates senior officials in the Ministry, as well as in other relevant Ministries, such as the Ministry of Finance, the Ministry of Foreign Affairs, and the Ministry of Defense, on developments concerning the implementation of the Anti-Bribery Convention, and anti-bribery legal instruments developed by the OECD, such as the 2009 Recommendation.

In conjunction with the relentless efforts of the MOJ in awareness raising activities within the public sector, other relevant Ministries have been engaging in similar efforts, with aim to reflect a comprehensive and coordinated approach highlighting the continued commitment of the Israeli government to ensure that public officials in all government authorities be aware of the Anti-Bribery Convention and the foreign

bribery offence and the importance of dedicating efforts to prevent and detect foreign bribery. Many activities have taken place in the past two years in this regard, and the following is a brief description of some representative examples.

In November 2010, the Ministry of Finance cooperated with the OECD Secretariat to hold a seminar on various aspects of the work of the OECD, attended by a variety of government officials. The seminar also included a presentation on the Anti-Bribery Convention and the monitoring process by Mr. Robert Ley, Deputy Director for Financial and Enterprise Affairs at the OECD.

During 2011, as part of the efforts of the Ministry of Foreign Affairs (MFA) to raise awareness to the Anti-Bribery Convention and the foreign bribery offence, the MFA legal department circulated several internal memorandums to all Ambassadors and Consuls abroad, and to all heads of departments in the MFA headquarters. In the memorandums the MFA legal department reviewed the provisions of the Anti-Bribery Convention, the foreign bribery offence and the requirements regarding detection and reporting of Foreign Bribery, and requested to continue implementing these provisions at all levels. In addition, the MOJ Anti-Bribery brochure on foreign bribery was circulated to all missions abroad. Specific instructions have been issued by the legal department of MFA to the Defense Export Controls Division and the Economic Affairs Division in the MFA, regarding awareness raising of the Anti-Bribery Convention and the foreign bribery offence amongst the defense industry and the business sector respectively.

In addition, the MFA continues to conduct sessions on the Anti-Bribery Convention and the foreign bribery offence in the training curriculum of all training and preparatory programs, from the basic courses for new Cadets, training future diplomats, through to advanced courses for diplomats preparing for ambassadorial postings.

Furthermore, every diplomatic representative (which includes all Israeli officials posted abroad under the authority of an Israeli Embassy or Consulate, including police and military attachés) is now required to sign in his or her dispatching file an acknowledgment of awareness of the duty on them to report suspected violations of the foreign bribery offence. This reporting requirement has been included in the Foreign Affairs Code of Conduct, a breach of which may be subject to disciplinary sanctions imposed by the Civil Service Commission. Such reports must be sent to the General International Law Department in the Legal Department of the Ministry of Foreign Affairs. Reports received by the MFA would be immediately forwarded to the Israeli Police and other relevant authorities.

The Ministry of Foreign Affairs Centre for International Cooperation (MASHAV) conducted a comprehensive process of raising awareness to the Anti-Bribery Convention within its employees and associates, and implemented relevant regulations and procedures in its work practice. MASHAV employees involved with partnerships and external relations were briefed on the Anti-Bribery Convention and the foreign bribery offence and today it is considered in any new partnership that is being promoted (for further information see Recommendation 12(c)). To further raise awareness within MASHAV, a memorandum was sent to all employees regarding the Anti-Bribery convention and the foreign bribery offence. It was followed by a seminar for about 100 of MASHAV's employees and affiliated partners that took place in June 2010. The seminar addressed several issues relating to Israel's accession to the OECD and its implications for the work of MASHAV. The Anti-Bribery Convention and the foreign bribery offence were presented and discussed by MASHAV's Director of the Department for Planning and External Relations.

The Foreign Trade Administration (FTA) in the Ministry of Industry, Trade and Labor (MOITAL), which serves also as the National Contact Point to the OECD Guidelines for MNEs, continues to take active steps to raise the awareness of the foreign bribery offence and the Anti-Bribery Convention. The FTA has distributed the amended MOJ Anti-Bribery brochure to all commercial attachés, as well as manufactures, exporters, trade associations and consultants, via e-mail. Hard copies of the amended MOJ Anti-Bribery brochure are distributed among the commercial representatives abroad where they will be available for businessmen, both in Hebrew and in English. In addition, the FTA has posted the Anti-Bribery

Convention and a complementary information sheet on the Anti-Bribery Convention and the foreign bribery offence on the web portal which serves as a knowledge preservation mechanism for all FTA employees in Israel and abroad. The portal also refers to the MOJ anti-corruption website for additional information. The Anti-Bribery Convention and related documents, information and publications regarding the Anti-Bribery Convention are also available on the website of the Israel National Contact Point for the Guidelines for Multi-National Enterprises (in Hebrew, see URL: <http://www.moital.gov.il/NR/exeres/3ADB5281-FC32-40BA-9A12-100589E2B4D0.html>)

The MOITAL continues to include material regarding the foreign bribery offence and the Anti-Bribery Convention in the curriculum of the FTA commercial attachés course and in the training for FTA employees prior to their posting abroad. Accordingly, this item in the curriculum was included in the last FTA commercial attachés course and in the trainings prior to stationing abroad conducted this year. Additionally, the FTA distributed a leaflet about the Anti-Bribery Convention, in Hebrew and in English, by Email to all of the FTA's commercial attachés abroad.

The Ministry of Defense (MOD) is continuously taking measures to raise awareness in the defense export sector to the foreign bribery offence, the OECD Anti-Bribery Convention, and the implications thereof with regards to the defense export control, licensing and enforcement. These include, inter alia, the inclusion of the MOJ Anti-Bribery brochure concerning anti-corruption on the website of the Defense Export Controls Directorate (DECD), as well as posting a link to the MOJ anti-corruption website. Efforts targeted at the private sector are detailed below in reference to Recommendation 2(a).

Senior officials in the MOD are continuously updated in regard to the Anti-Bribery Convention and the foreign bribery offence. In addition, MOD employees were informed in regard to their duty to report suspicions of acts constituting the foreign bribery offence as instructed in the Civil Service Commission Circular (mentioned regarding Recommendation 4(a)). Furthermore, representatives of relevant departments within the MOD, and specifically the DECD, attended the conferences and seminars conducted by the MOD (as elaborated under Recommendation 2). Additional presentations regarding the Anti-Bribery Convention and the foreign bribery offence are given to personnel of the defense establishment.

As was exemplified by the wide variety of efforts listed above, Israel's approach is to place great emphasis on awareness which is essential for greater involvement of the public sector. Israel will continue to engage in raising awareness efforts in the public sector in the upcoming years, and is currently considering new avenues in this regard, building on its experience of the past two years, best practices of fellow member states, and on the guidance of the Working Group.

**Text of recommendation 2(a):**

2. Regarding measures in the private sector, the Working Group recommends that Israel:

(a) Continue to raise the level of awareness of the Convention and the foreign bribery offence, including further attention to the detrimental effects of foreign bribery and the extraterritorial effect of the offence, amongst the public generally as well as specifically within the business sector and defence industry, including through the engagement of businesses operating abroad by Israeli overseas diplomatic representatives (Revised Recommendation I).

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

Israeli authorities, from the early days of the process of accession to the Anti-Bribery Convention, are pursuing a multifaceted approach to raising awareness in the private sector. This approach includes not

only activities initiated by government agencies but also, and to a wide extent, encouragement of business and industry associations to take independent initiatives in this regard. This strategy resulted in both generating greater awareness to the Anti-Bribery Convention in the business sector, and in private sector initiatives to raise awareness to the foreign bribery offence and the Anti-Bribery Convention.

Israeli authorities have utilized many relevant forums to continue Israel's long lasting campaign to promote awareness of the foreign bribery offence, the Anti-Bribery Convention and related documents, including Annex II to the 2009 Recommendation – Good Practice Guidance on Internal Controls, Ethics and Compliance. These efforts included presentations by MOJ officials in many conferences and forums attended by the private sector. As would be further elaborated, such conferences included industry forums attended by defense exporters and corporations operating abroad, seminars organized by law firms, academic forums, accountants, auditors and representatives from financial institutions.. This framework for cooperation between the government and the private sector, serves as a platform for joint awareness raising initiatives. As noted above, a very positive development in this sense is that in many cases the initiative to include discussions and presentations in conferences, forums and seminars on anti-bribery issues comes from the private sector, rather than from the government.

Complementing these and other efforts, the MOJ has also made collaborative efforts with its counterparts in government and the private sector to promote publications regarding the Anti-Bribery Convention and the foreign bribery offence. One example is a chapter dedicated to the foreign bribery offence, the implementation of the Anti-Bribery Convention in Israel and the work of the WGB, in a publication sponsored by the Ministry of Finance on *Israel and the OECD* (published in September 2010). A second example is a joint effort by the MOJ and an accountant in a large private hi-tech firm in Israel to publish an article in *The Accountant*, the main professional journal of the Institute of Certified Public Accountants in Israel (ICPAS). The article was published in October 2010. In January 2010, an article dedicated to the global fight against corruption was published in another ICPAS publication. In regards to promoting general public knowledge of the foreign bribery offence, MOJ officials have also spoke about the issue in several radio programs aired on national public radio.

Other notable examples include presentations given by MOJ officials in 2009, in the 2009 Annual Internal Auditors Convention, and in an internal auditors' forum organized by one of Israel's most prominent accounting firms. These presentations were part of a concentrated effort by the MOJ to focus on awareness raising activities to accountants and internal auditors, with particular attention to the accounting and auditing provisions of the Anti-Bribery Convention and the framework established by the 2009 Recommendation.

The issue of detecting foreign bribery payments by accountants and internal auditors was also discussed in this abovementioned internal auditors' forum meeting, as an accountant invited to speak before the forum presented proposals for developing appropriate accounting tools. In addition, Israel Auditor's Council (IAC- a statutory body, subordinate to the Ministry of Justice, which grants accounting licences and supervises the accounting profession in Israel) has posted on their website information about the Anti-Bribery Convention and the foreign bribery offence.

The Ministry of Defense (MOD) is continuously taking measures to raise awareness in the defense export sector to the foreign bribery offence, the OECD Anti-Bribery Convention, and the implications thereof with regards to the defense export controls, licensing and enforcement. This includes, inter alia, the following:

- The matter of foreign bribery and anti-corruption compliance is being routinely presented in the course of DECD exporter conferences and seminars.
- The annual DECD (Defense Export Controls Directorate) Conferences, which took place in March 2010 and March 2011, included presentations on the topic of the foreign bribery offence

and the OECD Anti-Bribery Convention. These conferences were attended by the majority of registered defense exporters.

- A seminar focusing on anti-bribery corporate compliance programs was held by the MOD in November 2010. The keynote speaker was the Director General of the MOD. Additional presentations were given by the Ministry of Justice, Ministry of Defense, a representative of an Israeli defense industry and a group of lawyers from a leading global law-firm which shared its extensive experience in the field of compliance with regards to anti-corruption. The seminar was attended by over 200 representatives of leading defense exporters and Israeli law-firms. In addition, representatives of relevant government ministries attended this seminar. One of the main objectives of the seminar was to provide defense exporters with practical tools in order to formulate and implement appropriate anti-corruption compliance programs. Fundamental principles of such compliance programs, as set by the MOD, were presented in the seminar. (see elaboration in Recommendation 6).
- The DECD also dispatched newsletters to registered defense exporters which included information regarding the foreign bribery offence and the Anti-Bribery Convention.
- The MOD Legal Adviser participated in a conference organized by a prominent Israeli law-firm dedicated to compliance with regards to anti- bribery in October 2010. The Legal Adviser made a presentation on the Anti-Bribery Convention and the foreign bribery offence.

The MOD continues to inform defense exporters of major anti-corruption conferences and seminars in Israel and abroad, and to encourage their participation in such conferences. The MOD has been informed that defense exporters have taken part in such activities, as well as conducted internal training on the matter.

The MOD plans to continue its efforts to increase awareness of the foreign bribery offence, the Anti-Bribery Convention and implications on defense export control in the course of 2012.

The Manufacturers Association in Israel (MAI) has also taken measures to increase awareness to the Anti-Bribery Convention and the foreign bribery offence in the private sector. The highlight of these efforts is the establishment of the Anti-Bribery Business Forum in July 2010, whose scope of activities was broadened in 2011 to corporate social responsibility issues in general. The purpose of establishing the Forum was to facilitate awareness to international regulations on the prevention of foreign bribery in the business sector. The forum serves as a knowledge center for the business sector in issues relating to new Israeli legislation and international legal documents in this field. The Forum aims, *inter alia*, to help companies in Israel apply the new anti-bribery statutory regime. The forum also serves as a connecting point between the business sector and the government, while coordinating with NGOs. Forum participants include directors, legal counsels and compliance officers of leading Israeli companies, from a variety of industry sectors, including, *inter alia*, pharmaceuticals, defense, food, and chemicals. Forum meetings are also regularly attended by MAI officials, government officials and NGOs, and are chaired by the legal counsel of one of Israel's prominent corporations.

In the course of 2011, the Anti-Bribery Business Forum met twice, and participants were given lectures on related matters as well as reports from the continuous work of the OECD, BIAC and the B20 Group on Anti-bribery. The Forum and its members also provide input to the continuous work of the BIAC Task Force on Bribery & Corruption, in which representatives from the MAI and private sector are members. MAI representatives also attended the G20-OECD Conference "Joining Forces against Corruption: G20, Business and Government" which was held in Paris on late April 2011, as well as engaged in several ad-hoc initiatives of the G20 taking place under the supervision of the BIAC Task Force on Bribery & Corruption. These, and other, activities are creating a knowledge base within the private sector and facilitate engagement between the Israeli and global business communities in combating corruption.

The MAI Foreign Trade Division also hosted two conferences in the course on 2010 and 2011 on the issues of the foreign bribery offence and the Anti-Bribery Convention. In 2010, it hosted a conference featuring a presentation by Mr. Nicola Bonucci, OECD Director for Legal Affairs and attended by representatives of prominent companies in Israel, mainly companies engaged in international business. On December 2011 the Division held a conference under the title “Bribery, Terror & Frauds – Risk Management in the International Sphere”. Nearly 100 participants from all sectors and industries attended the event (CEO's, Export Managers, Compliance Officers, Legal Advisors, Etc.) in order to learn on old and new risks they may encounter in the rapidly changing global business environment. A special emphasis was placed on the enforcement of the foreign bribery offence, the implementation of the OECD Anti-bribery Convention and the importance of due-diligence in fighting corruption and avoiding unexpected malfunctions in international business. This conference was part of an ongoing campaign by the MAI to involve the private sector in deploying strategies of compliance mechanisms to prevent corruption and foreign bribery.

Complementing the activities of the Anti-Bribery Forum, MAI's website provides direct links to the MOJ anti-corruption website, and the MAI regularly distributes the MOJ updated Anti-Bribery Brochure to industrialists and businessmen attending various MAI's seminars. The updated version of the MOJ Anti-Bribery Brochure was also distributed, in its electronic version, to approximately 2000 members of MAI and is available on MAI's website.

In a similar manner, the updated version of the Anti-Bribery Brochure appears on website of Ashra, Israel's Export Insurance Corporate Ltd - responsible for providing officially supported export credit. Ashra also maintains on its website a page dedicated to Anti-Bribery and Corruption, which provides links to the MOJ anti-corruption website, the text of the Anti-Bribery Convention and to the OECD 2006 Council Recommendation on Bribery and Officially Supported Export Credits.

It is also noteworthy that other business and trade organizations have taken initiative to raise awareness to the Anti-Bribery Convention and the foreign bribery offence amongst their members. One such example is a special board meeting held in February 2011 by the Africa-Israel Chamber of Commerce, which included a presentation by an MOJ official on the issue of the foreign bribery offence and the Anti-Bribery Convention.

These efforts by business organizations were accompanied by similar events held by members of the legal private sector. One such example is a half day seminar held by one of Israel's largest law firms, attended by representatives of leading Israeli corporations engaged in international activity, including those from the defense export sector. The seminar included a presentation on the foreign bribery offence and the Anti-Bribery Convention by a senior MOJ official, as well as presentations made on the relevant legal regime in the US and the UK by lawyers from eminent international law firms. A second example is a forum held by the Israel Bar Association on May 2011, where MOJ officials made presentations on the Anti-Bribery Convention and its implementation in Israel with a particular focus on the foreign bribery offence and on economic enforcement in general.

As noted above, these efforts directed at the private sector also included reference to the Good Practice Guidance set in Annex II to the 2009 Recommendation as a source for guidance for developing anti-bribery internal control measures.

The Anti-Bribery Convention and its implication on responsible behavior of the business sector were also emphasized in various presentations by the Ministry of Industry, Trade and Labor (MOITAL), including:

- The 3<sup>rd</sup> Industry Conference for Promotion and Growth of BDO's Israeli branch of the international network of public accountants firms (June 2010);

- The 4th Conference of Beyond Business for Corporate Social Environmental Responsibility (July 2010); and
- The 18th International Conference of the Israel Society for Quality (November 2010).

Building on past work, MOJ officials have continued to work hand in hand with anti-corruption NGOs to enhance activities regarding awareness to the Anti-Bribery Convention and the foreign bribery offence amongst the general public and the business sector.

Another measure contributing to awareness raising within the private sector is the Maala CSR Index. Maala is a non-for profit organization that works with businesses to develop and implement Corporate Social Responsibility (CSR) strategies. Since 2003, Maala has produced the Maala Ranking, which rates Israel's largest companies on their commitment to CSR, and in 2005 Maala launched the **Maala Index**- a ranking of dozens of companies according to their commitment to CSR principles, in which companies are ranked based on their performance in six major areas: environment, business ethics, human rights and work environment, community involvement, corporate governance and social and environmental reporting. Companies choose to participate in Maala and be subject to the index on a voluntary basis. Currently their membership includes over 100 of Israel's most prominent companies, representing almost a quarter of the country's workforce and around half of Israel's economic product.

In order to develop the **Maala Index**, Maala sends out an annual questionnaire that companies can answer. The Index, including the ratings of the various companies, are published annually. As of 2012, the issues of corruption and bribery have been incorporated into the Index, through the chapter on ethics in questionnaire which was updated to contain questions on these issues. The chapter of ethics examines the codes of ethics of companies and the implementation of such codes. The process of formulation of the 2012 new Index's criteria, regarding corruption and bribery, took into account suggestions, inputs and meetings with multiple stakeholders from the business, social and public sectors. The final version of the 2012 Maala Index was posted on Maala's website in early August 2011.

Maala's annual conference, which draws hundreds of participants representing the various sectors of Israeli society, is a primary arena for discussion of corporate social responsibility and the impact of business on society in Israel. The issue of bribery and corruption will be discussed in this year's conference, scheduled for November 2012.

In addition, Maala holds seminars for its member companies, and in the up-coming seminar in March 2012 a representative of the MOJ will give a presentation on the topic of the foreign bribery offence and the Anti-Bribery Convention. Maala also regularly updates its website to present current information about corruption prevention.

In 2012 Transparency International Israel (TI) incorporated in the curriculum for its annual course for ethics officers, the issue of compliance programs for prevention of foreign bribery. Additionally, TI conducts seminars on the issue for the private sector.

Israel has also heeded the WGB call to the member states to be involved in efforts regarding to the 2011 International Jessup Competition regarding the Anti-Bribery Convention. MOJ officials have briefed the two Israeli student teams involved in the competition. In a different academic realm, the topic of foreign bribery offence has been introduced in several academic courses.

Like in regards to the public sector, Israeli authorities will continue to engage with the private sector to create wide knowledge of the foreign bribery offence and the consequences of using illicit bribery practices in international business.

**Text of recommendation 2(b):**

2. Regarding measures in the private sector, the Working Group recommends that Israel:
- (b) Consider making key resources on the Convention and the foreign bribery offence available in Arabic, English and Russian (Revised Recommendation I).

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

The MOJ anti-corruption website has been updated and now features comprehensive English and Arabic pages. An English version of the updated MOJ Anti-Bribery brochure was issued and has been distributed to the MAI and to the relevant ministries, for further distribution to the diplomatic missions abroad and to the businessmen and industries. The MOJ Anti-Bribery brochure has also been translated to Arabic and an electronic version has been transferred to the MOITAL and to the MAI for further publication or distribution.

**Text of recommendation 3 (a)+(b):**

3. Regarding whistleblower protection, the Working Group recommends that Israel:
- (a) Consider enhancing the level of protection against discriminatory or disciplinary action afforded to private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities (Revised Recommendation I and V(C)(iv)).
- (b) Take further steps to raise awareness within the public and private sectors of the availability of whistleblower protection, including awareness of the limitation upon the Ombudsman to take protective action concerning matters which are pending in court or in which a court has given a decision (Revised Recommendation I).

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

The Office of the State Comptroller and Ombudsman maintains several pages on their website dedicated to the protection of whistleblowers in workplaces subject to the review of the State Comptroller. The Ombudsman issues a brochure in 5 languages regarding the protection of whistleblower, and the brochure is widely distributed, as well as being offered in the Ombudsman and State Comptroller's offices in a variety of locations around the country (as mentioned in Israel's Phase 2 Report).

The limitation upon the Ombudsman to take protective action concerning matters which are pending in court or in which a court has given a decision is well known because it is made public through the abovementioned brochure. The brochure specifically states the limitation upon the Ombudsman to investigate matters which are pending in court or in which a court has given a decision.

The MOJ Anti-Bribery brochure, mentioned above (regarding Recommendation 1) includes a reference to the availability of whistleblower protection in regards to the foreign bribery offence.

Since the Phase 2 review of Israel, the Ombudsman's Annual Reports show constant rise in the number of complaints referred to the Ombudsman's Office regarding measures taken against whistleblowers regarding detrimental acts against whistleblowers. The number of complaints has risen from 39 complaints in 2008, to 68 complaints in 2010, as presented in the Ombudsman's Reports published on June 2009 and June 2011 respectively. This presents a leap of 74% in two years. Israel believes that this may indicate a rise in the awareness of employees to the protection available to whistleblowers in the public sector, as well as growing confidence in the mechanism that exists in the Ombudsman's office for this purpose.

As discussed in the Phase 2 Report, The Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law 1997 prevents an employer from taking steps detrimental to a person's employment for reasons that the person "complained" about their employer or a fellow employee. In addition, The Office of the State Comptroller and Ombudsman is able to protect public officials (and employees of state-owned companies) who report suspicions of corruption in the workplace by public officials working in the same office as the reporting person. The protection framework exists under the Encouragement of Integrity in the Public Service Law 1992, the State Comptroller Law 1958, and the Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law 1997. The State Comptroller has wide powers of investigation and is able to issue protective orders where there is a connection between the reporting of the act of corruption and the action taken against the complainant.

Recently there have been two changes pertaining to the Encouragement of Integrity in the Public Service Law, aimed at changing the public perception of whistleblowers in Israeli society. First, in December 2011, the Law was amended to improve the process for granting Recognition Certificates to whistleblowers, in a way that directs the responsibility to grant the Certificates solely to the Israeli President (before the amendment this responsibility was bestowed to the President as well as the Chairman of the Knesset, requiring a consultation process between them).

This was done with an aim to ensure that one central authority implements the law and grants the recognition certificates, without unnecessary delays, thus fulfilling the purpose of the Law. Second, in January 2012, the Encouragement of Integrity in Public Service Regulations 1994 were amended to introduced changes that clarify and assist in the implementation of the Encouragement of Integrity in the Public Service Law. Thus, for example, the amendment broaden the scope of the definition of what constitute a complaint by whistleblower which may be alleageable for receiving the certificate, including the case in which the complaint does not lead to a conviction.

The purpose of the amendments to this legal framework is to strengthen the incentive for employees to uncover acts of corruption, by changing the social perception of whistle blowing, acknowledging the important role of whistleblowers in combating corruption and recognizing their efforts to this end by granting the certificates.

In this context it is also worth to report on the discussions held in the State Control Committee in the Knesset on the topic of protection of whistleblowers. This Committee is one of the permanent parliamentary committees, which is in charge of issues related to the State Comptroller and Ombudsman and their reports. The Committee decided that one of the issues that it will focus and will follow up on is the whistleblower protection. The meetings on this issue were attended by many representatives and have held serious discussions on whistleblower protection. The last meeting was held in December 2011 and was attended by, inter alia, representatives of the Ministry of Justice, the State Comptroller's office and Ombudsman, the Ministry of Finance, the State Attorney's Office, various employees' organizations,

NGO's and whistleblowers who were involved in uncovering corruption. The objectives of the Committee's meetings on this issue include, inter alia, raising awareness to the different challenges encountered by whistleblowers, contributing to the work of the Knesset in improving the current legal framework, and sending a clear message to government offices, agencies and the public in general, as to the importance of whistleblower protection. In the last meeting the Committee Chairman opened the meeting by saying: "The battle on corruption protects three safeguarded values of the Israeli society. The first value is the trust of the public in public servants; the second is integrity of the public service; the third is the public interest that is entrusted the public servant and the system in overall."

All of the abovementioned measures are part of a concerted effort to improve the protection of whistleblowers and their public image, acknowledging their role in combating corruption and recognizing their efforts to this end.

**Text of recommendation 4(a):**

4. Regarding reporting of foreign bribery, the Working Group recommends that Israel:

(a) Consider taking appropriate measures to strengthen the detection of foreign bribery through the reporting of credible information relating to foreign bribery to law enforcement authorities, including through the possibility of establishing a statutory obligation for all public sector employees to report to law enforcement authorities information or suspicions that a serious criminal offence is or has been committed by an Israeli company or individual, with an accompanying clarification that any such obligation applies to the reporting of foreign bribery (Revised Recommendation I).

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

As reported above in Recommendation 1 (and as reported previously in the Phase 2 Report), the Civil Service Commission published a Circular informing government employees of their duty to report information relating to suspicions of payment of foreign bribery. The Circular instructs government employees to report information discovered during the course of carrying out their duties as follows: (i) instances where they have received an offer of a bribe; (ii) "substantial information of suspicion" that a fellow employee received a bribe or made an offer of a bribe to a foreign public official; and (iii) substantial information of suspicion of foreign bribery by the private sector. The Circular states that failure to report may constitute a violation of the Civil Service Regulations or Rules of Ethics.

Several presentations and updates on the Anti-Bribery Convention and the foreign bribery offence as mentioned in Recommendation 1, addressed also to public sector employees, include, *inter alia*, reference to the Civil Service Commissioner Circular, with an emphasis on the need of reporting information on foreign bribery to enhance enforcement.

The possibility of establishing a statutory obligation for all public sector employees to report to law enforcement authorities information or suspicions that a serious criminal offence is or has been committed, is being considered by the Israeli authorities. It should be noted, that the establishment of reporting obligations of any kind is complex and raises substantial questions in the Israeli legal system.

**Text of recommendation 4(b):**

4. Regarding reporting of foreign bribery, the Working Group recommends that Israel:

(b) Impose an obligation on the Military Censor to forward any information to law enforcement authorities and/or the Attorney General where that information has been suppressed by the Censor (whether in part or in full) and the information alleges the involvement of an Israeli company or individual in foreign bribery (Revised Recommendation I).

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

The Military Censor was instructed by the Deputy State Attorney (Special Affairs), on January 2010, to forward to his office any suppressed information which raises suspicions that a foreign bribery offence has been committed by an Israeli company or individual. Up to date, no such information has been forwarded to the State Attorney's office.

**Text of recommendation 5:**

5. Regarding officially supported export credits, the Working Group recommends that the Israel Export Insurance Corporate Ltd (Ashr'a): (i) continue to undertake training on the detection of bribery and how to deal with clients who use foreign agents; and (ii) consider requiring clients to incorporate anti-bribery clauses when engaging sub-contractors (Revised Recommendation I and VI(ii)).

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

Regarding the recommendation to continue training (Recommendation (i)), Ashr'a continues to provide further instruction and training to its relevant personnel on the subject of foreign bribery. This is also an integral part of Ashra's 2012 work plan.

Regarding the recommendation to consider requiring clients to incorporate anti-bribery clauses when engaging sub-contractors (Recommendation (ii)), Israel acceded to the OECD Working Party on Export Credit and Credit Guarantees (ECG) in April 2011 and its representative to the ECG- Ashr'a, would like to consider this recommendation after further discussions and consultations with its counterparts in the ECG. As the representative for Israel in the ECG, Ashr'a fully complies with the ECG's requirements regarding bribery and recently participated in a survey on measures taken to combat Bribery, conducted by the ECG in June 2011.

**Text of recommendation 6:**

6. Regarding detection within the defence industry, the Working Group recommends that Israel: (i) encourage the defence industry in Israel to develop strong anti-corruption measures and engage in international anti-corruption initiatives concerning the defence sector; (ii) ensure that, when providing

licenses for exporting military equipment and dual-use goods, the Defense Export Controls Directorate of the Ministry of Defense considers whether applicants have been involved in bribery as well as the level of risk of corruption in relation to arms procurement in the destination country; and (iii) consider the temporary or permanent disqualification of enterprises convicted of bribing foreign public officials from applying for export licenses (Revised Recommendation I and VI(ii)).

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

The Ministry of Defense (MOD) has initiated an endeavor to encourage defense exporters in Israel to develop appropriate anti-corruption measures and adopt and implement anti-bribery compliance programs in line with international standards, including those set forth in Annex II of the OECD 2009 Recommendation – Good Practice Guidance on Internal Controls, Ethics and Compliance, adopted on February 2010 (hereinafter: Annex II). This endeavor includes awareness raising efforts discussed above (see Recommendation 1).

The Director General of the MOD has issued a letter, in February 2010, to Israeli defense exporters calling them to adopt and implement strong anti-corruption measures, including appropriate compliance programs consistent with international standards. Several major defense export companies have already adopted internal compliance programs or are currently in the process of formulating and adopting such programs.

During the course of 2011, major defense exporters, in terms of their scope of export, were required to adopt and implement corporate anti-corruption compliance programs as a precondition for receiving marketing and export licenses starting the year 2012. In the first stage, the major defense exporters were required, to notify the MOD that their Board of Directors has decided to develop and implement an anti-corruption compliance program. In order to assist and guide the exporters in their effort to form and adopt anti-corruption compliance programs, the MOD has published, through the Defense Export Controls Directorate (DECD) website, fundamental principles regarding anti-corruption compliance programs, including reference to the provisions of Annex II. Pursuant to the abovementioned, exporters have reported to the MOD of their compliance with the MOD requirement.

MOD management intends to continue encouraging the defense exporters, through both oral and written communications, to implement anti-corruption measures.

Furthermore, the MOD takes measures to encourage the defense industry to engage in international anti-corruption initiatives concerning the defense sector. In a letter dated January 7, 2010, the MOD's Legal Adviser urged major defense industries to participate in international anti-corruption initiatives and forums, particularly those specific to the defense sector. During 2011 the MOD continued to inform defense exporters of major anti-corruption conferences and seminars, and to encourage their participation in such conferences. The MOD has been informed that defense exporters have taken part in such activities during 2010 and 2011, as well as conducted internal training on the matter.

The MOD management shall continue to promote participation of defense industries in relevant international initiatives and forums.

In April 2010 the MOD introduced a declaration and a commitment by exporters relating to the foreign bribery offence into license applications, according to which the exporters declare that neither they, nor anyone on their behalf, have been involved in the foreign bribery offence, and commit not to do so in the future. A similar term has been incorporated into the licenses themselves. Furthermore, licenses include a provision stating that such involvement would be considered a breach of the terms of the license and

might therefore lead to the suspension or revocation thereof.

In addition to these measures, the DECD will consider the level of risk of corruption in relation to arms procurement in the destination country, according to internationally recognized indexes, in the framework of licensing procedure.

In accordance with the Israeli Defense Export Control Law, 2007, the DECD considers the criminal record of an applicant when determining whether to register the applicant as a defense exporter or when determining whether to grant a license as well as when determining whether to revoke such registration or license. Since Phase 2, the MOD has significantly increased the frequency of routine reviews of criminal records of registered exporters, to approximately once a year. To complement this, the Director General of the MOD issued on March 2010 an instruction to the DECD clarifying explicitly that an exporter's engagement in foreign bribery should be taken into consideration in licensing and registration decisions and may also lead to the revocation or suspension of a license or registration.

**Text of recommendation 7(a):**

7. Regarding taxation, the Working Group recommends that Israel:

(a) Clarify the prohibition on the deductibility of payments made “in contravention of any law” by introducing an express denial of the deductibility of foreign bribe payments either in tax legislation or through another mechanism that is binding and publicly available (Revised Recommendation IV; 2009 Recommendation on Tax Measures I(i)).

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

Israel Tax Authority's Income Tax Circular 2/2011 "The prohibition of bribery of Foreign Public Officials" was issued on January 23, 2011. The circular is binding for all staff of the Israel Tax Authority, and refers to the amendment to Article 32 of the Income Tax Ordinance, clarifying explicitly that the amendment applies also to payments of bribes to a foreign public official. The Circular is available to the public on the Tax Authority's website and on the MOJ anti-corruption website.

**Text of recommendation 7(b):**

7. Regarding taxation, the Working Group recommends that Israel:

(b) Expressly communicate to tax officials the non-tax deductibility of bribes and the need to be attentive to any outflows of money that could represent bribes to foreign public officials, including commissions, bonus, gratuities as well as non-documented expenses incurred abroad, through the issuance of guidelines or manuals, and training programs (2009 Recommendation on Tax Measures).

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

Following the WGB's recommendation, the Tax Authority adopted the abovementioned Circular which is the appropriate tool to disseminate the policy to its employees (including tax inspectors). In providing guidance to the tax inspectors, the Circular highlights central issues from the OECD Bribery Awareness Handbook for Tax Examiners, and specifically provides guidance to tax officials regarding the non-tax deductibility of bribes and ways to detect bribery in its various forms. In addition, the Tax Authority has published the OECD Bribery Awareness Handbook for Tax Examiners on the Tax Authority's website.

On the matter of training regarding the issue of the Anti-Bribery Convention, the foreign bribery offence, the amendment of Article 32 of the Tax Ordinance and the Income Tax Circular, the Israel Tax Authority undertook the following steps:

First, the issue of the Anti-Bribery Convention, the foreign bribery offence, the amendment of Article 32 of the Tax Ordinance and the Income Tax Circular were incorporated as one of the topics for the 2011 Tax Authority's annual training for relevant employees at the headquarters of the Authority held on November 21, 2011. These employees are in constant contact with the field offices and provide them with counseling and guidance on the policies of the Authority. Through the work of these employees with the field offices they disseminate the information provided at the trainings.

Second, regarding new tax inspectors, the issues of the Anti-Bribery Convention, the foreign bribery offence, the amendment to the Income Tax Ordinance and the Income Tax Circular have been incorporated into the curriculum of training courses for new tax inspectors. Since the Phase 2 report, two courses for new tax inspectors were held and they included the aforesaid issues. The Tax Authority intends to include these issues in future training courses for new tax inspectors as part of the curriculum.

Third, regarding current tax inspectors, in 2012 the Tax Authority will be including the issues of the Anti-Bribery Convention, the foreign bribery offence, the amendment to the Income Tax Ordinance and the Income Tax Circular as part of the training for current tax inspectors. Each of the field tax assessment offices is required to send representatives to this training. Attending this type of training is obligatory for the tax inspectors designated by their offices to attend. This training is held for representatives from all the tax assessment offices that are relevant to assessment procedures. This training is held 5-6 times a year, and is usually attended by 30-40 representatives each time, and by a total of about 200 tax inspectors.

**Text of recommendation 7(c):**

7. Regarding taxation, the Working Group recommends that Israel:

(c) Continue to include in existing and future tax treaties the Commentary to Article 26(2) of the OECD Model Tax Convention, allowing for the reciprocal sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities in relation to corruption offences (Revised Recommendation IV; 2009 Recommendation on Tax Measures).

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

The Commentary to Article 26(2) of the OECD Model Tax Convention is included in tax treaties as a result of bilateral negotiations.

**Text of recommendation 8(a):**

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

- (a) Take further steps as a matter of priority to ensure that the Police Legal Assistance Unit is adequately resourced to enable it to provide prompt and effective legal assistance (Convention, Article 9(1); Revised Recommendation VII).

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

Israel has taken the necessary steps to ensure that the resources dedicated to Police legal assistance is adequate to enable it to provide prompt and effective legal assistance and since the on-site visit of Phase 2 the resources have been increased significantly. Consequently, according to the Israel Police, up to date there are no delays with regards to MLA requests.

**Text of recommendation 8(b):**

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

- (b) Complete without undue delay its preliminary enquiries concerning allegations of foreign bribery by Israeli companies, including through appropriate measures for the exchange of information about these allegations with the foreign public officials' country, and decide whether to commence formal investigations into these matters (Convention, Article 5; Revised Recommendation I and VII(i)).

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

Since the Phase 2 Report, the Israel Police took necessary measures to complete preliminary examinations concerning allegations of foreign bribery by Israelis or Israeli companies, including through requests for information from the countries of the foreign public officials alleged to be involved.

As reported in the past, in 2009 the Attorney General issued Guideline No. 4.1110 "*Attorney General Guideline – the Prohibition of Bribery of Foreign Public Officials- Article 291A of the Penal Law, 1977*", in order to clarify the policy regarding the investigation and prosecution of the foreign bribery offence.

The Guideline stipulates, *inter alia*, that any decision about opening an investigation or about closing a case related to foreign bribery without opening an investigation, shall be made by the Head of the Investigation and Intelligence Unit of the Israel Police. He shall give advance notice of any such decision to the Deputy State Attorney (Special Affairs). The Deputy State Attorney (Special Affairs) has been authorized to oversee the issue of enforcement of the foreign bribery offence.

Going beyond the instruction of the Guideline, the Deputy State Attorney (Special Affairs) monitors and closely follows the status of treatment of the various relevant cases involving suspicions of foreign

bribery, and is updated periodically on the matter.

Further information regarding specific cases will be discussed during the oral presentation of this follow up report.

**Text of recommendation 9(a):**

9. Regarding jurisdiction over the foreign bribery offence, the Working Group recommends that Israel:

(a) Given the stringent requirements of dual criminality for the application of nationality jurisdiction, ensure the full effectiveness of nationality jurisdiction, especially in the case of legal persons (Convention, Article 4(2)).

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

The Penal Law (Article 15(b)) was amended, in February 2010, to remove the dual criminality requirement for the foreign bribery offence.

**Text of recommendation 9(b):**

9. Regarding jurisdiction over the foreign bribery offence, the Working Group recommends that Israel:

(b) Proceed promptly with the amendment of Article 291A of the Penal Law 1977 to include a specific reference to "a political entity that is not a State, including the Palestinian Authority" in the definition of a "Foreign State" (Convention, Article 4(1)).

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

In February 2010 the definition of a "*Foreign Country*" in the foreign bribery offence (set in Article 291A of the Penal Law) was extended, to include "a political entity that is not a state, including the Palestinian Council". As a result of the amendment, the definition of "*Foreign Country*" is as follows:  
"**Foreign Country**" includes, but not limited to, any governmental unit in the foreign country, including national, district or local unit and also includes a political entity that is not a state, including the Palestinian Council".

**Text of recommendation 10:**

10. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Israel ensure: (i) the active prosecution of legal persons who engage in foreign bribery, including State-owned or State-controlled companies; (ii) that the need to identify a natural person does not prevent effective investigation, prosecution and sanctioning of legal persons; and (iii) that the level of natural persons in respect of which the criminal liability of legal persons can be engaged is applied broadly enough to capture the situation of legal persons that have decentralised decision-making processes (Convention, Article 2; Revised Recommendation I).

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

As explained throughout the monitoring process, Israel believes that there is no impediment to imposing liability on legal persons in foreign bribery cases. Moreover, the Attorney General Guideline No. 4.1110: the Investigation and Prosecution of the Foreign Bribery Offence, issued on November 2009, contain a specific guidance to indict legal persons for foreign bribery where possible. A reference highlighting the applicable sanctions against legal persons, was also included in the State Attorney Guideline no. 9.15: The Aggravation of Sanctions and Sanctioning Policy for Bribery Offences (for elaboration on this guideline see Recommendation 12(a)).

Nevertheless, the Minister of Justice appointed a working team to review the issue of criminal liability of legal persons in the Israeli legal system including specific matters of concern raised in the WGB recommendation. The working team has a mandate, inter-alia, to make recommendations regarding legislative amendments.

As a basis for the review of the Working Team, the MOJ has engaged two Israeli legal scholars for the conduct of a comprehensive research on the issue of liability of legal persons. The research includes an in-depth examination of the legal status of corporate liability in Israel, including case law and an examination of different models for corporate liability in different legal systems. The terms of reference for the research included also a reference to the corporate liability chapter in Phase II Report of Israel and specifically to the WGB recommendation on this matter.

It is notable that the Israeli legal scholars conducting the comprehensive research on the issue of liability of legal persons that will serve as the basis for the working team's review, has found a tendency in case law in recent years to stretch the limits of the organ theory, focusing on the functional test, and thus blurring the distinction between organ theory and vicarious liability.

The Working Team aims to formulate its preliminary recommendations by the end of 2012.

In addition, efforts are made, in various methods and measures, to raise the awareness of law enforcement officials as to the issue of liability of legal persons. One of the main fora for such awareness raising measures is at The Institute of Legal Training for Attorneys and Legal Advisers, where in the past years several initiatives were taken with regard to this topic (see above, regarding recommendation 1). A special session was dedicated in 2011 specifically to the issue of criminal liability of legal entities. In addition throughout 2011-2012 lectures on the topic were added to several other seminars dealing with criminal law, money laundering, financial enforcement etc.

Awareness raising steps have been taken within the prosecution service as well. In addition to the dissemination of the abovementioned Guidelines, the topic is discussed within the framework of professional meetings of district attorneys, as well as in seminars dedicated to financial enforcement conducted in each district, with the oversight of the Deputy State Attorney (Financial Enforcement).

In recent years several successful criminal investigations have been initiated in bribery and corruption cases as well as money laundering and securities fraud. In many of these cases indictments have been made against legal persons leading to conviction in several cases (other cases still pending).

For example, in the recent Criminal Case 8116/03 The State of Israel vs. Apple, that was brought before the Magistrate Court in Tel Aviv, a corporation was convicted in giving bribery in April 2010. In this case, Migdalei Hazohar Building LTD and David Apple, a controlling shareholder in the corporation, were convicted of giving bribery: Apple was convicted on three accounts of giving bribery according to Article 291 of the Penal Law 1997, and the corporation was convicted on one account.

The bribery amounted to 1.3 Million NIS and was taken by a fourth defendant, while running for election as the Mayor of the city of Lod, towards his election campaign. An additional 95,000 NIS were given towards an election campaign of a candidate to the Municipality of Givat Shmuel. The bribery was given for the purpose of gaining power and control with an expectation that in the future he would receive advantages that would have substantial monetary significance (cast thy bread upon the waters), and that the company and Apple would benefit from these advantages. The crimes were committed in 1998.

The court sentenced Apple to 42 months of imprisonment, in addition to 18 months suspended imprisonment and a fine of 1,000,000 NIS or 20 months imprisonment instead of the fine.

Regarding the Corporation, the Court found that the organs of the Corporation were not directly involved in giving the bribery, but allowed Apple to do with the money as he wanted. The Court sentenced the corporation to a fine of 500,000 NIS.

However, after Apple and the corporation submitted an appeal about the verdict and the sentence, the corporation began a process of liquidation. The Corporation then renounced its appeal and reached an agreement with the State as to a lower fine.

In the sentence, the Court accepted an argument by the defendants that the tendency in recent case law to give aggravated sanctions for bribery, including the amendment increasing the sanctions for the bribery offence, could not be given substantial consideration in this case since the crimes were committed 12 year prior. From this, it is clear that the court acknowledges that the current tendency is to give high sentences for bribery.

Finally, the issue of criminal liability for legal entities will be part of the action plan for the new "financial enforcement teams", planned to be created in each District Attorney's Office. A pilot stage of this plan has begun only recently in the southern and central districts.

**Text of recommendation 11(a):**

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

(a) Take measures to encourage Israeli companies that are active in foreign markets to: (i) continue to develop and adopt adequate internal company controls and standards of conduct with a particular focus on the control of foreign operations and on compliance with the law criminalising foreign bribery; and (ii) develop and strengthen monitoring bodies (such as audit committees) and ensure that they are independent of management and have the effective power and competence to fully perform their functions (Revised Recommendation V(C)).

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

As described at length in regards to recommendations 1, 2(a) and 6, significant awareness raising and other efforts are invested in encouraging Israeli companies to develop and adopt standards of conduct and compliance programs relating to the foreign bribery offence. The MOJ Anti-Bribery Brochure (referred to in recommendation 1) also recommends that companies raise awareness amongst employees to the foreign bribery offence, develop training programs aimed at internalizing the offence and create internal mechanisms to prevent the offence.

These efforts focused, *inter alia*, on the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance - Annex II to the 2009 Recommendation (also published on the MOJ Anti-Corruption website, and mentioned in the MOJ Anti-Bribery Brochure). Measures have been taken by the MOD to require or encourage companies in the defense export sector to adopt and implement strong anti-corruption measures, including appropriate compliance programs consistent with international standards (see recommendation 6).

With regards to strengthening effectiveness of internal controls, in 2009 Israel amended the Securities Regulations (Periodic and immediate reports) 1970, adapting some of the principles of the US Sarbanes-Oxley Act to the Israeli legal requirements. These new Regulations strengthen internal accounting controls for public companies and the adequacy and effectiveness thereof, as they require *inter alia* the submission of reports to that effect. The new Regulations (Article 9B and 38C to the Securities Regulations) stipulate that every annual or quarterly financial report submitted to the Israeli Securities Authority (ISA) has to contain declarations by both the company's CEO and CFO to the effect that the reports have been examined by them and there are no misleading details included in them, thus they reflect the true financial state of a company. In addition, following the amendment, a company is required to attach to its annual and quarterly financial reports submitted to the ISA, assessment reports by the management and the board of directors on the effectiveness of the company's internal controls. Finally, Article 9B(c) of the Regulations stipulates that the annual assessment reports by the management and board of directors shall be accompanied by a report of the external auditor stating his opinion regarding the effectiveness of the company's internal controls, and identifying material weaknesses encountered by him. These requirements came into effect starting with the 2010 financial reports.

Regarding the recommendation to develop and strengthen the monitoring bodies, there have been recent amendments to the Israeli Companies Law that came into effect on May 2011 with regards to the audit committee. The amendments refer to audit committees in public companies deal mainly with the composition of the committee and the scope of its duties. In order to ensure the independence of the

committee, the amendment to Article 115 of the Israeli Companies Law stipulates with regards to the composition of the committee inter alia that: the committee must be composed of a majority of independent directors; the chairman of the committee must be an external director; a person who cannot serve as a member of the committee shall not be present in the meetings of the committee during the discussion or the voting, unless he is authorized by the chairman of the committee that his presence is required in order to present certain topic and then he may be present during the discussions but not during the voting; the following persons shall not be appointed as members of the audit committee: the chairman of the board of directors, a director employed by the company or by a controlling shareholder or by a corporation under his control, a director who renders services on a regular basis to the company or to a controlling shareholder or to a corporation under his control, and a director for whom the bulk of his livelihood is provided by a controlling shareholder. The legal required for meetings and decision making in the audit committee shall be when a majority of those present are independent directors and at least one of those present is an external director (Article 116A).

With regards to the scope of the audit committee's duties in public companies, it has been broadened in Article 117 to include, inter alia: identifying and examining deficiencies in the business management of the company, including by consulting with the company's external auditor or internal auditor; where the committee identifies a material deficiency it must hold at least one meeting on the matter in the presence of the company's internal auditor or external auditor and without the presence of officers of the company who are not members of the audit committee; examining the internal auditor's work plan, to the extent brought before the board for approval, and proposing changes to it as needed; examining the framework of the internal control in the company and the internal auditor's performance and whether he has at his disposal sufficient resources to fulfill his duties; examining the scope of the external auditor's work and the fees paid to him; setting procedures with regards to addressing complaints made by employees of a company on deficiencies in the business management and with regards to the protection afforded to employees making such complaints.

The most recent amendment to the Companies Law, which was approved by the Knesset on August 3, 2011 and will come into effect on February 17, 2012, applies many of the corporate governance rules for publicly held companies to private companies that have issued bonds to the public. Following the amendment, according to Article 114, the rules relating to the audit committee in public companies, referred to above, are fully applied to these companies. Up until now, private companies that have issued bonds to the public were subject to the rules regarding the audit committee applicable to private companies, which are more lenient.

**Text of recommendation 11(b):**

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

(b) In consultation with relevant professional associations: (i) develop and implement more stringent requirements to effectively ensure the independence of external auditors; (ii) take steps to encourage the detection and reporting of suspected bribery of foreign public officials by accountants and internal and external auditors, in particular through guidelines and training for these professionals and through raising the awareness of management and supervisory boards of companies about these issues (Revised Recommendation V(B) and V(C)).

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

As elaborated above, in 2009 some principles from the US Sarbanes-Oxley Act have been adopted into Israeli legislation with the amendment of the Securities Regulations (Periodic and immediate reports) 1970, requiring inter alia the submission of reports on the effectiveness of internal controls in the company. As abovementioned, following the amendment, according to Article 9B(3) of the Regulations, the company is required to attach to the annual assessment report signed by the management and the board of directors on the effectiveness of the internal controls in the company (see above regarding recommendation 11(a)), a report by the external auditor on this issue. These requirements came into effect starting with the 2010 financial reports.

This amendment reinforces the position of the external auditors since it requires that they audit the evaluation reports of the management and the board of directors on the effectiveness of internal controls and submit an independent report on this issue. In addition, on September 2009 the Israel Securities Authority (ISA) issued a Staff Legal Bulletin (SLB) providing clarification as to the independence of an external auditor in relation to services provided to the audited company relating to the implementation of these new Regulations. While SLB's are not legally binding, they are widely accepted and applied by public companies.

In the SLB, the ISA emphasizes that, in principle, it would find assistance or provision of additional services by the external auditor to the audited company with regards to the implementation of the new regulations, as compromising the independence of the external auditor. It was further clarified that financial reports audited by an external auditor whose independence has been compromised are not considered audited as required by law and therefore do not satisfy the legal requirements set forth in the Securities Law and Regulations.

Regarding reporting of suspected bribery of foreign public officials by accountants, Article 262 of the Penal Law 1977 makes it an offence not to prevent a felony. According to his Article, a person who was aware of a felony (which includes the foreign bribery offence) and failed to use all reasonable means to prevent its commission shall be liable to two years' imprisonment. Article 1A(3) of the Accountants Regulations (Behaviour Unfitting the Dignity of the Profession) 1965 prohibits auditing accountants from disclosing information obtained in the course of providing their professional services, *unless "required by any other statutory provision to disclose such information"*. However, because Article 262 of the Penal Law requires a person who is aware of a felony (the foreign bribery offence being a felony in Israel) to use all reasonable means to *prevent* its commission (emphasis added), Israel maintains that it is reasonable to assume that an auditor is required to report to law enforcement authorities whenever s/he comes across information in the course of an audit indicating that a felony is in the process of being committed or about to be committed.

In the Phase 2 report, the lead examiners raised a concern, that a doubt exists within the accounting and auditing profession with regards to the obligation to report according to Article 262 and that doubt needs to be clarified. In order to clarify the issue of Article 262, and thus encourage the reporting of suspected bribery of foreign public officials by accountants, the Exam Committee of the IAC (Israel Auditor's Council) has recently changed the required syllabus for one of the obligatory licensing exams for all new accountants to that effect. The IAC has informed that starting from the 2012 Council exam on "audit and special audit problems", will include the topic of Article 262 and its implications for accountants, in the context of detection of suspected acts of bribery of foreign public officials. This will affect all of the 1,500 new accountants taking the upcoming exam.

**Text of recommendation 12(a)+(b):**

12. Regarding sanctions for foreign bribery, the Working Group recommends that Israel:

(a) Increase the level of penal sanctions available against natural persons convicted of the foreign bribery offence to provide for effective, proportionate and dissuasive sanctions (Convention, Article 3(1)).

(b) Increase the level of financial sanctions available against legal persons convicted of the foreign bribery offence to provide for effective, proportionate and dissuasive sanctions (Convention, Article 3(1)).

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

The Penal Law (Articles 290, 291) was amended, in February 2010, to increase the sanctions for the foreign bribery offence doubling the maximum prison sentence to seven years, and significantly raising the applicable fines. Natural persons can now be fined up to about 1.13 million ILS (approximately 221,000 EUR) - a fivefold increase of the previous applicable fine, or four times the benefit intended or obtained - whichever is higher. While Legal persons can be fined up to about 2.26 million ILS (approximately 443,000 EUR) - a tenfold increase of the previous fine, or four times the benefit intended or obtained - whichever is higher.

The Israeli legislature has decided to introduce, specifically for the bribery offences, the option of imposing fines based on an intended benefit, as an effective deterrent against bribes in high value transactions. Such a fine would be effective when the sum of four times the benefit intended exceeds the set fines for the offence. This would address also a situation of a mere offer of a bribe and possible difficulties in proving a causal link between the payment of the bribe and the benefit obtained.

In March 2010 the State Attorney issued official Guideline No. 9.15 "Aggravation of Sanctions and Sanctioning Policy for Bribery Offences", on the increase of sanctions and the sanctioning policy for bribery offences, also referring specifically to the foreign bribery offence. The Guideline draws the attention of the prosecutors to the increase in sanctions for the bribery offences, reflecting the change in approach and policy towards these offences. The Guideline calls for implementation of the policy set forth by the legislator in raising the sanctions. The prosecutors are instructed to take into account, already at the stage of investigation, the need to gather evidence to prove the benefit that the offender received or intended to receive and, if required, to also use an expert opinion in this respect.

The above is consistent with the overall trend, over the recent years, of the Israeli authorities, to combat economically motivated crimes by creating strong economic disincentives to such crimes. This is applied through a multi-layers approach which includes intensive training and awareness raising of law enforcement authorities to different aspects of economic enforcement; forming specialized units in the Israel Police and the prosecution; appointing a Deputy State Attorney responsible for financial enforcement; training sessions for police units and prosecutors; enhanced coordination between the Israel Police and State Attorney's office and such bodies as the Tax Authority, the Israel Money Laundering and Terror Financing Prohibition Authority, and the Israel Securities Authority.

**Text of recommendation 12(c):**

12. Regarding sanctions for foreign bribery, the Working Group recommends that Israel:
- (c) Establish formal, written policies for denying ODA contracts and public procurement contracts to legal and natural persons who have been convicted of foreign bribery, and debarment of defence industry companies convicted of foreign bribery (Convention, Article 3(4); Commentary paragraph 24; Revised Recommendation VI).

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

As mentioned in the response to recommendation 1, the issue of the Anti-Bribery Convention and the foreign bribery offence is considered in any new partnership that is being promoted by the Ministry of Foreign Affairs Centre for International Cooperation (MASHAV). The following paragraph on this issue is included in all partnership or cooperation agreements:

*"In accordance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, to which Israel is a party, and its related instruments:*

- a. *Bribing a foreign public official is forbidden by Article 291a of the Israeli Penal Law 5737-1977. In accordance with the Article, anyone who offers or gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity is committing an offence. This includes, inter alia, offering or giving of a bribe to a foreign public official through intermediaries. The contractor must use its best endeavors to raise awareness to this rule among all subcontractors.*
- b. *The contractor hereby declares that they had not previously been convicted of bribery of foreign public officials.*
- c. *A conviction of bribery of foreign public officials will set ground for termination of the contract."*

This paragraph stipulates that a conviction in the offence of bribery of foreign public officials will set ground for termination of the contract.

The Ministry of Foreign Affairs continues to establish and implement specific guidelines within relevant MASHAV authorities, in order to ensure ODA contracts are denied to legal and natural persons who have been convicted of foreign bribery, both before and after the commencement of the contract.

Moreover, the Director General of Ministry of Industry Trade and Labor (MOITAL) has issued guidelines regarding applications for financial assistance and support filed by Israeli companies and businessmen to MOITAL. A provision in the guidelines stipulates that in order to be eligible for assistance, the applicant has to submit a statement, stating that he was not convicted in the 3 years prior to the application for committing, *inter alia*, any of the offences under Chapter Five of the Penal Law, which includes the foreign bribery offence, nor is he aware of any ongoing criminal procedures against him with regards to these offences at the time of submission of the application.

Regarding tender procedures, a team consisting of representatives from the Ministry of Justice and the Ministry of Finance, was established in order to develop a Takam Administrative Ordinance (Regulations, Finances and Economy) which will set forth suggested rules for consideration of convictions in these

procedures. The administrative order is expected to be finalized during 2012.

As reported in Phase 2, Ashr'a has adopted an Internal Procedure concerning sanctions to be applied to export insurance policy holders involved in foreign bribery, including suspension of insurance, denial of claim payments, cancellation of the policy or indemnification, and/or a requirement for the policy holder to refund any claim payments made. Ashr'a assures that the new procedure is thoroughly assimilated and implemented in the company.

## **Part II: Issues for Follow-up by the Working Group**

### **Text of issue for follow-up 13(a):**

13. The Working Group will follow up the issues below as practice develops:

(a) The application by Israeli courts of the foreign bribery offence as an extension of the offence of domestic active bribery (Convention, Article 1).

Since the enactment of the foreign bribery offence in Israel, there have not yet been any formal investigations nor prosecutions regarding the offence.

### **Text of issue for follow-up 13(b):**

13. The Working Group will follow up the issues below as practice develops:

(b) The effectiveness in practice of territorial jurisdiction concerning offences committed in whole or in part abroad, in particular with regard to acts involving foreign subsidiaries (Convention, Article 4(1)).

As reported previously throughout the monitoring process, territorial jurisdiction is interpreted broadly in Israel. However, since Phase 2 Report, we are not aware of any new case law on the issue.

**Text of issue for follow-up 13(c):**

13. The Working Group will follow up the issues below as practice develops:

(c) The application of the judicial discretion on whether to convict legal persons, particularly as this applies to the potential creation of additional criteria for the liability of legal persons, to ensure that this cannot create an impediment to the effective implementation of Article 2 of the Convention (Convention, Article 2).

This issue is included in the review of the working team reviewing the issue of criminal liability of legal persons in the Israeli legal system (mentioned above regarding recommendation 10). Nevertheless, since Phase 2, no additional criteria for liability of legal persons have been created in case law.

**Text of issue for follow-up 13(d):**

13. The Working Group will follow up the issues below as practice develops:

(d) The exercise of judicial discretion in the determination of whether a conviction of a legal person would, in the particular circumstances, “help attain the desired social aims” with a view to ensuring that this does not include considerations contrary to Article 5 of the Convention.

As stated by Israeli authorities in the Phase 2 Report, regarding the range of considerations that may be taken into account when attributing liability, considerations that are inconsistent with Article 5 of the Anti-Bribery Convention are not relevant to a court's discretion under Article 23 of the Penal Law. Thus, the courts do not include considerations contrary to Article 5 of the Anti-Bribery Convention in their decisions. Still, since the enactment of the foreign bribery offence in Israel, there have not yet been any prosecutions regarding the offence, and therefore we are unable to report about the non-inclusion of considerations contrary to Article 5.

**Text of issue for follow-up 13(e):**

13. The Working Group will follow up the issues below as practice develops:

(e) The use of investigative techniques in foreign bribery investigations, including in the area of accessing bank records (Convention, Article 5; Revised Recommendation I).

Since the enactment of the foreign bribery offence in Israel, there have not yet been any formal investigations regarding the offence and therefore we are unable to report about the use of investigative techniques in foreign bribery investigations. However, as reported above regarding recommendation 8(b), in the course of preliminary examinations, Israel has used requests for information from the countries of the foreign public officials alleged to be involved in the offence.

**Text of issue for follow-up 13(f):**

13. The Working Group will follow up the issues below as practice develops:

(f) The level to which Israel is able to provide prompt and effective legal assistance and respond to requests for extradition (Convention, Articles 9(1) and 10; Revised Recommendation VII).

As reported above regarding recommendation 8(a), since the Phase 2 review, Israel has taken the necessary steps to ensure that there would be no unwarranted delays with regards to MLA requests. Israeli authorities also have assigned resources to endeavour to respond to requests for extradition without unnecessary delays. Israel handles a large number of extradition requests, a significant percentage of which are requests for the extradition of Israeli nationals under Israel's Extradition Law which permits the extradition of nationals.

**Text of issue for follow-up 13(g):**

13. The Working Group will follow up the issues below as practice develops:

(g) The number of convictions for money laundering and the efficacy of “unusual activity reports” (Convention, Article 7).

In the years 2010-2011, there have been convictions for money laundering in 20 cases, pertaining to 40 defendants.

A significant increase in the volume and the quality of The Unusual Activity Reports (UAR's) is notable from the year 2004 onwards. This raise is attributable to an increased awareness of the reporting duties by the officials of the institutions and their compliance officers especially in the banking sector. Furthermore, it may also be due to enforcement actions such as criminal investigations by the police, and to administrative sanctions imposed by the regulators' sanctions committees, and last but not least, to the amendments of the AML/CFT orders that added types of occurrences which may justify financial institutions to report UAR's to Israeli Money Laundering and Terrorism Financing Prohibition Authority (IMPA).

All UAR's received at IMPA from the various Reporting Institutions, are reviewed manually, at least twice: First, at the moment the UAR is received at IMPA, the report is reviewed by the Collection and Control Department to determine whether the report is linked to Terror Financing. If so, the Department edits immediately a spontaneous disclosure, without further enrichment or evaluation of the contained information, and transfers it simultaneously to the Israeli Security Agency and the Israeli Police. Second, a day after the reports' details are entered into the computerized system, each UAR is analysed by an analyst from the Research and Analysis Department, to determine whether it falls under certain criteria defined at the "Immediate Routine". The "Immediate Routine" stipulates that UAR's that suggest a suspicion for committing an offence of money laundering or terror financing will be transferred immediately to the Israeli Security Agency and to the Israeli Police. If so, the analyst enriches the information contained in the original report and adds a basic evaluation, into a spontaneous disclosure. Spontaneous disclosure is a procedure where the Authority initiates the transference of information to the investigation authorities or to a foreign FIU's in accordance with the law, for the purpose of preventing the commitment of offences of money laundering or terror financing.

Furthermore, IMPA is equipped with Anti Money Laundering software program that scans, all information details that are entered into the database – sourced from CTR's, UAR's, Customs reports, Information Request etc, and provides alerts to IMPA analysts in cases of independent reports or compilation of reports that have characteristics that meet the terms of the AML "rules" defined by IMPA in the system. This sub-system includes up to date FATF points, as well as other Modus Operandi based "rules". The tool provides also alerts based on a "Watched Entities" list, maintained by IMPA. This procedure is performed every night and, as mentioned, creates alerts according to varied defined criteria. Each of these alerts is to be reviewed by the specialized analyst. This mechanism results in a significant number of UAR's that are scanned and analysed once again from a different angle. For example, the software can detect a UAR about an entity that has appeared previously in a request from the police to receive information from IMPA regarding an investigation by the Police of bribery or money laundering.

In addition, according to a feedback report sent by the Police to IMPA, 64% of the information reports provided by IMPA to the Police, contributed in some way (9% of which contributed in a significant way) to complete information gaps; 41% of the information reports provided by IMPA to the Police, led to new courses of investigation (from that 9% in a significant way); In 51% of the cases, the information reports provided by IMPA to the Police contributed to detect evidence (from that 13% in a significant way). Furthermore, the Israel police reported lately that 17 information reports that IMPA provided to the Police led to significant progress in police investigations.

With regard to statistics concerning the years 2010-2011, in the tables I, II below we can find the significant number of ML/TF investigations, prosecutions, convictions, proceeds frozen/seized and confiscated. Furthermore, in tables III, IV below, we can find the number of UAR's from each of

the reporting entities, the number of cases opened at IMPA following the UAR's, the number of notifications to law enforcement concerning the UAR's and in the column "judicial proceedings" we can find the number of indictments and convictions which were initiated due to information from IMPA. This indicates the efficacy of the UAR's, by demonstrating how they contribute substantially to detection of crimes and enforcement endeavors.

**Table I**

2010												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
<b>ML</b>	70	156	21	82	13	27	-	-	24	23,408,833	9	7,054,248[1][1]
<b>FT</b>	2	6	5	8	1	5	-	-	2	156,050[2][2]	-	-

**Table II**

2011*												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
<b>ML</b>	66	104	15	54	7	13	-	-	23	26,798,019	10	2,164,157
<b>FT</b>	1	2	3	4	2	2	-	-	2	30,032	1	10,276

\* Data updated 1/8/2011.

<sup>[1][1]</sup> In addition, 2 vehicles have been confiscated but have not yet been sold or evaluated.

<sup>[2][2]</sup> In addition, a vehicle have been seized but have not yet been sold or evaluated.

**Table III**

2010																		
Statistical Information on reports received by the FIU								Judicial proceedings										
Monitoring entities, e.g.	reports about transactions above threshold	reports about UAR transactions		cases opened by FIU		notifications to law enforcement/prosecutors		indictments				convictions						
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT				
								cases	persons	cases	persons	cases	persons	cases	persons			
Banks	953,329	27,283	26															
Credit cards companies	N.A[3][1]	694	4															
Insurance companies & Agents	7,722	1,884	-															
Members of the Stock Exchange	4,417	812	-															
Portfolio Managers	53,342	170	-															
Postal bank	4,396	958	4															
Provident funds	1,250	54	-															
Providers of Currency Services	158,425	76	-															
Trust Companies	639	76	-	60	4	203	16	1	2	2	2	5	8	1	1			
<b>Total</b>	<b>1,183,540</b>	<b>32,007</b>	<b>34</b>															

**Table IV**

2011																	
Statistical Information on reports received by the FIU								Judicial proceedings									
Monitoring entities, e.g.	reports about transactions above threshold*	reports about UAR Transactions*		cases opened by FIU**		notifications to law enforcement/prosecutors**		indictments				convictions					
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT			
								cases	persons	cases	persons	cases	persons	cases	persons		
Banks	747,790	23,142	87														
Credit cards companies	1,313	861	6														
Insurance companies & Agents	5,766	1,801	-														
Members of the Stock Exchange	4,214	768	1														
Portfolio Managers[4][1]	47,064	215	1														
Postal bank[5][2]	2,209	846	15														
Provident funds	867	48	1														
Providers of Currency Services	113,020	41	-														
Trust Companies	340	89	-	40	4	215	9	8	1	0	0	4	4	0	0		
<b>Total</b>	<b>922,583</b>	<b>27,811</b>	<b>111</b>														

\* Updated to 12/10/2011.

\*\* Updated to 30/9/2011.

**Text of issue for follow-up 13(h):**

13. The Working Group will follow up the issues below as practice develops:

(h) The level of sentencing of natural and legal persons for the foreign bribery offence, and the application to natural persons of suspended sentences or conditional release in such cases (Convention, Article 3(1)).

Since the enactment of the foreign bribery offence in Israel, there have not yet been any prosecutions regarding the offence and therefore we are unable to report about the level of sentencing of natural and legal persons for the foreign bribery offence.

**Text of issue for follow-up 13(i):**

13. The Working Group will follow up the issues below as practice develops:

(i) The use of confiscation in foreign bribery cases (Convention, Article 3(3)).

Since the enactment of the foreign bribery offence in Israel, there have not yet been any prosecutions regarding the offence and therefore we are unable to report about the use of confiscation in foreign bribery cases.

**Text of issue for follow-up 13(j):**

13. The Working Group will follow up the issues below as practice develops:

(j) The effectiveness of the reporting system by Israeli tax authorities, in particular as this applies to the requirement for prior authorisation from the Head of the Tax Authority (2009 Recommendation on Tax Measures II).

The Israel Tax Authority's Income Tax Circular 2/2011 (mentioned above regarding recommendation 7(a)) includes explicitly, *inter alia*, the change in policy regarding reporting by an assessing officer to enforcement authorities, setting forth the possibility for an assessing officer to request, on his own initiative, an authorization from the Director of the Tax Authority to disclose information to law enforcement authorities when he encounters suspicions that payments of bribery to foreign officials were made.

Since under Article 132(a) of the Income Tax Ordinance the annual tax reports can be presented to the assessing officer until April 30 of the consequent year, and the Circular setting this reporting possibility

was only published on January of 2011, we are unable to report yet on cases where assessing officers used this new reporting possibility and thus to report on the effectiveness of our improved reporting system.

**Text of issue for follow-up 13(k):**

13. The Working Group will follow up the issues below as practice develops:

(k) The effectiveness of having integrated the provisions on the maintenance of books and records in tax rules, in particular as this applies to the *mens rea* offence of false accounting (Convention, Article 8(1); Revised Recommendation V(A)).

Since Phase 2, there have been no new case law on the offence of failing to keep account books under Article 216(5) of the Income Tax Ordinance. Therefore, we are unable to report on the effectiveness of having integrated the provisions on the maintenance of books and records in tax rules, in particular as this applies to the *mens rea* offence of false accounting.

Nevertheless, the Israel Tax Authority's Income Tax Circular 2/2011 "The prohibition of bribery of Foreign Public Officials" details methods for the detection of bribery payments set forth in the OECD Bribery Awareness Handbook for Tax Examiners, including the need to identify indications for bribery such as the absence of books, the concealment of records or the refusal to produce records or books, in tax assessment procedures. Furthermore, the Circular refers to the need to conduct an evaluation of a taxpayer's internal controls in order to determine the reliability of the books and records which is relevant in particular when there is suspicion of fraud or suspicious payments.

A new step with regards to false accounting was adopted into The Israeli Securities Law in 2011. Chapter 8-D and a Seventh Schedule have been inserted into the Law, establishing the possibility of administrative enforcement over the offences listed in the Seventh Schedule. Chapter 8-D includes Articles 52(31)-52(68). According to Article 52(32), an Administrative Enforcement Committee has been founded and the Committee is authorized to exercise this administrative enforcement. The recently added Seventh Schedule lists the provisions of the Securities Law that a violation thereof may result in administrative enforcement. Chapter 8-D sets forth the available administrative sanctions which include financial sanctions, payment to the party injured by the violation, taking measures to correct the violation and to prevent its repetition, prohibition against serving as a senior corporate officer in a supervised entity, and revocation or suspension of a license, approval or permit. Acts of omission or inclusion of misleading information in the prospectus or the company's financial reports are included in the Seventh Schedule and therefore may be sanctioned as above. As a result, such acts can now be subject either to criminal or administrative enforcement. The *mens rea* required for application of this administrative enforcement is negligence.

**Text of issue for follow-up 13(l):**

13. The Working Group will follow up the issues below as practice develops:

(l) The application in practice of new internal procedures adopted by Ashr'a, particularly as this

applies to due diligence, and enhanced due diligence procedures where there are suspicions that applicants or clients have been or are involved in payment of bribes to foreign public officials.

Since the Phase 2 Report, there were no cases that raised suspicion of payment of bribes to foreign public officials by applicants or clients ensured by Ashr'a. Therefore we are unable to report on the application in practice of the new internal procedure adopted by Ashr'a. However, Ashr'a assures that the new procedure has been thoroughly assimilated and implemented in the company.

**Text of issue for follow-up 13(m):**

13. The Working Group will follow up the issues below as practice develops:

(m) The nature and extent of official development assistance projects undertaken by Israel, with a view to determining whether this is extended from the current mandate and practice of MASHAV and whether further structures for the detection and prevention of foreign bribery should be implemented accordingly (Revised Recommendation I and VI(iii)).

The nature and extent of official development assistance projects given by MASHAV (The Ministry of Foreign Affairs Center for International Cooperation) has not been extended from the model presented to the lead examiners in the Phase 2 Report, and it remains a relatively small programme of official development assistance by Israel, which normally provides assistance through training and exchange of knowledge, in Israel and abroad, rather than funding or undertaking projects, or providing financial support for overseas ministries or government initiatives. Should there be changes in the nature and extent of official development assistance projects in the future, MASHAV will consider creating further structures for the detection and prevention of foreign bribery accordingly.

Nevertheless, MASHAV engages in awareness raising efforts to employees and associates on the issue of the Anti-Bribery Convention and the foreign bribery offence (as described above regarding recommendation 1), and the issue is also considered in any new partnership being promoted by MASHAV and is included in all partnership or cooperation agreements (as described above regarding recommendation 12(c)).

For the past three years since ratification of the Anti-Bribery Convention, Israeli authorities have dedicated many resources to enhance implementation of the Convention and its related documents, in a wide variety of forms. As is evident from this report, Israel invested considerable efforts in acting to address the recommendations adopted by the Working Group on Bribery in its Phase 2 report. In that regard, Israeli authorities would continue to strive to find ways and means to address the outstanding issues.

With the progress of time, we have witnessed great positive developments in the understanding of the Israeli public and private sector of the need to curb foreign bribery, and we are confident that this would be apparent in future stages of the monitoring process.