Response of the State of Israel

Information requested from States parties in relation to conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7 – 9 of the United Nations Convention Against Corruption

(Reference: CU 2012/28 (A)/DTA/CEB)

July 2012
**Article 7. Public sector**

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

   (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

   (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

   (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

   (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

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1. **Has your country adopted and implemented article 7 of the UN Convention against Corruption?**

   Yes.

2. **Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):**

   Israel has in place a wide range of measures in the context of article 7, including comprehensive statutory, regulatory and administrative schemes. The following are some representative examples, with particular emphasis on issues related to conflicts of interest.
**Civil Service appointments** *(Article 7(1) + (2)) - the government is required by statute to carry out equitable and transparent public tenders for civil service appointments. The State of Israel is currently in the process of reducing the number of tender exemptions provided to certain senior positions in the civil service, replacing them with the process of a search committee. Search committees consist mainly of professional experts, who determine who the best candidate for the position is and submit their recommendation to the person responsible for making the appointments.

**Attorney General Directive no. 1.1555** (2006) includes guidelines for the prevention of conflicts of interest when recruiting employees to the civil service. This Directive stipulates detailed disclosure requirements as well as legal guidelines for drafting ad-hoc requirements for the appointment of civil servants that may face various situations of conflicts of interest, for example a requirement for the civil servant to divest himself/herself from his/her holdings in a particular corporation (such as by way of transferring the shares to blind trusts), or a reassignment of certain fields of responsibility from one civil servant's position to another. The Directive includes a model questionnaire which aims to detect areas in which conflicts of interest may arise. The questionnaire can be modified to address the particular circumstances of each case.

The Directive adds that the Attorney General may also require the candidate for public office to provide additional details or to clarify answers in the questionnaire, as necessary (Section 16). If a risk of a conflict of interests is discovered and there is a need for an arrangement to prevent conflicts of interest, it is usually arranged by the legal advisor of the relevant government office, in consultation with the Ministry of Justice and the Civil Service Commission. According to Attorney General Directive 1.1555, a conflict of interest arrangement must include an express statement that the responsibility to avoid any conflicts of interest rests with the candidate. The person making the arrangement with the candidate must also notify them that if there is a change in the validity of their statements in the questionnaire or the declaration of capital, it is their responsibility to notify the competent authority of the change and provide the relevant information in writing.
**Funding of political parties and elected public officials** *(Article 7(3)) -* funding rules apply to elections held in party elections (primaries) (in accordance with the **Political Parties Law, 1992**). They establish the maximum amounts of contributions and the allocated time period for spending these contributions. There is a mandatory obligation to publish the list of donations and donors, and candidates are required to regularly report on contributions received and expenditures made. This applies both to municipal and general elections. The data is published on the State Comptroller's website, thus enhancing transparency of candidate funding. At the end of each election process, the State Comptroller publishes a report on the candidate's financial conduct during the campaign. A finding that the candidate breached these rules could result in sanctions.

Complementing these measures, and as part of the effort against exploitation of political power to advance personal or business interests through conflicts of interest, extraneous considerations, bias or discrimination, the Attorney General published **Directive no. 1.1708** (2004), entitled "Limitations on the Handling of Applications of Members of an Electoral Body by Public Officials".

**Conflicts of Interest – Civil Service** *(Article 7(4)) - The Civil Service Regulations* (hereinafter referred to as the **"Takshir"**) are a collection of regulations and orders applicable to the Civil Service, which include, inter alia, prohibitions on deriving personal benefit from public positions and on operating in a situation of conflicts of interest. To that effect, the Takshir provides that in regards to certain positions in public service (as defined in Section 13.621 to the Takshir), as a pre-requisite to nomination, the candidate must declare any possible conflicts of interest, and, where necessary, upon the Attorney General's decision, must agree to an arrangement to preclude conflicts of interest (Section 13.65). The Takshir mandates that the review and handling of conflicts of interest issues be performed under the direction of the Attorney General. Article 42.7 of the Takshir (Chapter 11 of the rules of ethics) provides that a State employee may only receive a salary and other payments from the State Treasury, and may not receive any other benefit from another person for or in connection with his/her public function.
Attorney General Directive No. 3.1005 (2005) stipulates which of the ad-hoc arrangements and requirements must be made known to the public.

The civil servant’s ongoing duty of full disclosure to the competent authority, and the fact that conflicts of interest arrangements are generally public, allow for more effective oversight. Furthermore, failure to provide all of the relevant information in the questionnaire or the attached affidavit may amount to a criminal offense, such as perjury (Section 239 of the Penal Code, 1977) or attempted fraud (Section 415 of the Penal Code).

All Attorney General Directives are available to the public online, thus ensuring broad access to and awareness of these Directives.

The Civil Service Law (Post Departure Limitations), 1969 imposes certain limitations on former public officials aimed at preventing potential conflicts of interest. Violation of the Law is criminal offense, and can result in a fine or six months imprisonment. The Law includes a "cooling-off period" of one year following retirement, regarding engagement with issues under the responsibility of the public official during his time in office (as would be detailed further below). This period can only be shortened by a public committee headed by a District Court judge. The law also prohibits a retired civil servant from representing a person (including a corporation) against the organization from which the civil servant retired, in a matter in which the civil servant was involved while in office. Furthermore, the Law prohibits a retired civil servant from contacting a person who was subject to them prior to retirement, for a period of one year following the retirement, in matters relating to the latter person's professional duties. Similar restrictions relating to former military officials are set forth in the Cooling-Off Period for Former Servants of the Armed-Forces Law (2007), particularly with respect to elections and nominations for public positions.

Conflicts of Interest – Government Members and Elected Public Officials: Regarding Ministers and Deputy Ministers, the Israeli government has adopted the Rules for the Prevention of Conflicts of Interest by Ministers and Deputy Ministers, 2003. The application of these rules is reviewed by the State Comptroller, who is authorized to review the declarations made by Ministers and Deputy Ministers.
under the rules, and to notify the relevant committee of the Knesset (the Israeli Parliament) if the rules have been breached.

**Conflicts of Interest – Municipal Government:** Conflicts of interests in municipal government are regulated mainly via three instruments: the **Municipalities Ordinance (New Version) 1968**, the **Local Councils Order, 1951** and the **Regional Council Order, 1958**. All three instruments prohibit employees and elected officials from operating in conflicts of interest. A breach of these prohibitions constitutes a penal offence. These legal instruments also include another important penal offense, applicable only to elected officials: it is generally prohibited for a council member to engage in business dealings with the municipal authority to which he or she was elected.

Another important example (applicable to municipalities that are cities) is the prohibition to recruit employees who are relatives of the mayor and his or her deputies, except when the recruitment of a specific employee was approved by a special committee convened by the Ministry of Interior, the members of which are independent of the municipality.

The Director General of the Ministry of Interior issues several circulars a year. These circulars regulate many areas of conduct relevant to the provisions of the Convention. They are mandatory for local municipalities, and are issued by the Director General by virtue of the powers delegated to him or her by the Minister of Interior. An example of a relevant circular is the circular of May 2011, which establishes disclosure duties for officers (employees) of local authorities, along the lines of **Attorney General Directive no. 1.1555**. Another example is the circular of January 2009 imposing personal liability on employees and elected officials of local municipalities whose actions have resulted in an illegal expenditure for the municipality.

The **Planning and Building Law, 1965** prohibits employees and members of planning committees (elected municipal officials or municipal employees) of all levels, from participating in deliberations and voting on a given matter, in case of a personal interest in that matter. They also have a duty to disclose to the chairperson of the committee any personal interest they may have in relation to the matter at hand.
Conflicts of Interest – Directors Appointed by the State: Regarding directors of government-owned companies, the criteria for their appointment are set forth in the Government Companies Law, 1975. These criteria include, inter alia, provisions designed to prevent conflicts of interest.

Conflicts of Interest – Judicial System: The Ethics Regulations for Judges, 2006, which were enacted pursuant to article 16a of the Courts Law, 1984, set forth rules of ethics and integrity for the judicial authority. In addition, an Office of the Ombudsman for the Israeli Judiciary was established in 2003.

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 7 of the Convention:

The policies extensively detailed in the answer to question 2 above provide an overview of the measures corresponding to article 7 (although many of these measures were in place before the entry into force of UNCAC in Israel to UNCAC), reflecting an inclusive and comprehensive approach to prevention of conflicts of interest in public service. The following are some illustrative examples for other relevant domestic measures, including specific concrete cases of the past few years.

Transparency in Public Government (including in issues related to public officials) (Article 7(1)(a))

- In 2011, the government established the Freedom of Information Unit in the Ministry of Justice, in order to enhance transparency and oversee the implementation of the Freedom of Information Law, 1998. The Law requires all government offices and agencies to grant access to information to the public upon request. These high standards of transparency help prevent misconduct and mismanagement throughout the public sector. The Freedom of Information Unit also initiates reports and publications to the general public, in order to raise awareness regarding certain subjects that might affect the public. The unit has operates a web-site, providing information on the Law and contact details for filing requests for information from every government authority subject to the law.
In recent years, several reports of the State Comptroller have focused on political appointments, some leading to criminal investigations and to the prosecution of public officials for related offenses.

**Conflicts of Interest – Civil Service (Article 7(4))**

The following are some representative examples of conflicts of interest situations which have arisen, and the solutions adopted to resolve them.

- A candidate who holds shares in a company whose business is related to his areas of responsibility in the civil service will be required to sell his holdings in the company and to refrain from dealing with any matter relating to the company, its shareholders, companies in their control and their major clients, for a limited period.

- A candidate who was a partner in a law firm or an accounting firm prior to his appointment to public office will be required to retire from the partnership and to refrain for two years from dealings involving that business, its other partners and its employees. In addition, the candidate must undertake not to maintain professional relations with the business, its partners and its employees and not to viewing the accounting records, documents or any other information relating to the work of the business.

- A candidate who, prior to his appointment, took part in the management of a private corporation will be required to resign from this position and to refrain from dealing with issues related to the organization for two years.

- A candidate who is the creditor of a debt must collect the debt within a specified period of time and guarantee that the appeal to the debtor must not be made in the context of his public role or on the letterhead of the government office. In addition, the candidate is required to specify the identity of his debtors and debt levels, and must determine the amounts and dates of payment before the appointment of the candidate to public office is formalized.
• The courts have also ruled on the issue, setting important precedents in cases involving the crimes of fraud and breach of trust by public servants and in conflict of interest cases (for example the Israeli Prison Service Case, decided in 2004).

4. **Have you ever assessed the effectiveness of the measures adopted to implement article 7? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.**

There has been no formal assessment of the effectiveness of the measures adopted to implement article 7 in Israel. However, like in any other field, policies are constantly reviewed and modified as appropriate to achieve their stated goals.

5. **Which challenges and issues are you facing in (fully) implementing article 7 of the Convention?**

Candidates come to public service from different and diverse fields. As noted, in regards to categories of senior positions in public service, and under certain circumstances, conflicts of interest arrangements are required. In such cases, since a conflicts of interest arrangement necessitates an initial detection of a potential conflicts of interest, the person drafting the arrangement must have a deep understanding of the system of functions which the public servant is required to perform, and make a precise distinction between them and the candidate's other affairs. Each arrangement must be specifically tailored to the special circumstances of each case, and this makes it harder to construct unified standards to increase efficiency and objectivity.

6. **Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?**

No technical assistance is required in this regard.
**Article 8. Codes of conduct for public officials**

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

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1. **Has your country adopted and implemented article 8 of the UN Convention against Corruption?**

   Yes.

2. **Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):**

   As with Article 7, the measures in place in Israel in the context of Article 8 are diverse and comprehensive. The following are some representative examples, with particular emphasis on issues related to reporting on corruption by public officials and whistleblower protection.
Standards of Conduct for Performance of Public Functions *(Article 8(1 + 2) – Judges)* - The Ethics Regulations for Judges, 2007, which were enacted pursuant to article 16a of the Courts Law, 1984, set forth rules of ethics and integrity for the judicial authority. In addition, an Office of the Ombudsman for the Israeli Judiciary was established in 2003.

The *Ethics Regulations for Judges* include a few key provisions to ensure prevention of corruption in performance of judicial duties, as follows:

- Chapter Five determines that a judge is prevented from benefiting from his position as a judge, materially or otherwise, directly or indirectly. In addition Article 20 in the same chapter, forbids the use of the judge's position to promote personal interests or using the "title" of judge, where it might be perceived that doing so will create a favorable position.

- Receiving gifts by a judge is governed by the 1979 public service law (gifts). Furthermore according to Article 21 to the *Ethics Regulations* a judge is prevented from receiving a discount when purchasing an item or upon receiving a service, unless the discount was given regardless of the judge's title or approved under the Courts administration general regulations.

- A judge cannot benefit from free entrance to events or venues where admission is required unless the invitation is from a family member or a close friend or where the judge acts as an escort to someone else invited and regardless of his position.

- Article 24 (a) to the *Ethics Regulations* determines that a judge is allowed to be a member of the administrative body of an educational institution such as a trustee of an educational institution or in a body for public purposes as permitted under Article 11 of the *Basic law: The Judiciary*. According to Article 24 (a) a judge must refrain from financial or business management of the public institution in which he is active, and shall not receive any benefits.
- A judge cannot be active in a public institution initiating legal procedures and shall not approach public authorities or private instruments on behalf of a public institution in which he is active.

- According to Article 35 to the Ethics Regulations a judge shall not conduct a business in an active manner, whether directly or indirectly, and shall not act as a functionary in a commercial corporation or any other business entity.

Public Officials - As noted, there are many provisions in Israeli law regulating the conduct of public officials in Israel, with aim to prevent corruption by public officials. The main ones are as follows: The Civil Service Regulations (hereinafter: "Takshir", the collection of the regulations and orders of the Civil Service) includes, inter alia, prohibitions on gaining personal benefit from public positions and operating in conflict of interest; The Civil Service Law (Discipline), 1963 provides the Civil Service Commissioner with jurisdiction to penalize public officials for any violation of the "Takshir", and The Encouragement of Public Morality in Public Service Law, 1992, provide the framework for encouraging public officials to report acts of corruption in public administration; The Civil Service Law (Gifts), 1979, regulates acceptance of gifts by public officials, mandating the reporting of gifts with over nominal value.

Reporting Acts of Corruption (General) – Civil Service (Article 8(4)) - The duty of civil servants to report information regarding suspicions of corruption forms an integral part of a civil servant's duty of loyalty. This notion is further expressed in Article 4.02 of the Code of Ethics (part of the Takshir) and Article 17 of the Civil Service Law (Discipline), 1963, which also grants the Civil Service Commissioner the authority to penalize public officials for any violation of the Takshir (the Civil Service Regulations, as stated previously).

The Encouragement of Public Morality in Public Service Law, 1992, provides the framework for encouraging public officials to report acts of corruption within the public administration, by creating a process which allows the public servant who made a complaint to receive a report of the results of the investigation and a
confirmation of the validity of his/her complaint, as well as a possibility of receiving a commendation from the President of the State of Israel.

According to this framework, the Director of Discipline of the Civil Service Commission issued a Circular in 2009, entitled "OECD Convention on Combating Bribery of Foreign Public Officials" setting out the requirements for the reporting of corruption offences by public officials (the Circular relates to both domestic and foreign bribery). The Circular focuses on the provision of the OECD Anti-Bribery Convention, but also refers to UNCAC and the information provided by the website of the Ministry of Justice in that regard (para. 25 to the Circular, see translation of the text below).

The binding Circular provides instructions to employees of the civil service who, in the course of carrying out their functions, have either been personally offered a bribe or have obtained information of a bribe offered or accepted by a peer employee which has not been reported. Additionally, the Circular includes instructions for civil servants who have obtained information of a bribe offered by a peer civil servant to foreign public officials. Under the Circular, civil servants are obligated to promptly report any such information to their supervisors or to law enforcement authorities.

The Circular points out that a civil servant is a public trustee and as such has special responsibility to carry out his or her duties with fairness, honesty, and integrity. The Discipline Department of the Civil Service Commission will consider taking disciplinary measures, including disciplinary hearings, against a civil servant failing to report as required any such substantial information concerning the payment of a bribe to either the relevant superior within the civil service or the law enforcement authorities. Civil servants in such actions could be charged of engaging in conduct unbecoming a civil servant or dishonest conduct (see the translation of the text of the circular in the examples portion of the answer).

**Reporting Acts of Corruption (Protection of Whistleblowers) – Civil Service**

*(Article 8(4)) – The Protection of Employees Law - Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997* prohibits an employer from adversely modifying a person’s conditions of employment for reasons
that the person “complained” about their employer or a fellow employee. The law is applicable to both public and private sector employees. The Law provides the courts with authority to order compensation for unlawful termination due to whistleblowing and, in public bodies or employers with more than 25 employees, to order reinstatement of the employee under certain circumstances.

Public sector employees are additionally protected by Regulation 43.523(a) of the Takshir, providing that a public official may not be dismissed and his working conditions may not be prejudiced as a result of his complaint or assistance to another official to file a complaint, provided that the complaint concerns violations of integrity and proper administration, that it was filed in good faith, and that certain other conditions are met. An additional condition to this protection is that the harm he suffered from his superior is in reaction to the complaint. As noted, a public official who reports a bribery offer made either to him or to another official, will likewise be entitled to the protection set forth in the Civil Service Regulations, as long as the conditions for that protection are fulfilled.

The 2009 Circular of the Director of Discipline of the Civil Service Commission, mentioned above also addresses the issue of protecting persons who expose acts of corruption. Under the Circular, any civil servant reporting suspicions of bribery is afforded protection as set forth in the Civil Service Regulations, in addition to the protections granted under the Protection of Employees Law. The text of the Circular is provided in the implementation section of this question (part 3).

The State Comptroller’s Office includes the State Comptroller and the Ombudsman and plays a significant role in the protection of whistleblowers. The Office is empowered 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 State Comptroller has wide powers of investigation and is authorized to issue protective orders where there is a connection between the reporting of the act of corruption and the action taken against the complainant.
It should be noted that, pursuant to the State Comptroller Law, 1958, the Ombudsman cannot investigate any matter which is pending in court or in which a court has rendered a decision. This means that, if an employee who had exposed suspected acts of corruption in the workplace submits a claim to a court under the Protection of Employees Law, or makes a complaint to law enforcement authorities which results in a prosecution, the Ombudsman’s protection will no longer be available. The rationale for this approach is that, in such circumstances, the courts are in a position to provide protection. In addition, this avoids potential of conflicting rulings, one by the court and one by the ombudsman.

The State Comptroller’s Office has become a very significant authority in Israel, while remaining independent of the government. The State Comptroller is elected by the Knesset and not by the government.

**Gifts and Asset Declarations:** As detailed in the answer in relation to Article 7, the Public Service Law (Gifts) and chapter 42.7 of the Takshir govern the subject of gifts given to civil servants.

**Asset and Gifts Declarations by Public Officials (Article 8(5))**

As noted previously, Article 42.7 of the Takshir (Chapter 11 of the rules of ethics) provides that a state employee may only receive a salary and other payments from the State Treasury, and may not receive any other benefit from another person for his public work or in connection with his work. The Takshir also includes, *inter alia*, prohibitions on deriving a personal benefit from public positions and operating in conflicts of interest.

**Declarations of private interests:** The Public Service Law (Appointments), 1959, requires certain public officials to declare assets, debts and past sources of income (if these might apply in the future), for themselves and their families. Ministers and Deputy Ministers are required to make such declarations to the State Comptroller with respect to themselves and their families, pursuant to the Rules for the Prevention of Conflicts of Interests by Ministers and Deputy Ministers, 2003. Similarly, heads of municipal authorities and their deputies are also required to submit such
declarations, pursuant to the **Heads of Municipal Authorities and their Deputies Law (Financial Statement), 1993**.

The **Public Service Law (Gifts) 1979**, provides that a gift (beyond a minimal economic value) given to a public servant in his capacity as such is considered state property, and hence the public service employee must transfer any gift received to the State Treasury. As an exception to this rule, a public servant may request permission to keep a gift he or she received, but this permission will not be given if the gift has value to the State, besides its economic value, or if allowing the employee to keep the gift could harm public morals. A public employee must give notice of a gift received, and handle it as determined by the law and regulations. Any violation of this Law constitutes a criminal offence.

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 8 of the Convention:

**Reporting Acts of Corruption – Civil Service** *(Article 8(4))* – the following is a translation of the text of the Civil Service Commission Circular issued in October 2009 (issued by the Civil Service Commission Director of Discipline):

"**OECD Convention on Combating Bribery of Foreign Public Officials**

1. Acts of corruption and bribery constitute a threat to democratic institutions, impair the rule of law, and impede economic development. For years, the State of Israel has been committed to combating corruption and to advancing norms of honesty and integrity and creation of a mechanism to eradicate corruption in public administration and in the private sector.

2. *The Discipline Department in the Civil Service Commission is committed to combating corruption and promoting norms among civil servants, and accordingly views the battle against corruption and bribery as a matter of supreme importance.*

3. *Some two years ago, the State of Israel began the process of joining the OECD, a process that is expected to be completed in 2010. Simultaneously, Israel recently joined the Convention on Combating Bribery of Foreign Public Officials. The conception underlying the commitment of the OECD and of the parties to the convention is a joint effort of the international community to effectively combat corruption, in general, and bribery, in*
particular, with the objective of enforcing the prohibition on bribery of foreign public officials.

4. In this circular, I want to bring to your attention and to the attention of all employees Amendment No. 99 to the Penal Law, and also to clarify the modes of operation required of an employee who, in the course of carrying out his functions, received an offer of a bribe or who has substantial information that another employee received a bribe or offered a bribe to a foreign public official and did not report it.

Prohibition on bribing a foreign public official – Article 291A of the Penal Law, 1977

5. The State of Israel, as a partner in the battle to create an international climate free of corruption, added to its Penal Law the offense of giving a bribe to a public official of a foreign country or to an official of a public international organization – Article 291A of the Penal Law.

6. On 14 July 2008, the Knesset enacted the Penal (Amendment No. 99) Law, 2008, which adds Article 291A to the Penal Law. Under this Article, it is an offence to give a bribe to a foreign official, where it is given for the purpose of promoting business activity, or to achieve an advantage in such activity.

7. The wording of the offence is as follows:

"291A. Bribing a Foreign Public Official

(a) A person who 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, shall be treated in the same manner as a person who commits an offence under Article 291.

(b) No indictment shall be issued in respect to an offence under this article unless given written consent from the Attorney General.

(c) For the purpose of this article:

"foreign country" includes, but not limited to, any governmental unit in the foreign country, including national, district or local unit.

"foreign public official" includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;
(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;
(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization; "public international organization" means an organization formed by two or more countries, or by organizations formed by two or more countries;

8. The offense specified in Article 291A of the Penal Law prohibits the offer or giving of a bribe to a foreign public official with the objective of promoting business activity, or to achieve an advantage related to such activity. The objective of a prohibited bribe can be to promote a transaction or grant an advantage in promoting it directly, for example by a payment to the foreign public official who has such influence, or by promoting business indirectly, for example by a payment to a foreign public official for information that is transmitted unlawfully, for the purpose of granting the person who gives the bribe an advantage in attaining a transaction.

Reporting by civil servant of cases of bribes to foreign public officials

9. In advance of the visit of the examining delegation from the OECD in Israel in July 2009 regarding implementation of the Convention on Combating Bribery of Foreign Public Officials, in which the undersigned also participated, the question arose as to the obligation of reporting by civil servants of suspicion of cases of payment of bribes to foreign public officials or acceptance of bribes from a foreign or local company.

10. I want to clarify the modes of operation required of a civil servant who, in the framework of his functions, received, directly or indirectly, an offer for payment of a bribe, or has substantial information that another employee received a bribe or was offered a bribe, or offered a bribe to a foreign public official (hereafter – suspicion of cases of payment of a bribe).

11. As is known, bribery is an offence containing the element of corruption and as such is liable to breach the trust of the individual in government and undermine social stability. The offence of bribery corrupts the system of public administration, and impairs the delicate structure of the system of relations between the individual and civil servants, which is based on honesty, substance, impartiality, equality, and the like.
12. A civil servant is a public trustee, and as such has special responsibility to act in the framework of his functions with fairness, honesty, and integrity. A civil servant in the framework of his functions does not represent himself for his private needs, but represents the citizens of the state in accord with the public interest. Therefore, a civil servant who, in carrying out his functions, obtains substantial information on suspicion of cases of payment of a bribe, it is expected that he will not treat this information as a private matter and refrain from exposing it, but will report the suspicion. The duty of civil servants to provide this information is a natural part of the obligations of a civil servant.

13. Article 4.02 of the Code of Ethics states:

   A civil servant must report fully to his supervisors and to the relevant persons about actions and matters that must be reported under the applicable circumstances, and provide them with all the information that seems to him to be relevant.

14. This Article teaches that civil servants have the duty to report "matters that must be reported under the applicable circumstances," which includes reporting a substantial suspicion of cases of payment of a bribe.

15. Furthermore, in a long list of court judgments, it has been held that, regarding Article 17 of the Civil Service (Discipline) Law, 1963 (hereafter – the Discipline Law), that the Article has an “open structure,” containing general criteria. For example, the norm as to “unbecoming conduct” is an extremely broad concept that refers to values, principles, and interests that shape public service and is filled with content from time to time.

16. Pursuant to sub articles of Article 17 of the Discipline Law, we try employees in disciplinary hearings for a wide variety of conduct that harms other persons, that taints the work environment, disrupts labour relations, undermines the public’s trust in the civil service, or impairs harms in another way the proper functioning of the civil service, and in appropriate circumstances, the Discipline Department in the Civil Service Commission will consider taking disciplinary measures, among them disciplinary hearings against civil servants who obtain substantial information of suspicion of cases of payment of a bribe and refrain from reporting it to the person in charge in the ministry or to the law enforcement authorities, for conduct unbecoming a civil servant or for dishonest conduct, depending on the specific circumstances of the case presented before us.

Protection of persons who expose corruption

17. This issue automatically raises the question of the protection given to civil servants who expose acts of corruption where they work. For an extensive discussion of this matter, see, inter alia, Notice No. 62/4, “Protection of Persons Who Expose Corruption – Notice of

18. As is known, the Israeli legislator sought, by means of a number of statutes, to protect an employee who exposes acts of corruption from harm and abuse resulting from the exposure of acts or corruption or an improper act. Among these statutory enactments are:

A. Articles 45A–45F of the State Comptroller Law, 1958 [Consolidated Version];
B. The Protection of Employees (Exposure of Offences and Harm to Integrity or Proper Administration) Law, 1997;
C. The Encouragement of Integrity in the Civil Service Law, 1992, and the regulations enacted pursuant to the statute.

19. In addition to the aforesaid statutes, Article 43.523(a) of the Civil Service Regulations states that, “A person holding authority shall not harm the work conditions of the complaining employee and shall not dismiss him for filing a complaint, or for assisting another employee in filing a complaint.” Such protection is provided upon meeting a number of conditions, among them that the complaint that the employee files is made in good faith, and that the complaint deals with “harm to integrity or proper administration.” Furthermore, a condition for the protection given to an employee is that the harm to him by his supervisor is a reaction to exposure of acts of corruption.

20. As a result, a civil servant who reports a suspicion of cases of payment of a bribe as stated in this circular is given the protection set forth in the Civil Service Regulations, to the extent that he meets the aforesaid conditions.

Conclusion

21. “A public servant is a public trustee. He does not act for himself, but for the public interest” [HCJ 669/86, Ya’akov Rubin v. Haifa District Committee of the Bar Association et al.].

22. Public trust in the civil service requires that a civil servant be a public trustee, and as such must act to promote the public interest, and not his personal interest, certainly when matters relating to his work are involved. Therefore, a civil servant who, in the framework of his functions, obtains substantial information of suspicion of cases of payment of a bribe, he must not treat the information as his private interest, and he is expected to report it to the supervisor in his office or to the law enforcement authorities.

23. The suspicions referred to in this circular relate to acts of corruption that endanger society and governmental procedures, acts that gnaw at the ties that link us together as members of one society, breach the trust that individuals have in government, and encourage contempt for public authorities and public servants. Conduct that conforms to
the comments in this circular will assist in combating corruption and promoting norms of honesty and integrity.

24. I would like to take this opportunity to update you about a relevant matter: in the spirit of this circular, we are presently examining, together with the Ministry of Justice, the possibility of imposing, in primary legislation, a **general** duty of public servants to report substantial information the public servant obtains in the course of performing his functions or relating to performing his functions which indicate that a serious criminal offense has been committed.

25. Also, the Ministry of Justice has recently established a website intended to promote awareness of the criminal prohibition on bribing foreign public officials and of actions that have been taken by Israel relating to the OECD Convention on Combating Bribery of Foreign Public Officials and the UN Convention Against Corruption. The website includes regular and updated information on the measures taken domestically and internationally to advance the participation of Israel in the international battle against corruption in all its forms. The address of the website is [www.corruption.justice.gov.il](http://www.corruption.justice.gov.il)."

**Asset Declarations by Public Officials** (Article 8(5)) - The information the applicant conveys in his/her questionnaire or asset declaration form may reveal different risks for conflicts of interests that the applicant is subject to. According to these risk assessments, prevention steps are taken, which may include, inter alia: disqualification of the applicant, transferring authorities and responsibilities to another position holder, refraining from certain decision making or executing, working in cooperation with another position holder, or possession of assets in a "blind trust".
The following is a translation of the standard conflicts of interest form used by Israeli authorities:

Assessment of risk of conflict of interest Questionnaire

Part A. Positions

1. Personal details

<table>
<thead>
<tr>
<th>I.D number</th>
<th>First name</th>
<th>Surname</th>
<th>Date of Birth</th>
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<table>
<thead>
<tr>
<th>Home Address</th>
<th>Phone number</th>
<th>Cellphone Number</th>
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</table>

2. Positions and Occupations

Details of current and former positions and occupations in the last four years (including as an employee, self-employed, officer in a corporation, contractor, advisor, etc.).

Please refer to positions in corporations of any kind (company, partnership, non-profit organization, etc.), as well as voluntary or paid positions (voluntary positions must be explicitly clarified).

<table>
<thead>
<tr>
<th>1</th>
<th>Employer's name</th>
<th>Employer's scope of activity</th>
<th>Employer's address</th>
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<table>
<thead>
<tr>
<th>Position and scope of responsibility</th>
<th>Employment dates</th>
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<tr>
<th>2</th>
<th>Employer's name</th>
<th>Employer's scope of activity</th>
<th>Employer's address</th>
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<tr>
<td>Position and scope of responsibility</td>
<td>Employment dates</td>
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<tr>
<td>3. Employer's name</td>
<td>Employer's scope of activity</td>
<td>Employer's address</td>
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<td>Position and scope of responsibility</td>
<td>Employment dates</td>
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<tr>
<td>4. Employer's name</td>
<td>Employer's scope of activity</td>
<td>Employer's address</td>
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<tr>
<td>Position and scope of responsibility</td>
<td>Employment dates</td>
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<tr>
<td>5. Employer's name</td>
<td>Employer's scope of activity</td>
<td>Employer's address</td>
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<tr>
<td>Capacity and scope of responsibility</td>
<td>Employment dates</td>
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<tr>
<td>6. Employer's name</td>
<td>Employer's scope of activity</td>
<td>Employer's address</td>
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<tr>
<td>Position and scope of responsibility</td>
<td>Employment dates</td>
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</table>

### 3. Public Service Positions
Details of public service positions not mentioned under section 2 above. Please refer to current and former positions in the last four years.
4. **Membership in Boards of Directors or in Parallel Corporate Entities**

Details on membership in a Boards of Directors or in Parallel Corporate Entities, authorities or other bodies, whether public or not. Please refer to current and former memberships in the last four years.

<table>
<thead>
<tr>
<th>Name of Corporation/Authority/Entity</th>
<th>Scope of Occupation</th>
<th><strong>Date</strong></th>
<th>Type of Position</th>
<th>Special activity in the Board of Directors</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Start Date</strong></td>
<td><strong>End Date</strong></td>
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</table>

5. **Relation to The Public Office**

Did you or an entity you have interest in have or had a relation or connection, not as a citizen receiving service, to the activity of the office you are nominated to work in or any other entities that the office is connected to (including relation or connection to statutory

---

1 External Director or on behalf of a stock holder. As far as the latter – please specify the names of the stock holders who appointed you.

2 Such as in committees or other positions.
corporations that are under the responsibility of the office you are nominated to work in or other entities that the office is connected to)?

"Party having interest" in an entity – including whoever has ownership of the entity and/or holds a position in the Board of Directors or in parallel corporate entities and/or works at and/or represents and/or is an outside advisor to. (There is no need to specify an ownership which is not of a party having interest in a corporation as implied in the Securities Law, 1968, for corporations traded in the Stock Market)³.

☐ yes          ☐ no

If so, elaborate __________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

6. Details of Positions referred to in provisions 2 – 5 above regarding relatives
(please refer to current positions only)

Please elaborate relative's name, family relation and relevant details that were required in the above questions (for example: in case your spouse is a member of a Board of Directors, please specify the name of the corporation and scope of occupation, starting date, type of positions and special activity in the Board of Directors).

"relative" - spouse, parent, child and financial dependents.

³ Securities Law, 1968 (article 1 – definitions): "party with an interest", in a body corporate (1) whoever holds 5% or more of the issued share capital or of the voting power in the body corporate, whoever is entitled to appoint one or more of the Directors of the body corporate or its general manager, whoever serves as Director or as general manager of the body corporate, or a body corporate in which an aforesaid person holds 25% or more of its issued share capital or of the voting power in it or is entitled to appoint 25% or more of its Directors; for purposes of this paragraph – (a) a Director of a joint investment fund shall be deemed the person who holds the securities included in the fund's assets; (b) if a person holds securities through a trustee, then the trustee shall also be deemed to be holding the said securities; for this purpose, "trustee" – exclusive of a registration company and exclusive of whoever holds the securities only by virtue of his position as trustee for an arrangement, within its meaning in section 46(a)(2)(f) or as trustee for the allocation of shares to employees, as defined in section 102 of the Income Tax Ordinance; (2) a subsidiary of a body corporate, exclusive of a registration company.
7. **Relation to subordinates or superiors in the position**

Do you or those who are considered to be your superior (directly or indirectly) or your subordinates in the position you are nominated to, hold an additional position in other organizations?

Are there any subordination relationships between you and them in other frameworks, business ties, family relations or other relations?

☐ yes ☐ no

If so, elaborate_______________________________________________________

______________________________________________________________________

______________________________________________________________________


8. **Personal positions and interests, or those of your relatives, that might put you in risk of conflict of interests**

Are you aware of any personal positions and interests, not mentioned above, or those of your relatives, that might put you in risk of conflict of interest in the position which you are nominated for?

"relative" - spouse, parent, child and financial dependents.

☐ yes ☐ no

If so, elaborate_______________________________________________________

______________________________________________________________________

______________________________________________________________________
9. **Positions, occupations, and interests of your other relatives and persons in close relationship to you that might put you in risk of conflict of interest**

Are you aware of Positions, occupations, and other interests of your other relatives of whom you were not asked to refer to above, or of persons in close relationship to you (including close friends and business partners), that might put you in risk of conflict of interests to the position you are nominated to?

**Please also refer to siblings and their spouses and relatives of not from a first degree**

Please refer specifically to the subject matters of which you were asked previously through provisions 1-8 (for example: those relatives' positions and occupations, membership in Boards of Directors or other parallel corporate entities and their connection with the office's activity)

☐ yes ☐ no

If so, elaborate________________________________________________________

________________________________________________________

________________________________________________________

10. **Please Attached CV in Hebrew, updated to the date of the questionnaire, including education and details of current and former occupations including relevant dates.**

**Part B: Possessions and holdings**

11. **Market share holdings**

Please specify your or your relatives' market share holdings in corporations, directly or indirectly, or partnership in business entities (there is no need to specify an ownership
which is not of an party having interest in a corporation as implied in the Securities Law, 1968, for corporations traded in the Stock market).

"relative" - spouse, parent, child and whoever is financially dependent on you.

<table>
<thead>
<tr>
<th>Name of Corporation/entity</th>
<th>Name of stock holder (as far as the stockholder is not the nominee)</th>
<th>% Holdings</th>
<th>Scope of corporation/entity occupation</th>
</tr>
</thead>
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</table>

12. Possessions which ownership, selling, or using of might put you in risk of conflict of interest

Are there any possessions you or your relatives own, hold, sell or use of might put you in risk of conflict of interests for the positions that you are nominated for?

"relative" - spouse, parent, child and financial dependents.

☐ yes  ☐ no

If so, elaborate_______________________________________________________

______________________________________________________________________

______________________________________________________________________

4 Securities Law, 1968 (article 1 – definitions): "party with an interest", in a body corporate (1) whoever holds 5% or more of the issued share capital or of the voting power in the body corporate, whoever is entitled to appoint one or more of the Directors of the body corporate or its general manager, whoever serves as Director or as general manager of the body corporate, or a body corporate in which an aforesaid person holds 25% or more of its issued share capital or of the voting power in it or is entitled to appoint 25% or more of its Directors; for purposes of this paragraph – (a) a Director of a joint investment fund shall be deemed the person who holds the securities included in the fund's assets; (b) if a person holds securities through a trustee, then the trustee shall also be deemed to be holding the said securities; for this purpose, "trustee" – exclusive of a registration company and exclusive of whoever holds the securities only by virtue of his position as trustee for an arrangement, within its meaning in section 46(a)(2)(f) as or trustee for the allocation of shares to employees, as defined in section 102 of the Income Tax Ordinance; (2) a subsidiary of a body corporate, exclusive of a registration company.
13. **Financial Liability of substantial measure**

Are you, your relatives or any of your business partners, if applicable, are in debt or guarantors for any debts or undertakings?

"relative" - spouse, parent, child and financial dependents.

☐ yes    ☐ no

If so, elaborate_____________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

14. **Other possessions that might put you in a risk of conflict of interests**

Do you know of other possessions not detailed above, that might put you in risk of conflict of interests in the position you are nominated for? Please refer to your possessions, your relatives', and those belonging to persons in close relationship to you (including close friends and business partners) or to entities in which you have interest in and entities that your relatives or persons in close relationship to you have an interest in.

**Please refer to siblings and their spouses and relatives not of the first degree.**

"Party having interest" in an entity – including whoever has ownership of the entity and/or holds a position in the Board of Directorate or in parallel corporate entities and/or works at and/or represents and/or is an outside advisor to.

☐ yes    ☐ no

If so, elaborate_____________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________
Part C: Declaration

I, signed above, hereby declare that:

1. All the information and details I submitted in this questionnaire regarding myself, my relatives and persons in close relationship to me, are comprehensive, correct and truthful.

2. All the information and details I submitted in this questionnaire regarding myself, my relatives and persons in close relationship to me, is of personal knowledge, unless explicitly mentioned that the declaration is in the best of my knowledge, in the event that I'm not fully familiar with the details and/or part of it and/or are not known to me personally.

3. Beyond the details submitted in this questionnaire, I am not aware of any other issue that might put me in a risk of conflict of interest for the capacity.

4. I will avoid handling any matter that might put me in risk of conflict of interest while fulfilling my duties, until receiving instructions from the office's legal advisor.

5. If any changes in the content of this declaration will occur or arise, during regular conduct, issues that were not anticipated in advance, that might put me in risk of conflict of interest, I will consult with the office's legal advisor, provide him all the relevant information in writing and act according to his instructions.

6. It was made clear to me that the arrangement made to avoid conflict of interests will be governed, if required, by the Freedom of Information Act , 1998;

7. I hereby declare that I have read the Public Service Law (Restrictions after Retirement), 1969, I understood its content and I will act according to the opinion of the Civil Service Commission and the Ministry of Justice, with regard to any provision of law mentioned above and its application.

__________              __________             ____________          ____________
Date                            Name                          I.D Number                 Signature
4. Have you ever assessed the effectiveness of the measures adopted to implement article 8? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

There has been no formal assessment of the effectiveness of the measures adopted to implement Article 8 in Israel. However, as detailed above, many of the measures are regulated by flexible codes of conduct and regulations which are routinely modified to address problematic areas, as is exemplified by the Civil Service Commission Circular issued in 2009. The applicable legislation is also modified from time to time to create a more comprehensive system.

5. Which challenges and issues are you facing in (fully) implementing article 8 of the Convention?

Prior to the entry into force of UNCAC in Israel, asset declaration, proper conduct of public officials, and whistleblower protection were key elements in Israeli law, and the commitments undertaken pursuant to Article 8 have strengthened existing mechanisms. However, despite the fact that there are many legal and ethical rules governing the behavior within the public service, acts of corruption and negligence still occur from time to time. Israeli authorities are constantly making efforts to enforce the rules for each and every public official, including those in high ranking positions.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

No technical assistance is required in this regard.

Article 9. Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:
1. Has your country adopted and implemented article 9 of the UN Convention against Corruption?

Yes.

2. Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):

The public procurement regime in Israel embodies the principle that personnel responsible for public procurement decisions must act without bias or undue influence, in order to ensure that the decisions will be merit-based under all circumstances and in any kind of tender. To that end, the measures taken by Israel in
the context of Article 9 are comprehensive and wide-ranging. The following are some representative examples.

**Decision Making (Article 9(1))** - The Mandatory Tenders Act, 1992 and its regulations place robust restrictions on the actions of the tender committee, thus considerably minimizing the risk of potentially improper tender awards. Among other things, the Mandatory Tenders Regulations, 1993 require that every tender committee include a legal counsel and accountant (Article 8 to the Mandatory Tenders Regulations). Almost all tenders must be public and subject to judicial review. Members of the Tender Committee and the Tender Exemptions Committee in each public entity include representatives of the public entity's accountant and legal adviser. Both are independent and are subject to the authority of the Accountant General and the Attorney General, respectively, and, importantly, not to the authority of the Director General of the public entity or to any other political authority.

In recent years, the Israeli government has broadened the scope of the bodies bound by the tender regulations when managing government procurement administration, to include, for example, municipal religious councils; Israel's major Health Maintenance Organizations (HMO's) and higher education institutions. Under the modified regulations, such bodies are obligated to administer procurement based on an equal and transparent tender process.

**Transparency (Article 9(1)(a))** - Beginning in June 2009 a broad reform in the Mandatory Tenders Regulations, 1993 came into force. A core principle of the reform is the primacy of the public tender procedure as the default norm for public procurement. Accordingly, the new regulations establish a public procurement scale of procedures (preference to public tenders, followed by fast automatic tenders, closed tenders and exemption from the tender obligation), with clear conditions and restrictions regarding the usage of the other forms of procurement. The tender papers are published on a website including details of tender provisions, evaluation standards, the contract, the schedule for the tender process and any other relevant document or information necessary to ensure a fair and adequate tender. Additionally, tender participants are entitled to view the tender committee's protocols, communications with other participants, professional opinions submitted to the committee and the winning bid. The Freedom of Information Act, 1998 provides an
even broader right of access to information. The reform mentioned above imposed an additional obligation to publish contracts that are exempt from the tender obligation and contracts about to be made where a single provider participated in the tender process.

**Regulation of Personnel (Training, Screening, Conflicts of Interest) (Article 9(1)(d);(e)) -**

Israeli authorities believe that proper training for public officials is an important element in securing objective decisions. As stated above, members of the Tender Committee and the Tender Exemptions Committee in each public entity include representatives of the public entity's accountant and legal adviser. All members of the Tender Committee, in each public entity, must undergo a training program approved by the Accountant General within a year of their appointment to the Committee. In case of failure to abide by this provision, the appointment can be annulled. Regulation 10(c) of the **Mandatory Tenders Regulations** was enacted in order to prevent conflicts of interest in tender procedures. It provides that any member of the committee who has an interest, or whose relative has an interest, in a corporation or business, or a personal interest of any kind, in a matter being heard before the committee, is not allowed to participate in the committee's deliberations on that matter and a replacement must appointed in his or her stead. The members are required to declare in advance any conflicts of interest in a matter before the committee.

As mentioned above, additional legislation such as **The Public Service Law (Restriction after Retirement), 1969** sets restrictions on the activities of civil servants, which helps prevent conflicts of interest.

**Review of Tenders (Article 9(1)(d)) -** Under Israeli law, public procurement decisions are similar to any other administrative decision by public entities, in that parties claiming to be injured by administrative decisions can challenge the decisions in both Administrative Courts (which are part of any District Court) and the High Court of Justice. Today, public procurement decisions, in regards to tenders are usually challenged in Administrative District Courts (Article 5(1) of the **Administrative Courts Law, 2000**). The Administrative Courts specialize, *inter alia,*
in reviewing challenges to procurement decisions and have proven to be efficient in exercising judicial review where the circumstances warrant it. The decisions of the Administrative Courts can be challenged by an appeal to the Court for Administrative Appeals (a function of the Supreme Court). Possible remedies include, *inter alia*, compensation, restitution and annulment of the procurement decision. This procedure, together with the accompanying remedies, ensures an effective review mechanism.

Other than this general framework for appeals, there are also more specific procedures. Indeed, according to the **Tender Regulations, 1993**, losing bidders can review the documents relating to the tender, the tender's committee's protocols, correspondences, and professional opinions.

**Adoption of the National Budget** *(Article 9(2) - The State budget, which is determined by provisions set out in the **Foundations of the Budget Law, 1985**, is the most detailed work plan of the government. Accordingly, the procedures for its approval are well established, ensuring proper administration of public funds, and transparency. Drafts of the proposed economic plan for each future fiscal year, its final version and other relevant information, such as Cabinet decisions, appear on government websites. There is a system for parliamentary queries with respect to the state budget, and the budgets for previous years are published.

The **Basic Law: The State Economy, 1975**, lays down the procedures for the adoption of the national budget. Article 3(a) provides that the State's budget shall be set in a law every year for one year. Article 3(b) provides that the government must present to the Knesset (the Israeli Parliament) a detailed Budget Law proposal in a date set by the Knesset but no later than 60 days before the beginning of each fiscal year. Article 3A provides that the government must prepare every year a budget plan for the next three years. The **Foundations of the Budget Law, 1985** establishes the legislative framework for the annual Budget Law, including the limitations on government power to revise the Budget Law, ways for utilizing budget reserves, and so forth. The annual Budget Law is enacted in a similar manner to any other law enacted by the Israeli Parliament. The Budget Law can also be enacted biannually, for a two year period, under certain circumstances.
The proposed Arrangements Law (or "Program Law") is an omnibus legislation submitted annually or biannually to the Israeli Parliament (Knesset) alongside the proposed State Budget Law. The Cabinet decision specifying the amendments to be made to the Budget Law is made before publication of the proposed Arrangements Law. Following the approval in Cabinet, and 7-10 days before the final draft is approved in a Ministerial Committee, the proposed Arrangements Law is published on the Ministry of Finance’s website. After the proposed Arrangements Law is approved by the Knesset, it is published as any other law in the official Gazette ("Reshumot") and on the Knesset website.

The procedures noted above are implemented in every one or two fiscal years. The documents issued pursuant to these legislative instruments are publicly available as follows: the drafts and final version of the proposed economic plan and budgets for previous years are published on the website of the Ministry of Finance, and decisions relating to the subject are published on the Prime Minister's Office’s website. The Knesset website publishes votes and other budget-related procedures such as committee meetings protocols.

**Public Funding (Article 9(2))** - Israel operates a mechanism whose purpose is the fair and equal distribution of public funding to non-profit organizations. In accordance with the Attorney General’s Procedures, the State publishes criteria containing clear and equitable standards for financial support, approved by government legal experts. Before final determination of the standards, the criteria are published for public review, after which any organization that meets the standards may apply for funding.

**Reporting on Revenue and Expenditure (Article 9(2)(b))** - The Minister of Finance presents to the Knesset (the Israeli Parliament) a report on the execution of the national budget, on an annual basis, as provided for in the Basic Law: The State Economy (Article 3(e)); According to the Law, the Minister must submit, no later than six months from the end of the fiscal year, reports containing information on revenues and expenditures along with conditional expenditures. The information is presented in a manner that enables comparison with the budgeted amounts (Foundations of the Budget Law, 1985, Article 49). This report presents data on
revenues and expenditures for the fiscal year, as approved by the Knesset. In addition to comparing the budgeted amounts and the actual allocations, the report notes the amendments to the budget, and is prepared according to the rules outlined by the international standards of the System of National Accounts (SNA) 1993 (jointly formulated by the International Monetary Fund, the European Union, the Organization for Economic Co-operation and Development, the United Nations and the World Bank). In practice, and in accordance with the Accountant General's Directive, the Minister of Finance submits the report mentioned above much sooner than required by law – the reports are submitted no later than three months from the end of each fiscal year.

Reports on the revenues and expenditures of the State - Any audited body in Israel (i.e. any public institution in Israel) must submit to the State Comptroller an annual report on its revenues and expenditures (State Comptroller Law, 1958, Article 11(a)); the Minister of Finance is obligated to submit to the State Comptroller a comprehensive annual report on the revenues and expenditures of the State, within nine months of the end of each fiscal year (State Comptroller Law, 1958, Article 12).

All financial reports comply with the Israeli Government Accounting Standards, which are derived from the ISPAS (International Public Sector Accounting Standards). Budgeted or supported institutions (including government companies and their subsidiaries) are required to submit any information relevant for the enforcement and review of the budget, to the Ministry of Finance, according to Article 33 (a) of the Foundations of the Budget Law, 1985 and the Ministry of Finance includes the information received in its reports to the Knesset. The Law further requires any public institution to annually report to the Wages Commissioner in the Ministry of Finance the terms of employment of any employee. Also, according to the Law, any budgeted or supported institution is required to submit some information regarding the terms of employment of certain employees.

Risk Management (Article 9(2)(d)) - Israel recognizes the importance of employing effective and efficient systems of risk management and internal controls in public governance. The Israeli government, through its Ministry of Finance, has established
comprehensive risk management and internal control systems. According to the **Internal Audit Law, 1992**, every government entity must conduct internal controls by an internal auditor. The internal auditor examines, inter alia, the management of assets including accounts, moneys and investments. According to the Law, the internal auditor of the Accountant General's Department in the Ministry of Finance is responsible for the internal control in regards to the implementation of the State budget by the different accounting units of the government Ministries.

It should be noted that there is still a need to consider the implementation of a risk management methodology in government offices and government financing mechanism as a whole. The adoption of internationally recognized accounting standards, as described above is one of the steps intended to enhance the sustainability of Israel's public financing system.

**Corrective Action** *(Article 9(2)(e))* - The **Basic Law: The State Economy**; the **Internal Control Law, 1992**; the **Foundations of the Budget Law, 1985**; and the **State Comptroller Law, 1958**, all provide for review and supervisory procedures which are utilized as a basis for corrective accounting actions when necessary. Additionally, several general mechanisms apply to the conduct of Israeli public officials who are responsible for management of public affairs.

Public officials who knowingly fail to abide by the procedures relating to the adoption of the budget or who order others to do so can be subjected to disciplinary action *(Foundations of the Budget Law, 1985, Article 34)*. The Law further imposes similar liability on senior government officials, when the disciplinary offence was committed by a non-senior official, if the senior official cannot prove either that the offence was committed without his knowledge, or that he took reasonable measures to prevent it *(Foundations of the Budget Law, 1985, Article 36)*.

Additionally, an audit by the State Comptroller detecting unexplained discrepancies may result in a report to the relevant minister, the Prime Minister, or to the Knesset's State Control Committee which may decide to establish an inquiry commission to investigate the matter. If there are grounds to believe that criminal conduct has occurred, this must be reported to the Attorney General who then informs the State Comptroller and the Knesset's State Control Committee of the chosen approach to
handle the matter (State Comptroller Law, 1958 Article 14). Similarly, an internal auditor must report to his/her supervisor (as defined specifically in a government decision) or to the State Comptroller any findings regarding the possibility of criminal conduct (Internal Audit Law, 1992, Article 11). The failure to appoint an internal auditor without reasonable justification, the appointment of an incompetent internal auditor and interference with the conduct of an internal audit are criminal offenses, each of which may result in the imposition of fines (Internal Audit Law, 1992, article 15).

Government Companies: Government owned companies must submit financial reports or documents in accordance with specific requirements set in the Government Companies Law, 1975. In cases where the chairman of the Board of Directors, a director or the CEO knew, or should have known, that the company acted in violation of the statutory requirements (set by the Government Companies Law, 1975), and did not take proper precautions to prevent it, that individual can be removed from office.

Accounting Integrity (Article 9(2)(c);(3)) - Israel has an elaborate system of accounting standards, designed to ensure accurate calculation of State revenues and expenditure. To complement this, and to enhance the integrity of accounting, various laws create a set of comprehensive requirements regarding timely reporting on fiscal matters and documenting reports. Furthermore, the falsification of such documents is an offence. The Minister of Finance can prescribe regulations in regard to the implementation of the Foundations of the Budget Law, 1985 including in matters relating to state accounting and management of public finances (Article 50(a)).

The State Comptroller conducts audits to ensure that all expenditures are within the scope of legal appropriation, that revenues are received according to the law and that each expenditure or revenue is accompanied by appropriate documentation (State Comptroller Law, 1958, Article 10). Audited bodies (i.e. any government entity in Israel) must submit to the State Comptroller an annual report on their revenues and expenditures (Article 11(a) of the Law), and the Minister of Finance is obligated to submit to the State Comptroller a comprehensive annual report on the revenues and expenditures of the State (Article 12 of the Law).
As noted, in addition, government companies and their subsidiaries are required to submit to the Government Companies Authority, on an annual basis, audited financial reports including declarations of the managers and a directors' report, a report on the work of the Board of Directors, internal audit and internal controls and a detailed budget performance report (Government Companies Law, 1975). A “government company” is defined in Article 1(a) of the Government Companies Law, 1975 as one in which more than half of the voting power at general meetings, or the right to appoint more than half of its directors, is held by the State, or by the State together with a government company or with a subsidiary thereof.

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 9 of the Convention:

**Transparency** *(Article 9(1)(a))* - Invitations to tender are published on a main government website: http://www.info.gov.il/LAPAM/Tenders. A new auction service allows Ministries to move from traditional tenders to procurement through auctions. This service helps the suppliers by enabling a quick and transparent procurement process. Many tenders have been executed in the online systems so far, in various amounts. The limited cases of procurement that are exempt from the public tender requirements are published on the website of the Israel Accountant General.

**Tender Criteria** *(Article 9(1)(b))* - There are many examples of the use of objective criteria in tenders and the successful implementation of this article. Primarily, the criteria refers to specifications/requirements describing the technical demands and purpose of the goods/services, their features, operations, installation, manner of use, quality specifications, level of service, maintenance, warranty period, insurance needs and the criteria to be used by the Tenders Committee in comparing bid proposals.

**Review of Tenders** *(Article 9(1)(d))* - Procurement decisions are routinely reviewed by the Administrative Courts, and appeals are brought before the Court of Administrative Appeals in many cases. There have been cases in which bidders were awarded compensation from the public entity, or the public entity was mandated to award the contract to a losing bidder, after the court held that the contract should have
been awarded to the losing bidder. In other cases, decisions on public procurement were annulled when the court concluded that the public entity had not acted in accordance with the tender criteria.

Regulation of Personnel (Training, Screening, Conflicts of Interest) (Article 9(1)(d);(e)) - One example of a significant practical measure to deter public procurement officials from acting against public interest is the requirement to maintain minutes of the Tender Committee’s activities and deliberations relating to the tender process. The minutes must include, inter alia, the names and positions of the Committee members, the subject under discussion, the positions of the members with regard to the bids and objections that arose in the course of the deliberations, an analysis of the bids based on the criteria that had been set and published, the decisions themselves and the grounds for such decisions.

With respect to training, the Government Procurement Office (hereinafter: GPO), a subdivision of the Office of the Accountant General in the Ministry of Finance, provides guidance to all government ministries in matters of procurement and tenders. The GPO also offers training and courses on procurement to heads of procurement departments and procurement department officials in the various Ministries. In some cases, the Ministries themselves provide special programs to increase the skills of their procurement personnel.

Reporting on Revenue and Expenditure (Article 9(2)(b)) - The Ministry of Finance’s Managerial Information Unit develops and implements monitoring tools, generates and publishes data, draft analyses, forecasts and discussion papers with respect to management of the State budget’s macro-economic goals. Information pertaining to the national deficit, and its related funding, is published at the beginning of each month, no later than the sixth business day. The information is published in accordance with the Special Data Dissemination Standards (SDDS) (rules established by the International Monetary Fund).

Risk Management (Article 9(2)(d)) - The following are representative examples of some of the risk management and internal control systems:

- To improve the management of government debt, the Ministry of Finance has established a Risk-Management Department within the Government Debt
Management Unit. The Risk Management Department assists policymakers in making decisions regarding several types of risks: market risk (risk resulting from changes in prices, exchange rates, interest rates and interest spreads); refinancing risk (risk related to the government's ability to roll over its debt once it matures); liquidity risk (risk related to the government's ability to raise funds unexpectedly and in a short time); credit risks (the risk that a debtor will fail to pay back its debt (this is especially relevant in swaps and derivatives transactions)); other risks, such as technical errors and legal risks.

- The Department's goals are to identify the optimal currency mix of the government's debt portfolio, to identify possible scenarios related to government debt, including cash flows in each scenario, and their probability, to identify the most efficient frontier (cost vs. risk) of different currency and fixed/floating weightings (benchmarking), to improve the government-debt databases, to price the government's foreign currency transactions, private placements, and derivatives transactions, and to examine principal and interest rate sensitivity to market changes for budgeting purposes.

- As mentioned above, the introduction of the IPSAS - with their conservative approach to revenues and expenditures - is by itself one measure of risk management. The review of the Comptroller's Unit in the Accountant General Department adds to the IPSAS and completes the risk management strategy in regard to public finances.

- The Comptroller's Unit in the Accountant General Department reviews actions of finance units in Government Ministries in light of relevant laws and procedures. The unit executes routine and specific reviews according to its work plan and special reviews on demand, as follows:

Routine reviews are executed according to the work plan and include, inter alia, the following chapters:

1) Review of the activity of the different finances departments (wages, accounting, revenues and more), focusing on separation of duties between departments, and on the authorizations of employees to perform different transactions in the financial system.

2) Accounting: review of payments and receipts.
3) Review of bank accounts of the Ministry.
4) Review of petty cash.
5) Wages: review of attendance hours, overtime payments etc.
6) Tenders: review of implementation of rules and procedures.

Specific reviews are executed according to the work plan and are aimed to inspect to depth specific issues unique to the reviewed body. Special reviews are executed on demand of the Accountant General, the Accountant General's deputies, or accountants of the Government Ministries themselves.

The work of the finance comptrollers of respective Government is regulated by Financial Temporary Order Circular 2006-1-8, according to which a finance comptroller must be employed in each accountant unit, and must act in accordance with applicable rules and regulations. The Comptroller's Unit in the Accountant General Department supervises the work of the comptrollers in the different government units, assists with the development of the annual work plan of these comptrollers and reviews the implementation of such work plans. The Comptroller's Unit is also responsible for conducting financial audits on all governmental units. It is important to note that any financial obligation, by any governmental unit, must be authorized by the comptroller of that unit. Encompassing the entirety of risk control and internal control mechanisms, ERP (Enterprise Resource Management) systems are set up in every government Ministry to integrate internal auditing procedures and to regulate financial authorization powers.

**Accounting Integrity** (Article 92(c); (3)) - The State Comptroller annually issues reports on audits conducted regarding the operations and activities of government offices, including regarding financial aspects. For a selection of these reports in English see: [http://www.mevaker.gov.il/serve/site/english/epublic.asp](http://www.mevaker.gov.il/serve/site/english/epublic.asp)

In approving Government Decision No. 70 of July 2004, regarding arrangement of the legal status of the Government Accounting Standards Board (GASB), the Government of Israel initiated the process of adopting the International Public Sector Accounting Standards (IPSAS). The IPSAS are published by the International Public Sector Accounting Standards Board (IPASB). The main objective of the GASB is to develop high quality government sector financial reporting standards by adopting and
implementing IPSAS in Israel. The Israel Accountant General, who is a member of the GASB, is also a member of IPSASB and takes active participation in IPSASB activities.

The Accountant General is currently in the process of ensuring external audit of the financial statements submitted by government offices and the unified statement submitted by the Government. The audit is performed by external accounting firms, according to established auditing procedures.

4. Have you ever assessed the effectiveness of the measures adopted to implement Article 9? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

There has been no formal assessment of the effectiveness of the measures adopted to implement Article 9 in Israel. However, as detailed above, the regulations and procedures are constantly modified to address issues relating to preservation of integrity and transparency in the tender process.

5. Which challenges and issues are you facing in (fully) implementing Article 9 of the Convention?

In certain cases, the application of the Mandatory Tenders Act, 1992 turns even simple contracts between the State and a service provider into a lengthy and bureaucratic process which includes a tender and, potentially, several stages of appeal, which may in certain cases result in loss of efficiency, opportunity costs and the like. However, the importance of this policy is not debatable and thus Israel continues to enforce and improve these mechanisms in order to prevent corruption. Efforts are also constantly being taken to remedy to resolve problems associated with the bureaucratic aspects of the tendering process.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

No technical assistance is required in this regard.
Article 12. Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:
   (a) Promoting cooperation between law enforcement agencies and relevant private entities;
   (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
   (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
   (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;
   (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
   (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:
   (a) The establishment of off-the-books accounts;
   (b) The making of off-the-books or inadequately identified transactions;
   (c) The recording of non-existent expenditure;
   (d) The entry of liabilities with incorrect identification of their objects;
   (e) The use of false documents; and
   (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.
1. Has your country adopted and implemented article 12 of the UN Convention against Corruption?

Yes.

2. Please cite, summarize and, if possible, provide copies of the applicable measure(s) or policy(ies):

**Prevention of Corruption in the Private Sector** *(Article 12(1))* - The State of Israel has enacted a wide range of legislation aimed at preventing corruption involving the private sector, as well as in relation to the other provisions in Article 12(1) of UNCAC. This legislation includes, *inter alia*, the **Penal Law, 1977**, the **Securities Law, 1968**, the **Income Tax Ordinance (New Version), 1961** the **Companies Law, 1999** and the **Business Licensing Law, 1968**. These laws and amendments thereto are published in official records, which are publicly accessible.

**Transparency and Accounting Standards** *(Article 12(2)(b); (c))* - Private corporations in Israel are regulated by the **Companies Law, 1999** and are subject to the authority of the **Companies Registrar** and the **Israel Corporations Authority**. Relevant provisions in the **Companies Law** explicitly address proper standards of corporate governance as well as required procedures in conflicted transactions. Private corporations are required to submit to the Companies Registrar information and annual reports concerning, among other subjects, their stockholders and directors. In certain circumstances, they are also required to submit their annual balance sheet. The information reported is made available to the public, including online on the Israel Corporations Authority's website. The list of shareholders and Directors must be kept in the registered office of the company and is open there for inspection to the public. Private associations and partnerships are regulated respectively by the **Associations Law, 1980** and the **Partnership Ordinance (New Version), 1975**, and they are overseen by the Associations Registrar and the Partnerships Registrar, as applicable.

Transparency in the financial markets is further promoted in the securities market through the reporting requirements of Section 36 of the **Securities Law, 1968** and regulations made thereunder, such as the **Securities Regulations (Periodic and
Immediate Reports), 1970 and the Securities Regulations (Editorship of Annual Financial Reporting), 1973. Disclosure requirements and procedural standards have been further enhanced through amendments introduced to this regulatory framework as well as through many recently enacted corporate and financial reporting regulations. Enhanced disclosure is now required on matters such as transactions involving conflicts of interest (particularly controlling shareholders transactions), managerial terms of employment and compensation, and corporate exposure to fluctuations in value and prices of raw materials or foreign currency.

In 2009 the Israel Securities Authority adopted measures to enhance the internal auditing controls in order to ensure that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures. An amendment of the Securities Regulations (Periodic and immediate reports), 1970, now requires, inter alia, the submission of reports on the effectiveness of internal controls in the company. Following the amendment, according to Article 9B(3) of the Regulations, a company is required to attach to the annual assessment a report, signed by the management and the board of directors, on the effectiveness of the internal controls in the company, and a report by the external auditor on this issue.

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.

It should be noted that in some cases the transparency related provisions apply only to publicly held (or publicly traded) corporations.

**Auditing (Article 12(2)(f))** - Further, the Israeli Companies Law has been recently amended (the amendment came into effect in May 2011) regarding the audit committee (which is mandatory for any publicly traded companies or private companies issuing bonds). In order to ensure the independence of the committee, it must be composed of a majority of independent directors, the chairman must be an external director, a quorum requires a majority of independent directors and at least one of those present must be an external director. A person who is not a member of the committee may be present unless he is authorized by the chairman of the
committee and he may be present during the discussions but not during the voting. The following persons may not be appointed as members of the audit committee: the chairman of the board, a director employed by the company, the controlling shareholder or a corporation under his control, a director who renders services to the company, its controlling shareholder or to a corporation under his control on a regular basis and a director for whom the bulk of his livelihood is provided by the controlling shareholder.

The scope of the audit committee's role has been broadened to include the following: examining deficiencies in the business management of the company, including by consulting with the company's external auditor or internal auditor; 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 internal auditor's performance and if he has sufficient resources to fulfill his duties; examining the scope of the external auditor's work and the fees paid to him; determining procedures for handling employee complaints with regard to the alleged deficiencies in the business management of the company, and the protection of employees who have made such complaints.

**Conflicts of Interest** (*Article 12(2)(e)*) – as noted in the answers to the question regarding Article 7 of the Convention, the Civil Service Law (*Post Employment Restrictions*, 1969), imposes certain limitations on former public officials aimed at preventing potential conflicts of interest, by restricting the opportunity of retired civil servants to work in the private sector on the same subjects that they have dealt with while in the public sector. The main purpose of this legislation is to prevent biased decisions which are intended to serve the person and not the public. Article 8 of this law provides that infringement of the law constitutes a criminal offense punishable by a fine or up to six months of incarceration. The limitations are imposed on former public officials of different ranks and responsibilities in the public service. The Cooling Off Period for Members of the Security Forces Law, 2007 was enacted so as to modify the relevant cooling-off period imposed on former members of the armed forces, particularly in regards to candidates for political office or nominations.
Non-Tax Deductibility (Article 12(4)) - In November 2009, an explicit prohibition on the deductibility of bribes was introduced into the Income Tax Ordinance, 1961. This legislative amendment reflected the view previously expressed by the Israeli Supreme Court, according to which disallowing the tax deductibility of bribes serves not only as a strong counter-incentive to corrupt activities but also as a politically visible sign of the common international commitment to combat bribery.

A Circular entitled "The Prohibition of Bribery of Foreign Public Officials", issued by the Israel Tax Authority in 2011, reflects this Amendment to the Income Tax Ordinance. The circular was published on the Israel Tax Authority's website, and distributed to all tax inspectors (see text of the circular in the examples portion of the answer).

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 12.

Initiatives Relating to the Private Sector (Article 12(2)(b); (c)) - Israeli authorities are pursuing a multifaceted approach to raising awareness to the need to eradicate corruptive practices 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 generating greater awareness of the UNCAC in the business sector, and in private sector initiatives to raise awareness to corruption and bribery offences.

The following are examples of collaborative and awareness raising efforts: the Ministry of Justice (hereinafter: MOJ) has collaborated with its counterparts in government and the private sector to promote publications, also aimed at the private sector, regarding the foreign bribery offence. Examples include: a chapter dedicated to the foreign bribery offence, in a publication sponsored by the Ministry of Finance of Israel and the OECD (published in September 2010), and the publication, in October 2010, of an article focusing on the development of internal control mechanisms in corporations to detect bribery in "The Accountant", the main professional journal of the Institute of Certified Public Accountants in Israel (ICPAS).
resulting from a joint effort by the MOJ and an accountant in a large private hi-tech firm. 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 spoken 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, focusing on the anti-corruption international legal frameworks, and Israel's international legal obligations in that regard, were part of a concerted effort by the MOJ to focus on awareness raising activities to accountants and internal auditors.

The issue of detecting foreign bribery payments by accountants and internal auditors was also discussed in this abovementioned internal auditors' forum meeting. 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 its website information about the foreign bribery offence.

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

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

- The DECD also dispatched newsletters to registered defense exporters which included information regarding corruption offences.

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 corruption offences and implications on defense export control in the course of 2012.

Responsible behavior of the business sector was also emphasized in various presentations by the Ministry of Industry, Trade and Labor (MOITAL), including:

- The 3rd 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).

Israeli authorities continue to utilize many relevant forums to maintain Israel's long lasting campaign to promote awareness of anti-corruption activities aimed at the private sector. Such activities include 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, and not exclusively from the government.

**The Manufacturers Association in Israel (MAI)** (Israel's major private sector
association incorporating many leading Israeli firms) has also taken measures to
increase awareness to the need to eradicate corruptive practices 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 Israeli legislation and international legal documents in this field. The
Forum aims, inter alia, to help companies in Israel apply the 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.

The Anti-Bribery Business Forum met twice during 2011, and once so far in the
course of 2012. Participants were given lectures on related matters as well as reports
from the continuous international anti-corruption activity. 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.

Complementing the activities of the Anti-Bribery Forum, MAI's website provides
direct links to the MOJ anti-corruption website, and 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.

MAI's Foreign Trade Division also hosted two conferences in the course on 2010 and 2011 on the issues of the foreign bribery offence. 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. In December 2011, the Division held a conference entitled “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 about old and new risks they may encounter in the rapidly changing global business environment. Special emphasis was placed on the importance of due diligence in fighting corruption and avoiding unexpected disruptions in international business. This conference was part of an ongoing campaign by MAI to involve the private sector in deploying strategies of compliance mechanisms to prevent corruption and bribery.

Most recently, the Ministry of Justice and the Ministry of Industry, Trade and Labor, in cooperation with MAI, hosted a conference, in June 2012, on the issues of corporate responsibility and prevention of bribery. High level members of the public and business sectors discussed the OECD guidelines on foreign bribery, corporate social responsibility and other current issues affecting today's global business community. Speakers in the conference included the Secretary General of the OECD and the Director General of the MOJ.

Other business and trade organizations have also taken initiative to raise awareness to the risks of corruption 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. These efforts by business organizations were accompanied by similar events held by members of the legal private sector, such as 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 by a senior MOJ official, as well as presentations made on the relevant legal regime in the US and the UK by lawyers from reputed international law firms. Another example is a forum held by the Israel Bar Association on May 2011, during which MOJ officials made presentations on the implementation of international anti-corruption conventions in Israel with a particular focus on economic enforcement in general.

The MOJ has also encouraged private sector representatives to participate in courses offered by the International Anti-Corruption Academy (IACA) (Israel is a founding member state of the Academy). In 2010, a senior corporate official from a leading Israeli accounting firm participated in a summer course offered by IACA, and in 2011, a senior executive at a leading Israeli company participated in the IACA UK Bribery Act Seminar.

**Non-Tax Deductibility** *(Article 12(4)) - translation of the text of the Income Tax Circular issued in January 2011:

*Income Tax Circular 2/2011 – Tax Authority*

**Subject: Prohibition of Bribery Payments to Foreign Public Officials**

1. **General**

1.1 *Bribery payments in connection with international transactions constitute a phenomenon that raises serious ethical and political concerns; they incur a heavy economic price in that they adversely impact on the development of international trade and investments and distort the terms of competition. A recognition of bribery payments as deductible expenses worsens the problem and legitimizes this improper phenomenon.*

1.2 *The member countries of the OECD (hereinafter: “the Organization”) have held talks about attempting to bring an end to this improper phenomenon in connection with international transactions, and in 1997 they drafted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The convention entered into force in 1999.*
1.3 Before the convention was drafted, such bribery payments were not considered to be crimes under the domestic law of many countries. Thus, the convention constitutes an important economic tool and measure to be used in the international struggle to prohibit the bribing of public officials and to reduce corruption within member countries.

1.4 The convention obligates the countries that have signed it to adopt domestic laws which provide that the payment of a bribe to a foreign public official in connection with an international transaction will constitute a crime. The convention defines the term “public official” very broadly.

1.5 The convention requires that effective criminal penalties, having the capacity to deter the prohibited behavior, are to be imposed with respect to the giving of bribes to foreign public officials – penalties that are similar to those that are imposed with respect to the bribery of local public officials.

2. Taxation aspects

2.1 In June of 1994, the Committee on Fiscal Affairs (CFA) – the Organization’s central body for tax policy – initiated a review of the taxation laws of the member countries for the purpose of identifying tax law provisions that potentially provide assistance with regard to the giving of bribes to foreign public officials. The committee decided that in cases in which such provisions were found – and in which changes of such sections, for example a change that would disallow the deduction of bribery expenses – could contribute to the prevention of bribery payments to foreign public officials, the local tax authorities should be encouraged to make such changes.

2.2 In 1996, in accordance with the Committee’s said recommendation, the Organization’s Council adopted the recommendation regarding the non-recognition as a deductible expense of bribery payments given to foreign public officials. In 2009 the Council replaced this recommendation with a broader and more detailed one.

2.3 This recommendation calls on the member countries that do not expressly prohibit the deductibility of expenses that constitute bribery payments to reexamine their policy and coordinate it with the spirit of the convention, such that these payments could not in actuality be recognized as deductible

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expenses for tax purposes. The Organization’s Council determined that the classification of bribery payments to foreign public officials as a criminal offense pursuant to the domestic law of each country would facilitate the necessary change in the tax policy.

3. **The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

3.1 **General**

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions\(^7\) (hereinafter: “the Convention”) deals with the subject matter indicated by its name, and its purpose is to combat the phenomenon of bribery of foreign public officials. It serves as central measure used by the Organization in the struggle against international bribery. The Convention was adopted by the Organization in 1997 and entered into force in 1999. Israel acceded to the Convention as a member state in 2009. The Convention’s basic principle is the determination that the payment of bribes to foreign public officials must constitute a criminal offense, and must be accompanied by an appropriate penalty, in a manner similar to the criminality of the bribery of local public officials. The Convention provides a broad definition of the concept of a bribery offense and provides that the offense will include, inter alia, the following situations:

- a. The giving of an amount of money or other benefit;
- b. The offering of an amount of money or other benefit;
- c. A promise to given an amount of money or other benefit;

All these will constitute bribery if they have been given either:

- a. Directly by the party giving the bribe to the foreign public official; or
- b. Through a third party.

All this applies whether or not the bribes have been given for the foreign public official himself or for a third party, so long as the bribe has been given in order to have the foreign public official act or fail to act, within the framework of his or her position, in order to achieve or preserve a business or other benefit involving the conduct of international transactions. Beyond the requirement that the domestic law establish a criminal prohibition, the

\(^7\) See para. 1.2 above.
Convention also includes additional provisions relating to the effort to combat international bribery, dealing with, inter alia, the following issues:

a. The establishment of the penalty for the bribery offense;

b. Provisions regarding seizure and foreclosure;

c. Granting of jurisdiction to the country in which the offense was committed or whose citizen committed the offense;

d. The establishment of standards for the maintenance of books of record;

e. The establishment of accounting principles and auditing procedures that make it difficult to conceal acts of bribery;

f. The provision of legal assistance to countries, including in criminal proceedings;

g. The definition of the offense of bribing foreign public officials as one which allows for extradition pursuant to the domestic law and pursuant to extradition agreements between member countries;

h. Provisions regarding the Organization’s supervision of the Convention’s implementation.

Aside from the Convention, the Organization has adopted a number of recommendations that supplement the struggle against the bribery of foreign public officials. These recommendations deal with, inter alia, taxation, accounting and auditing, export credit insurance and assistance for development.

3.2 Tax aspects

A key measure in the struggle against bribery, pursuant to the Convention and pursuant to the Organization’s accompanying recommendation, is the requirement that countries establish that the payment of bribes to foreign public officials may not be deducted as an expense for income tax purposes. The subject was covered by a 2009 binding recommendation dealing with the subject of taxation,8 (which replaced the original 1996 recommendation dealing with the subject) – and which established, inter alia, that the non-deductibility of bribery payments should not be contingent on the opening of an investigation by the enforcement authorities or by the initiation of legal proceedings. Additionally, the member countries were asked to create

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a mechanism that would enable the tax authorities to report to the enforcement authorities of any suspicions that have arisen regarding bribery payments being given to foreign public officials.

In addition to the above, the convention and its accompanying 2009 recommendation dealing with the further combating of international bribery, both provide that the member countries must take the necessary measures to ensure the maintenance of books and records, the disclosure of financial declarations and the establishment of standards for the auditing of accounts and for public accounting. These standards must prohibit the creation of off-book accounts, the concealment of the execution of transactions that have not been fully reported or which have only been partially reported, and the false reporting of expenses.

4. The United Nations Convention Against Corruption

General

There is an additional convention dealing with the subject of preventing bribery of foreign public officials – the United Nations Convention Against Corruption (hereinafter: “the UN Convention”). The UN Convention is the most comprehensive and up-to-date international mechanism dealing with the battle against corruption and bribery. This is a convention which deals with the entire range of subjects related to the corruption problem, including the bribery of foreign public officials. The convention includes 70 articles dealing with, inter alia, the following topics: measures that the member countries must take to prevent corruption, the member countries’ commitment to establish criminal offenses within their domestic laws, provisions dealing with seizures and foreclosures, promotion and strengthening of international cooperation in the battle against corruption, and the restitution to the source country of funds that originate from the crimes listed in the convention. The UN convention entered into effect in December 2005 and the State of Israel acceded to it in February of 2009 and is subject to the mechanism that monitors its implementation, including from the perspective of its various tax aspects. Articles 15 and 16 of the UN

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Convention provide that the member countries must establish in their domestic legislation that the bribery of a foreign public official or of an employee of an international organization is a criminal offense pursuant to the countries’ domestic legal systems.

4.1 Taxation aspects
Article 12(4) of the UN Convention provides that the member countries must prohibit the tax deductibility of expenses that constitute bribery or of other expenses that have been paid in order to further corrupt conduct. The objective of these provisions is to promote uniformity among the norms that are used to prevent bribery and corrupt behavior of other kinds, and thus to ensure that economic advantages are not obtained through improper activity. Article 12(4) of the UN Convention, dealing with the prevention of tax deductibility, constitutes a supplementary measure for the purpose of promoting the imposition of criminal prohibitions as are required by the provisions of articles 15 and 15, described above.

5. The law in Israel

5.1 The Penal Law
On 21 July 2008, Amendment 99 of the Penal Law-5737-1977 (hereinafter: “the Penal Law”) entered into effect, adding s. 291A of that law. The section created an offense of bribery of a foreign public official in the context of business activity. It establishes that a person who gives a bribe to a foreign public official will be subject to the same rule as a person who has given a bribe to a local public official. The section includes a definition of the term “foreign public official” and of the term “foreign country”. The crime of bribing a foreign public official established in s. 291A of the Penal Law provides that a person who gives a bribe to a foreign public official for activity related to his or her position, in order to achieve, assure or promote business activity or other advantage in connection with business activity, will be treated as a person who has given a bribe to local public official.

The prohibition established in Israeli law against the bribing of a foreign public official is a broad one, similar to the offense of bribery of a local
public official, and the prohibition is also in compliance with the OECD Corruption Convention. The differences between the crime of bribing a local public official and the offense of bribing a foreign public official revolve around two elements: the first being the difference between the definition of a local public official and the definition of a foreign public official, and the second relating to the purpose for which the bribe is given. The offense of bribing a foreign public official is limited to acts committed with the purpose of achieving, assuring or promoting business activity or other advantage in connection with business activity.

The offense of bribery of a foreign public official is included in the Bribery Offenses Chapter of the Penal Law, and all the general sections applicable to the offenses in that chapter will also apply to the foreign public official bribery offenses. Thus, bribes that are not given directly by the giver, or are not given directly to the public official, and are instead provided by a go-between will also fall within the definition of bribery. The same applies when the party benefiting from the bribe is not the foreign public official directly, and is instead some other third party.

As stated, the offense of bribery of a foreign public official applies to the giving of bribes in order to obtain, assure or promote business activity or other advantage in connection with business activity. As in the case of the bribery of a local public official, the bribe can be given either to have the official act or fail to act, or to have the official delay, rush, slow down, grant preference or discriminate. The purpose of the prohibited bribe can be the promotion of a transaction or the gaining of an advantage in its promotion, directly, for example – through payment to a foreign public official who has influence over the matter. Alternatively, the purpose could be the promotion of business in an indirect manner, such as through payment to a foreign public official in exchange for information that he received illegally, for the purpose of obtaining an advantage for the party giving the bribe in obtaining the transaction.

One of the elements of the crime is that the bribe must be given in exchange for action related to the public official’s position. The meaning of this term, as explained in the case law regarding the offense of bribing a local public
official, covers any action done in connection with the official’s position – even if the public official was not authorized or permitted to take that action, provided that it had a connection to the fact that the public official served in a particular position. (CA 534/78 Kobilo v. State of Israel IsrSC 34(2) 281; CrimA State of Israel v. Darwish et. al. IsrSC 45(2) 663). It is noted in this regard that all the bribery offenses listed in Part E of Chapter 9 of the Penal Law, which include the offense of bribery of a public foreign official, are deemed to be source offenses pursuant to the Prohibition of Money Laundering Law, 2000 – and the bribery of a foreign public official therefore also constitutes such a source offense.

The term “foreign public official”, is defined, pursuant to the Amendment, as any one of the following:

1. An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

2. A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

3. An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization;

Employees of governmental units within the foreign country also fall within this definition, as the intention was to prohibit the bribing of public officials in all government entities, whether the public official belongs to a government unit on a national level, or to a state within a federal system, or to a district or municipal unit within any of these. With regard to this offense, a public official of a state entity which is not actually a state is also included within the definition of a public official of a “foreign country”. Amendment 103 of the Penal Law, which took effect in February of 2010, amended ss.
290(a) and 291 of the Law and increased the penalties for bribery offenses as follows:

5.1.1 Prison sentences:

5.1.1.1 The maximum prison sentence for taking a bribe was increased to 10 years (instead of seven years in prison as had been the maximum penalty before the amendment).

5.1.1.2 The maximum prison sentence for giving a bribe to a local public official and to a foreign public official was increased to 7 years (instead of 3.5 years in prison as had been the maximum penalty before the amendment).

5.1.1.3 Fines – the maximum fine for taking a bribe or for giving a bribe to a local public official or to a foreign public official was increased to approximately NIS 1.1 million for an individual and approximately NIS 2.2 million for a corporation – or up to four times the value of the benefit that was obtained or which the offender intended to have achieved through the commission of the crime – whichever is higher.

5.2 The Income Tax Ordinance

5.2.1 General

Section 17 of the Income Tax Ordinance (New Version), 5721-1961 (hereinafter: “the Ordinance”) provides that expenses incurred entirely in the creation of income within the tax year, and for that purpose only, will be deductible from income – unless the expenses have been restricted or disallowed pursuant to s. 31 of the Ordinance. The interpretation of s. 17 of the Ordinance (described in para. 5.2.2 below), has been that expenses paid in contravention of any law are not allowed to be deducted pursuant to the section. This interpretation, which prohibits the deduction of bribery payments, has been established in several court decisions, including the decision in CA 6726/05 Hydrola v. Tel Aviv Assessment Officer 1, which dealt with the allowance of a deduction for an expense incurred abroad by an Israeli company for the “promotion of transactions” or as the Supreme Court preferred to call it – “bribery payments”.

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Justice Rubinstein wrote, in his concurrence, that all these payments, which had been directed at the bribery and corruption of public officials in a foreign country, would have been illegal if they had been incurred in Israel, and it could be presumed that they were illegal in the country in which they actually had been paid. Additionally, he wrote, the recognition of these payments in terms of allowing their deductibility for tax purposes would be against public policy. The majority opinion had been that the expense could not be deducted, as the actual existence of the payment had not been proven.

5.2.2 Amendment 172 of the Ordinance

Amendment 172 of the Ordinance entered into force in November of 2009; it added subsection 16 to s. 32, the caption of which is “Deductions That Will Not Be Allowed.” The sub-section provides as follows:

“Payment, in money or money’s worth, where there is a reasonable basis to believe it constitutes a violation of any law.” Sub-section 32(16) to the Ordinance anchors the tax authority’s existing policy, pursuant to which bribery payments are not allowed as tax deductions, and it was added in order to respond to the Organization’s requirement that this matter be enacted through legislation.

The new sub-section 32(16) applies, as stated, to payments made in contravention of any law, and when combined with section 291A of the Penal Law which establishes the offense of bribery of a foreign public official, it also includes a prohibition of the deduction for tax purposes of bribery payments given to foreign public officials in international transactions.

5.3 Maintenance of books/records

The obligation to maintain books and documents is established in Israeli legislation. Section 130 of the Ordinance provides that the Director of the Tax Authority may order that income account records be maintained, and he may also prescribe rules for the maintenance thereof, as well as various directives for this purpose that will apply to specific types of businesses.
Income Tax Directives (Maintenance of Accounting Records) 1973 (hereinafter: the “Accounting Records Directives”) were enacted pursuant to this section. The Accounting Records Directives specify the manner in which the accounts are to be maintained, and they include appendices which contain specific directives for different types of businesses. Pursuant to Section 130, if there are substantive defects regarding the determination of a taxpayer’s income, the taxpayer’s books may be disqualified, and an assessment will be issued according to the assessing officer’s best judgment.

The failure to maintain records pursuant to the Directives, or the destruction or concealment of documents which are of importance in connection with an assessment, may constitute a criminal offense pursuant to Section 216 of the Ordinance, if the person committing such act has committed them without a satisfactory reason. The penalty for this offense is one year in prison and/or a fine.

5.4 Transfer of information regarding a suspicion of the payment of a bribe to a foreign public official

Section 231 of the Ordinance provides that a person carrying out an official function in connection with the implementation of the Income Tax Ordinance or who is engaged in its implementation is subject to a duty of confidentiality regarding any information or document that he obtains pursuant by virtue of his function and may not disclose such information except in circumstances prescribed by law. Section 232 of the Ordinance provides that a person who has been appointed pursuant to the provisions of the Ordinance or who is engaged in its implementation will not be asked to show a court any report, document or assessment or to disclose to the court or to notify it of any matter which he received as part of the fulfillment of his or her function pursuant to the Ordinance, except to the extent required for the purpose of carrying out the provisions of the Ordinance.

Section 234 of the Ordinance provides that a person who controls documents, information, reports, assessment records or copies thereof relating to the income of a person or to any item thereof, and has delivered or attempted to deliver such information or a part of any such documents, without the
approval of the Minister of Finance, or who has transferred them other than for the purpose of implementing the provisions of the Ordinance, will be subject to a prison sentence. (This is subject to a various qualifications set forth in the statute – see regarding this matter the provisions of Section 235 of the Ordinance). In a decision dated 6 June 2005 (Government Publications [Yalkut Pirsumim], 5418), the Minister of Finance delegated the authority given to him pursuant to provisions of Section 234 of the Ordinance to the Director of the Tax Authority.

In the framework of this authority, the Director of the Tax Authority may transfer information to the Israel Police concerning payments made by an Israeli resident to a foreign public official regarding which there is a suspicion that they constitute bribery payments. In addition, an assessment officer who, in the course of his or her work, discovers information that raises a suspicion that a bribery payment has been made to foreign public officials, may – at his own initiative – ask the Director of the Tax Authority to remove the information’s immunity so that it can be submitted to the enforcement authorities.

6. Alternative methods for detecting bribery payments

In this paragraph (para. 6 of the Circular) we will briefly review the ways in which bribery payments can be identified, in accordance with the Organization’s guidelines regarding this subject (hereinafter: “the Organization Guidelines”). However, the purpose of this review is only to provide general and preliminary information regarding techniques for the identification of bribery payments and is not intended to replace the Organization Guidelines. The Organization Guidelines have been published on the Israeli Tax Authority’s website. The following is a survey of the alternative methods that can be used in detecting the payment of bribery payments to foreign public officials:

10 See http://www.oecd.org/dataoecd/20/20/37131825
6.1 Methods of payment

There can be a wide variety of methods of payment; the following are the key ones:

a. Transfer of funds through a legitimate business – for example through false invoices and through various exaggerated consulting commissions.

b. The transfer of funds through a fictitious business.

c. The payment of political campaign expenses.

d. Invoices issued to a customer for amounts that are very high in comparison to market prices.

e. Donations to non-profit organizations established by the public official.

f. Receipt of royalties that are recorded among the company’s liabilities in its books of account.

g. Professional services – the degree of exactness with which the services received by the company are described should be checked, as should be their reasonableness and their size relative to previous years and in relation to the company’s turnover.

h. Travel and entertainment expenses.
checks or salary payments are being issued to employees who have left or retired.

b. **Signs of fraudulent acts or of acts of bribery, detected through books and records** – the absence of books of account, the concealment of records or the refusal to issue produce records or books of account.

c. **Signs of fraudulent acts or of acts of bribery, detected in the taxpayer’s behavior** – attempts to disrupt or interfere with an inspection or an audit, destruction of books of account or documents, retroactive changes of dates on related documents, etc.

d. **Signs of fraudulent acts or of acts of bribery, detected through reporting requirements** – certain countries have reporting requirements regarding funds that have been paid for commissions, refunds, payments for usage fees, compensation, and payments of a similar nature, made either to local residents and to foreign residents. The manner of these payments should be examined, especially in circumstances in which the party receiving the payment presents a confirmation from a country that is considered to be a tax haven, or in situations in which the number of payments or of the beneficiaries of the payments has increased, or when the beneficiary of the payment is located in a geographical relationship in which the paying company (or organization) is not active. (In Israel the detection of payments of this type can be attempted through an examination of the deduction at source mechanism.)

### 6.3 Audit plans for identifying bribery payments and fraud

Those carrying out the audit, should, during the course of such audit, be on the lookout for situations in which payments of this type may have been made. The audit plan should examine both internal audit reports and work papers, and it should examine copies of the reports that the taxpayer has submitted to other authorities, and all of the audited entity’s contractual arrangements, as well as any transfers to tax havens.

### 6.4 Information received from other government authorities and from countries that are parties to tax treaties

Those carrying out audits must consider the information they can receive from countries that are parties to tax treaties and to what extent the information can contribute to the disclosure and identification of the
phenomena described above. In general, the exchange of information
clauses in these treaties can be used to clarify the nature of a payment that
has been made.

In addition, requests can be made for simultaneous (in Israel and abroad) tax
inspections, in the context of which it will be possible to determine the true
tax liabilities of the taxpayer, particularly in situations in which illegal
payments have been paid to foreign parties. In these cases, the request
should be directed to the international tax unit in order to determine whether
it may be possible to initiate a proceeding of this type.

6.5 Inspection techniques

This paragraph of the circular (6.5) is based on the Organization Guidelines,
and it provides tools and guidelines for the conduct of an efficient inspection
the purpose of identifying and disclosing of bribery payments. The following
is a brief review of the key tools:

6.5.1 Methods for accumulating evidence relating to the identification of
bribery payments – there are four main methods:

6.5.1.1 Analytical review – such as an analysis of balance sheet items for the
purpose of identifying large, unusual or doubtful accounts or
amounts.

6.5.1.2 Documentation - a careful examination of the books and records for
the purpose of determining their content and degree of accuracy,
while verifying the items that appear in the tax returns.

6.5.1.3 Investigation – interviews with the taxpayer and with third parties.

6.5.1.4 Examination – for example, following a specific transaction through
all the stages of the audit.

6.5.2 Interviews – the main purpose of these is to provide general information
regarding business activity, financial condition, etc., and to disclose new
information, to establish evidence and to settle various issues.
Importance should also be given to oral testimony to the extent that such
can contribute to resolving tax investigations and especially of those in
which bribery is involved. Attempts should be made to interview the
parties that are involved who have the most information regarding the
overall financial picture of the business or the organization. Care should
be taken to establish the proper documentation of the interview including
the recording of a protocol (indicating the date, place and time and the
names of those present at the interview). The Organization Guidelines provide additional information regarding techniques for conducting interviews effectively and the structure and type of question to present to the taxpayer in the situations dealt with here.

6.5.3 **Assessment of the taxpayer’s internal audit mechanism** – The existing internal audit mechanism within the taxpayer’s organizational system needs to be assessed in order to determine the reliability of the books and of the records, and in order to determine the appropriate audit techniques to be used during the course of the inspection. The key stages in the conduct of this assessment are the following:

6.5.3.1 **The control environment** - This is comprised of many factors such as the management style, the organizational structure, policy, etc. The manner in which the business or organization operates must be understood well in order to carry out a proper assessment of the audit environment.

6.5.3.2 **The accounting system** - It is necessary to understand well how the business is conducted on a daily basis, from all perspectives: suppliers, customers, employees, location, assets, etc.

6.5.3.3 **The control procedures** – The policy and procedures used by the management in order to achieve the business’ organization’s objectives. It is necessary to check whether and how powers are divided in actuality. To the extent that there is less separation of powers the greater the concern is that various offenses are being committed.

6.5.4 **Special inspection proceedings** – the items to be examined in depth in the context of the inspection procedure need to be chosen carefully in accordance with the purpose and intensity of the investigation and the manner in which it is being supervised.

The objective of the specific inspection needs to be defined as well. Attention should be paid to the fact that in some sectors, it is necessary to obtain approval from the authorities in order to operate a particular business; this fact, by itself, can focus the bribery investigation and can produce faster and more accurate results.
6.5.5 *Secret illegal funds* - These are accounts or groups of accounts that are generally created and located outside of company’s regular internal audit mechanism. These accounts can be used for the payment of bribes, political contributions, personal expenses of the organization’s managers or other illegal activity. For example, an external consultant charges an exorbitant amount for his services and afterwards transfers all or some the funds he has received to a party within the company, in cash – this will be considered to be a transfer to a type of secret fund. (The Organization Guidelines specifies questions for the identification of such funds.)

6.6 *Miscellaneous*

In addition to the above, the Organization Guidelines provide, inter alia, the following tools:

6.6.1 *Questionnaires* that can provide assistance when carrying out inspections, for the purpose of identifying and locating payments of bribes (including the identification of illegal secret funds).

6.6.2 *The structure and various types of questions* that can be asked of a party being questioned for the purpose of obtaining information that will advance the investigation (open questions, closed questions, investigative questions and leading questions).

6.6.3 *Guidelines for the use of the questionnaire regarding secret funds.*

| 4. Have you ever assessed the effectiveness of the measures adopted to implement article 12? If so, please outline (or, if available, attach) the results (intended/unintended/positive/negative) of such an assessment including methods, tools and resources utilized. |

There has been no formal assessment of the effectiveness of the measures adopted to implement Article 12 in Israel. However, as elaborated above, Israeli authorities are constantly reviewing ways and means to enhance cooperation with the private sector, as the active involvement of the private sector is a key component in the efforts to eradicate corruption.
5. Which challenges and issues are you facing in (fully) implementing the provision?

The main challenge in implementing Article 12 is that there is a need to convey the message to the private sector that corruption, domestic or foreign, is not a victimless crime, and that the gains of ethical conduct greatly outweigh the potential profits of illicit practices.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

No technical assistance is required in this regard.