



STATE OF ISRAEL

Ministry of Justice

August 2018

Response of the State of Israel

**Information requested from States parties in relation to preventing
and managing conflicts of interest, asset and interest disclosure
systems, particularly in the context of articles 7 – 8 of the United
Nations Convention Against Corruption**

(Reference: CU 2018/65/DTA/CEB)

I - Information requested from States parties in relation to preventing and managing conflicts of interest

Article 7. Public sector

1. ...

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.

1. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention, and in particular to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Israel has in place a wide range of measures in the context of article 7(4), including comprehensive statutory, regulatory and administrative schemes. The following are some representative examples, with particular emphasis on issues related to conflicts of interest:

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 areas 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 (Article 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 department. In respect of senior positions, the arrangement is carried out 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 official responsible for preparing the arrangement with the candidates 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.

In addition, as stipulated in the Attorney General Directive 3.1005, conflict of interests arrangements are subject to the Freedom of Information Law, 1998. Accordingly, , when preparing the arrangement to prevent conflicts of interest, the legal advisor of the relevant office should inform the employee that the arrangement, as a rule, will not be confidential, except for those parts where the employee provides legal justification to keep it confidential. The fact that conflict of interest arrangements are subject to the Freedom of Information Law is also expressly made clear in the arrangements signed by the employee. All Attorney General Directives are available to the public online, thus ensuring broad access to and awareness of these Directives.

Civil Service appointments

In order to ensure transparency in recruitment and promotion proceedings in criminal justice institutions, the Israeli system has developed a tightly regulated tender procedure which is managed by the Civil Service Commission, in accordance with Article 19 of the Civil Service Law (Appointments), 1959. Candidates for recruitment to the civil service undergo a multi-stage screening process in the course of the tender procedure that includes professional examinations and personal interviews, at the end of which a select few are accepted. The procedure of the tender is required by statute to be equitable and transparent.

Pursuant to Article 21 of the Civil Service Law (Appointments), it is possible for a position to be exempted from the tender procedure only in rare circumstances. One such example relates to particularly sensitive positions which require a high level security clearance.

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 appointment.

In order to maintain transparency and eliminate corruption, the Civil Service Law and Civil Service Rules (Appointments), (Restrictions on Family Relation), 2007, (hereinafter- "the Rules") govern cases in which family members work in criminal justice institutions, and in the civil service in general. Article 1 of the Rules states that a "relative" of a civil service employee include a spouse, including a common-law partner, a parent, a grandparent, a son, a daughter, a brother, a sister, a brother-in-law, a sister-in-law, a father-in-law, a mother-in-law, an uncle, an aunt, a nephew, a niece, a grandchild, including family relationships created as a result of adoption or due to marriage of a parent.

When applying for employment in the civil service, each employee is required to fill out a form stating whether or not he/she has relatives employed by the civil service, including in the judicial system, and if so, the employee is required to state all information necessary regarding each specific family member. Article 3 of the Rules states that if a family relationship is established between two employees within an office or a sub-unit, and the employees are in a supervisor-subordinate or other work relationship or in a situation of conflict of interests, one of the employees will be assigned to another position in the office or the sub-unit. If the reassignment is not possible, the responsible manager may, with the authorization of the Civil Service Commission, determine conditions for their continued employment in their positions for a period not exceeding one year.

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 Article 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 (Article 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 42.4 of the Takshir prohibits State employees from obtaining secondary employment without prior approval. According to Article 42.403, no approval will not be granted if the other position conflicts or could conflict with the interests of the employee's public position. 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.

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 (Article 239 of the Penal Code, 1977) or attempted fraud (Article 415 of the Penal Code).

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, with no time limit, a retired civil servant from representing a person (including a corporation) against the organization from which the civil servant retired, in a specific 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.

With regard to post-retirement restrictions, lawyers at the State Prosecutor's Office are subject not only to the usual restrictions that apply to public employees under the Public Service Law (Post-Retirement Restrictions), 1969, but also to other restrictive provisions that apply only to persons belonging to law enforcement or intelligence agencies (Articles 5A5D and 14A of the said Law).

Conflicts of Interests – Government Members and Elected Public Officials

Regarding Ministers and Deputy Ministers, the 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. According to the rules, ministers and deputy ministers are not allowed to receive salary beside their salary as government members; they are also prohibited from owning a business, and must manage their assets in a blind trust. The rules also require ministers and deputy ministers to submit an annual capital statement, as well as at the beginning and at the end of their term. Another provision of the rules defines the procedure which a minister should follow in case of conflict of interests. The rules also establish a special committee, under the State Comptroller's supervision, which can allow ministers to deviate from a specific rule when necessary.

Conflicts of Interests – 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 conflict of interests. A breach of these prohibitions also constitutes a criminal offense (Ad.Cr.H. 1397/03 State of Israel v. Shavas).

These legal instruments also contain another important penal offense, applicable only to elected officials, which generally prohibits municipal council members 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. In order to ensure the integrity of this process, the members of the special committee are independent of the municipality.

Under Article 6 of the Conflict of Interests of Public Officials in Local Government Order (1984), a special committee was established to advise public officials in the local governments on avoiding and resolving conflicts of interests. This committee publishes from time to time brief opinions, guidelines and answers to common issues.

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, based on Article 221 of the Municipalities Ordinance, 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.

Following the recommendations of a special committee assigned to examine ways for strengthening the rule of law in the municipal governance, a draft amendment to the Municipalities Ordinance has been approved by the Government to be brought before the Knesset. The amendment proposes, inter alia, a new conflicts of interests review system and more transparency of conflicts of interests arrangements.

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 or an institutional interest in that matter. The law also requires elected municipal officials who serve as members of planning committees, to answer a questionnaire on personal interests, and where necessary sign a conflict of interests arrangement, before they are appointed to the committee. In case of a continuous conflict of interests, the member

of the committee will be prevented from holding the position. In case of a non-continuous conflict of interests (a conflict of interests that can be cured with an arrangement), the member will be permitted to hold his position, subject to an arrangement formed by the legal adviser of the committee.

Conflicts of Interests – Directors Appointed by the State

The criteria for appointment of directors of government-owned companies are set forth in the Government Companies Law, 1975. These criteria include, inter alia, provisions designed to prevent conflicts of interest. In order to achieve this aim, the law stipulates that the appointment of a director requires the following procedure: The appointment is made possible only after the Review Committee found him qualified according to the terms of the law and saw that there was no conflict of interests in the appointment. The committee is required to examine, inter alia, whether a candidate for the office of director has a personal, business or other relationship with the appointing minister. In the event that such a relationship is found, the committee must examine whether the candidate has any "special qualifications" relevant to the company's fields of operation, beyond the normal qualifications, which could override that connection. The Appointment Review Committee is a professional and independent committee whose recommendations in terms of qualifications and conflicts of interests obligate the appointing ministers.

Conflicts of Interests – 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. According to this legal framework, the Ministry of Justice can submit a complaint to the judicial disciplinary tribunal in case of a breach of the ethics regulations. Article 77A to the Courts Law establishes grounds for the disqualification of a judge from presiding in a case, in order to avoid conflict of interests, for example when an applicant is a relative of the judge. Similarly, Articles 14-15 to the Ethics Regulations for Judges oblige a judge to abstain from presiding in a case, if he believes there are reasons that might cause to a conflict of interests.

In addition, an Office of the Ombudsman for the Israeli Judiciary was established in 2003. Article 7 of the Basic Law: The Judiciary allows the Ombudsman to remove a

judge from office for several reasons, including for conflict of interests. This tool enables the Ombudsman to supervise the integrity of the judicial system.

Conflicts of Interests – Police Force

The Israel Police orders regarding conflicts of interests require employees above certain ranks or serving in sensitive positions to answer questionnaires aimed at detecting potential conflicts of interests. In case of a potential conflict, it is examined further by the disciplinary department and the Legal Advisor of the Israel Police, who determines whether the conflict may be solved by requiring the employee to sign an arrangement to preclude it, or whether the employee must be assigned to another position. In addition, over the past two years, a new procedure was initiated in the Israel Police to detect possible conflicts of interest or corruption in the police force. By the end of 2018 every employee of the Israel Police is expected to go through this procedure.

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

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 preparing 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. Another challenge which arises from time to time is to get a full disclosure from a candidate, on private information such as their relatives' occupations, or commercial information such as their or their company's list of clients. Lastly, it should be mentioned that under

Conflicts of Interest – Civil Service

The following are some representative examples of conflicts of interests 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 corporation 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.

3. 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.

II - Information requested from States parties in relation to asset and interest disclosure (art. 8, para. 5)

Article 8. Codes of conduct for public officials

1. ...

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.

1. Please describe (cite and summarize) the measures your country has taken, if any, (or is planning to take, together with the related envisaged time frame) to ensure full compliance with article 8 (5) of the Convention, and in particular 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.

Funding of political parties and elected public officials

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".

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. Ministers and deputy ministers are required to submit their declaration of assets within sixty (60) days of their appointment date, annually thereafter, and within sixty (60) days of the end of their appointment. Rule 6(3)(a) of the Rules for the Prevention of Conflicts of Interests by Ministers and Deputy Ministers states that a minister may not receive a salary or a benefit other than the salary paid by the state. According to Rule 6(5), a minister may not invest funds in or hold securities except through a "blind trust." Rule (6)(6) of the Rules for the Prevention of Conflicts of Interests by Ministers and Deputy Ministers provides that a minister may not purchase or receive State assets, directly or indirectly, other than assets sold or given to the public according to predetermined principles and which the public has had an equivalent opportunity to purchase or receive.

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. According to this law, their declarations of assets are submitted to a retired Supreme Court justice or a district court judge appointed by the Chief Justice of the Supreme Court. This obligation also applies to Israeli Parliament Members (Members of Knesset, MK) by virtue of Article 13b of the Knesset Members Immunity, Rights and Duties Law, 1951 and Article 15 of the Rules of Ethics for Members of the Knesset, 1984.

According to Article 35 of The Public Service Law (Appointments), 1959, as well as the Civil Service Law (Appointments) (Declaration of Assets), Regulations, 2008,

senior officials or employees with access to sensitive and/or confidential information who may be susceptible to outside influence are obligated by law to submit extensive reports, including a declaration of assets. Senior officials in the public service must declare their assets when beginning their appointment and must update this information at least once every four years. The Civil Service Commissioner must protect the confidentiality of these declarations, and the information cannot be revealed without the employee's consent or by a court order given after the court considered the level of invasion of privacy entailed.

The Public Service Law (Asset Declarations), 2016 requires all high ranking public officials, including senior officers in the Israel Police and in the Israeli Prison System and all judges and registrars, to declare assets, debts and sources of income for themselves, their spouses and dependent children.

The aforementioned declarations can facilitate a comparison of civil servants' assets before, during and after their tenure and identification of undeclared assets.

Furthermore, the Takshir provides, inter alia, that in regards to certain positions in the public service (as defined in Article 13.621 of 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 (Article 13.65).

Asset Declarations by Public Officials

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".

On the disciplinary level, Article 17 of Israel's Civil Service Law (Discipline), 1963 includes more general offenses that allow for more flexibility in defining disciplinary offenses than that available in criminal law. If a civil servant's behavior falls into one

of the law's offenses such as "conduct unbecoming a civil servant" or "dishonest conduct", they may be tried for disciplinary offenses.

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 permission will not be granted 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 in this capacity as such, and handle it as determined by the law and regulations. Any violation of this Law constitutes a criminal offense.

Asset and Gifts Declarations by Public Officials

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.

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

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 occurs 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.

The Heads of the Municipal Authorities and their Deputies Law (Financial Statement), 1993 does not impose sanctions for non-compliance with the obligation to declare assets. In order to deal with this problem, the Minister of Interior decided that the list of municipal public officials who complied with those requirements will be published, and that non-compliance will affect the salary of the heads of municipal authorities and their deputies. Also, the Minister instructed that a head of a municipal authority or a deputy whose term of office has ended will not receive half of the payments due to them until they have complied with the legal requirement to submit a detailed asset declaration.

In addition, under the Heads of the Municipal Authorities and their Deputies Law, financial statement can only be examined on a technical level and not substantively.

3. 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.