PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN ISRAEL

June 2015

This Phase 3 Report on Israel by the OECD Working Group on Bribery evaluates and makes recommendations on Israel's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 11 June 2015.

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EXECUTIVE SUMMARY

The Phase 3 report on Israel by the OECD Working Group on Bribery evaluates and makes recommendations on Israel's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in Israel's legislative and institutional framework, as well as progress made since Israel's Phase 2 evaluation in 2009. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group is seriously concerned by the limited investigative steps taken in Israel's foreign bribery cases. It also notes the insufficient level of foreign bribery enforcement in Israel, with no prosecutions in the seven years since the entry force of Israel's foreign bribery offence. It is, however, encouraged by Israeli authorities' recent efforts to pursue foreign bribery more vigorously, and will pay close attention to how these efforts develop over the coming months. Out of 14 foreign bribery allegations, 4 are the subject of a formal investigation – 3 of which were opened in the past 6 months – and 4 other allegations are the subject of ongoing preliminary examinations. The Working Group recommends that Israel take all necessary steps to ensure that all foreign bribery allegations are thoroughly assessed and investigated, with a view to progressing cases to prosecution. Investigators should take advantage of the broad range of investigative tools available and seek mutual legal assistance more proactively in foreign bribery cases. Corporate liability should also be fully considered and investigated where appropriate. To this end, the existing prosecution policies that emphasise consideration of legal person liability are encouraging. Israel's establishment of the Inter-Ministerial Team on foreign bribery to oversee foreign bribery cases is another notable step which could contribute to increased enforcement. The Working Group is also encouraged by Israel's independent detection of 4 foreign bribery cases.

The report identifies additional areas for improvement. Detection could be further enhanced through increased training and guidance for law enforcement as well as other actors involved in the detection of foreign bribery, such as accountants and auditors and the anti-money laundering authorities. The Working Group also encourages Israel to proceed with its proposed legislative amendments to consolidate its legal person liability framework, and remove existing limitations to Israel's jurisdiction over extraterritorial foreign bribery offences and the monetary threshold applicable to the relevant offence under the anti-money laundering legislation.

The report also notes positive developments. Israel's foreign bribery offence is compliant with the Convention. With respect to the sanctioning regime, sanctions have been increased for foreign bribery, and confiscation has also been enhanced through the establishment of the confiscation forum within the State Attorney's Office and a special forfeiture unit under the Ministry of Justice. Israel has been active in encouraging its companies to adopt anti-corruption compliance programmes and in raising public and private sector awareness of foreign bribery – although more could be achieved to target accountants and auditors, and companies operating in high-risk sectors. The tax deductibility of bribes is now explicitly prohibited. Israel's whistleblowing regime has also significantly improved, though further efforts could be made to encourage this form of reporting.

The report and its recommendations reflect the findings of experts from Australia and Belgium and were adopted by the Working Group on 11 June 2015. It is based on legislation and other materials

provided by Israel and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Jerusalem and Tel Aviv on 3-5 February 2015, during which the team met representatives of Israel's public and private sectors, judiciary, civil society, and media. Within one year of the Working Group's approval of this report, Israel will make a written follow-up report on its implementation of certain recommendations and progress on its foreign bribery enforcement actions. It will further submit a written report in two years on the implementation of all recommendations and its enforcement efforts.

A. INTRODUCTION

1. The on-site visit

1. On 3-5 February 2015, an evaluation team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Jerusalem and Tel Aviv as part of the Phase 3 evaluation of Israel's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention); the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation); and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation).

2. The evaluation team was composed of Lead Examiners from Australia and Belgium as well as members of the OECD Secretariat.[1] Before the on-site visit, Israel responded to the Phase 3 questionnaire and supplementary questions, and provided certain relevant legislation and documents. The evaluation team also referred to publicly available information. During the on-site visit, the evaluation team met representatives of the Israeli public and private sectors, civil society, media and judges specialised in mutual legal assistance (MLA) and combating economic crime.[2] The evaluation team expresses its appreciation to the participants for their openness during the discussions and to Israel for its cooperation throughout the evaluation and organisation of a well-attended on-site visit. Following the on-site visit, Israel provided additional information and addressed questions from the evaluation team.

2. Summary of the monitoring steps leading to Phase 3

3. The Working Group previously evaluated Israel in Phase 1 (March 2009), Phase 2 (December 2009) and the Phase 2 Written Follow-up Report (May 2012). As of May 2012, Israel had fully implemented 16 out of 22 Phase 2 recommendations (see Annex 2). The outstanding recommendations cover issues such as the whistleblower protection, reporting of foreign bribery to law enforcement, the liability of legal persons, accounting and auditing, and official development assistance.

3. Outline and methodology of the report

4. This report is structured as follows. Part B examines Israel's efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to both Group-wide and country-specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. Part C sets out the Working Group's recommendations and issues for follow-up.

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1 Australia was represented by: Mr. Tom Sharp from the Attorney General's Department and Mr. Timothy Underhill from the Australian Federal Police. Belgium was represented by Mr. Yves Moiny from the General Prosecutor's Office at the Brussels Court of Appeal and Mr. Claude Bernard from the Belgian Federal Police. The OECD Secretariat was represented by Ms. Sandrine Hannedouche-Leric, Co-ordinator of the Phase 3 Evaluation of Israel and Senior Legal Analyst; Mr. Graeme Gunn, Legal Analyst; Ms. Liz Owen, Legal Analyst; and Ms. Sophie Wernert, Legal Analyst, all from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs. Ms. France Chain, Senior Legal Analyst, joined the evaluation team after the on-site visit.

2 See Annex 4 for a list of participants.

4. Economic background

5. Israel is a mid-sized economy within the Working Group; with an estimated GDP of USD 303.7 billion (EUR 269.7 billion) in 2014, Israel ranked 26th of the 41 Group members.[3] Israeli companies are active in a number of corruption-prone industries, including pharmaceuticals,[4] defence,[5] and the extractives industry (particularly diamonds).[6] Pharmaceuticals feature as a major export from Israel (11.2% of total goods exports) and the world's top producer of generic medication is an Israeli company. While defence products are not a top export commodity, Israel is nonetheless a major defence exporter, particularly given the size of its economy.[7] Several Israeli companies are among the largest arms-producing companies in the world,[8] and on average these companies export approximately 75% of their product.[9] Exports in this area have reportedly doubled between 2001 and 2012.[10] Rough diamonds are one of Israel's top imports (precious stones account for 11.7% of Israel's total goods imports) and cut diamonds are a major export (precious stones account for 16.8%). Israel is also home to the world's largest diamond exchange.[11] The susceptibility of these sectors to corruption is highlighted by a review of Israel's foreign bribery allegations; 5 of Israel's 14 allegations involve these sectors, including 2 which involve the defence sector (see Annex 1 on cases).

6. Israel is reported to suffer from problematic "economic concentration" (i.e. a small number of companies accounting for a large proportion of economic activity),[12] so much so that a governmental committee was established to address the issue.[13]

7. Israel is a relatively open economy and over the past two decades it has consistently pursued trade liberalisation. With its limited natural resources and a small domestic market, growth depends mainly upon expanding exports.[14] Israel is in the bottom half of the Working Group in terms of total exports (ranking 29th out of the 41 Working Group countries in 2013)[15] and the 22nd largest by exports as a share of GDP[16] (with total exports accounting for 31.8% of Israel's GDP in 2014).[17] Israel's largest trading partner is the United States (US) by a significant margin. Other major partners include China, the United Kingdom, Belgium, Switzerland, Turkey, the Netherlands, and India.[18] Trade with Asia continues to increase.[19] While the majority of Israel's trade is not in corruption-prone jurisdictions, it does trade in high-risk industries (as stated above). Moreover, the trade Israel does undertake with high-risk jurisdictions is

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3 International Monetary Fund, World Economic Outlook (April 2015).

4 Forbes "Is Big Pharma Addicted to Fraud" (29 July 2013); Transparency International "Corruption in the pharmaceutical industry".

5 Transparency International "Defence and Security".

6 Ann Hollingshead, Financial Transparency Coalition "Why are Extractive Industries Prone to Corruption?" (13 September 2013).

7 Jonathan Cook, Aljazeera "Israel's booming secretive arms trade" (16 August 2013).

8 Stockholm International Peace Research Institute *Top 100* (2013). The Israeli companies are Elbit Systems, Israel Aerospace Industries and Rafael.

9 Markus Becker, Spiegel Online "Factory and Lab: Israel's War Business" (27 August 2014).

10 Markus Becker, Spiegel Online "Factory and Lab: Israel's War Business" (27 August 2014).

11 The Israel Diamond Exchange.

12 OECD Definition

13 Financial Times "Israel Inc's families face backlash" (14 March 2010); Alternet "Oligarchy in the Holy Land – Tiny Number of Families Dominates Israel's Economy" (2 December 2013).

14 Phase 2 Report, pg. 5; CIA World Factbook "Middle East: Israel"; WTO *Trade Policy Review: Israel* (November 2012).

15 UNCTAD Statistics.

16 World Bank "Exports of goods and services (%of GDP)" (2013).

17 Israel Ministry of Finance *Economic Highlights Presentation* (21 July 2014).

18 UN Comtrade (2012).

19 WTO *Trade Policy Review: Israel* (November 2012).

primarily in relation to high-risk industries, e.g. trade with China and India in the defence industry and trade with Africa in the mining sector.[20] Five of Israel's 14 allegations relate to trade in Africa. Net foreign direct investment outflows from Israel remain low (amounting to USD 3.8 million (EUR 3.4 million) in 2014).[21]

8. Domestic corruption is a recurrent theme in the Israeli public debate, particularly in the political sphere. A wide range of senior political figures in Israel have been accused, investigated, and in some cases convicted of corruption.[22] Recently, Israel's current Prime Minister has been subject to corruption allegations. Israel is also home to several prominent businesspersons who have been implicated in corruption allegations (including foreign bribery) both at home and abroad. The widespread media interest in such scandals echoes the growing public interest in corruption stories, and illustrates the freedom of the press in Israel. Media reports indicate that public attitudes towards political corruption differ. Some consider corruption a standard part of Western society and think that corruption in Israel is no worse than other nations and Israel is simply better at uncovering such corruption.[23] Others are highly critical of what is perceived to be an increasing level of corruption.[24] Similarly divergent views were expressed in relation to foreign bribery during the on-site visit; for example, a senior representative from the business community expressed the view that Israeli companies cannot compete without corruption. Other panellists disagreed with these views, noting the links between a lack of corruption and a strong economy and successful businesses. Nonetheless, the existence of such an outdated perception of foreign bribery is concerning.

5. Cases involving the bribery of foreign public officials

9. Summaries of Israel's foreign bribery enforcement actions and allegations are provided in Annex 1. In the 7 years since the foreign bribery offence was enacted Israel has had 4 investigations, but no foreign bribery prosecutions, despite its companies' risk of exposure to foreign bribery in the corruption-prone industries in which they operate. This lack of enforcement is not due to an absence of allegations. Since the entry into force of the Convention in Israel in 2009, 14 allegations of foreign bribery involving Israeli individuals and/or companies have emerged. Of these 14 allegations, 4 have progressed to the formal investigation stage; 1 investigation was opened in 2014, and the remaining 3 in the first half of 2015. The evaluation team learned of one case during the on-site visit, one after the on-site visit, and the remaining two cases were progressed to the investigation stage shortly prior to the adoption of this report. This prevented a full discussion of the ongoing cases with panellists during the on-site visit. A "preliminary examination" is being, or has been, conducted in 7 cases. A preliminary examination is a tool used by Israel to obtain sufficient evidence and information to open a formal investigation; most investigative techniques are available at this early stage (see Section B.5(c) on investigation techniques).

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20 Aviation week "Israel among leading arms exporters in 2012" (5 August 2013); The Jerusalem Post "Israeli defense exports hit record high" (24 July 2013); Defence Review Asia "Strong growth for Israel in Asia" (3 June 2012).

21 Questionnaire response, SQ 13.1.

22 Israel National News "Exposé Links Olmert, Lieberman and Sharon to Jericho Casino" (24 January 2008); ynetnews "Lieberman to face criminal indictment" (13 April 2011); CNN "Israel's foreign minister to be charged with breach of trust, fraud" (13 December 2012); Haaretz "Lieberman acquittal paves way for return to Foreign Ministry" (6 November 2013); The Guardian "Israeli police reveal huge political corruption investigation" (24 December 2014); Al Jazeera "Dozens arrested in Israel corruption probe" (25 December 2014); The Jewish Press "Yisrael Beitenu Suspected of Fraud and Bribery" (24 December 2014); Middle East Monitor "Ex-Israeli minister faces indictment over corruption (17 August 2014); The Jerusalem Post "Candidate calls last-minute investigation "targeted assassination," was plagued with scandals in recent weeks" (7 June 2014).

23 The Jerusalem Post "Will corruption undo Israel?" (6 July 2014); Sever Plocker, ynetnew.com "The State of Israel's biggest failures" (19 January 2015).

24 The Jerusalem Post "Regulation and corruption" (11 January 2015).

Law enforcement authorities may also start directly with a formal investigation if the threshold of evidence is sufficient, without going through the preliminary examination stage. The remaining 3 allegations have not been dismissed, but nor has a preliminary examination been commenced.

10. In Phase 2, the Working Group raised concerns about an apparent lack of proactivity by Israel in relation to enforcement. This concern remains. Of the 7 preliminary examinations, 3 have been closed without further investigation, while 4 remain ongoing, though few active investigative steps appear to have been taken and Israel states that 1 is unlikely to lead to a formal investigation. Formal MLA has been sought in only 2 cases, though Israel appears to more commonly use informal means of seeking information (see Section B.9(a) on MLA). At least 5 of Israel's 14 allegations relate to high-risk industries (2 relate to defence, 2 to the extractives industry, and 1 to pharmaceuticals). In addition to these 14 allegations, 5 other foreign bribery cases were the subject of preliminary examinations, but were closed upon determining that the acts predated the entry into force of Israel's foreign bribery offence.

Commentary

The Lead Examiners have serious concerns regarding the low level of foreign bribery enforcement in Israel. In particular, the examiners are concerned that in the seven years since the foreign bribery offence was enacted, Israel has had no prosecutions. They are also concerned about the level of proactivity in detecting and investigating foreign bribery cases. Fourteen foreign bribery allegations have surfaced since the entry into force of the Convention in 2009, 4 of which were independently detected by Israel from a range of sources. The Lead Examiners are, however, encouraged by the opening of 3 investigations in the past six months and recommend that the Working Group pay close attention to how these evolve.

B. IMPLEMENTATION AND APPLICATION BY ISRAEL OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

11. This part of the report considers the approach of Israel in respect of key Group-wide (horizontal) issues identified by the Working Group for all Phase 3 evaluations. Consideration is also given to country-specific (vertical) issues arising from progress made by Israel on weaknesses identified in Phase 2, or from changes in the domestic legislation or institutional framework of Israel. With regard to weaknesses identified in Phase 2, the Phase 2 recommendations and issues for follow-up are set out at Annex 2 to this report.

1. Foreign bribery offence

12. Israel's foreign bribery offence is in sections 291A, 293 and 294 of the Penal Law 1977. These provisions extend Israel's domestic bribery offence to acts of foreign bribery by providing that a person who committed foreign bribery will be "treated in the same manner" as a person who has committed domestic bribery. The offence was amended in 2010 to increase the sanctions (see Section B.3 on sanctions) and to include a specific reference to "a political entity that is not a State, including the Palestinian Authority" (see Section B.5 on jurisdiction). These amendments did not alter the elements of the offence itself which remain as they were in Phase 2.

13. In Phase 2, the Working Group discussed a range of matters relating to Israel's foreign bribery offence and concluded that the offence "appears to conform to the requirements of Article 1 of the Convention".[25] The Group noted at the time of Phase 2 that the phrasing of Israel's foreign bribery offence, which provides that those who commit foreign bribery "shall be treated in the same manner" as those who commit domestic bribery, may cause difficulties in practice due to a lack of clarity. Consequently, the Group decided to follow-up on the practical application of the offence (follow-up issue 13(a)).

14. At the time of Phase 3, there has been no foreign bribery case law to clarify how the offence is applied in practice. During the on-site visit, the offence was discussed with different members of Israel's Inter-Ministerial Team on foreign bribery (discussed in further detail in Section B.5(a)); representatives of the agencies which form the Team indicated that they have not encountered any specific difficulties with the definition or implementation of the offence in the context of Israel's foreign bribery cases.

15. Israel noted in Phase 2 that by treating those who commit foreign bribery "in the same manner" as those who commit domestic bribery, judicial precedents set in domestic bribery cases can be applied to foreign bribery. Therefore, in Phase 3, the Lead Examiners requested any relevant domestic case law which may shed light on any potential issues with the courts' interpretation of the offence. There have been 194 domestic bribery convictions since Phase 2. Israel reports that none of these convictions resulted in judicial precedents which would alter the Working Group's Phase 2 interpretation of the offence and in several cases serve to strengthen the Working Group's earlier findings.[26]

Commentary

The Lead Examiners note that as in Phase 2, Israel's foreign bribery offence appears to be compliant with the Convention and in some cases is broader than Convention requirements.

2. Responsibility of legal persons

(a) Standard of liability

16. Israel has a regime of criminal liability for legal persons (also known as bodies corporate). The regime has developed at common law since 1973,[27] and some elements were enshrined in article 23 of the Penal Law (PL) in 1994. Article 23(a)(2) of the PL provides that the relevant test to determine legal person liability is "under the circumstances of the case and in the light of the position, authority and responsibility of the person [who commits foreign bribery] in the management of the affairs of the legal person". The PL has not been amended since Phase 2 with regard to legal person liability, but, as discussed below, proposed amendments are under consideration.

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25 Phase 2 Report, para. 135-142.

26 For example, Israel reports that *Trbulsi* (*CA State of Israel v. Mordechai Trbulsi* CA (B.S.) 4198-09-14 (published on 01.04.15)) confirmed the *Ben Atar* case noted in Phase 2 [Phase 2 report, para. 141] and found that where a benefit is given to an official, even where a friendly relationship exists, there will be a presumption that the benefit was given for an act related to the bribe recipient's role as a public official. The *Trbulsi* decision applied this presumption in the case of active bribery (whereas the *Ben Atar* case related to passive bribery). In *Atias* (*Armon Atias v State of Israel*, CA 6916/06) the Court held that if the defendant claims that the bribe was given in the context of an amicable relationship, the Court must be persuaded that the amicable relationship is not the result of or connected to the business relationship. Similarly, in the *Zvi Bar* (C.C. (T.A.) 61784-01-13 *State of Israel v. Zvi Bar and Others* (published on 26.02.15)) the Court found that the Court must consider the time at which a friendship began and must be able to disassociate the friendship from the business relationship.

27 Relevant case law includes: C.A. 109/72 The State of Israel v. Shoshana Paz, 28(1)93 (1973)); C.A. 24/77 Pan Lon v. The State of Israel, 33(1)493 (1979); C.A. (T.A.) Egged v. The State of Israel, 1984(1)505 (1987));*Modiim Construction and Development Corporations Ltd v The State of Israel, CR.A. 3027/90*.

(i) Level of authority of the person whose conduct triggers legal person liability

17. In Phase 2, the Working Group found that article 23 of the PL requires that the offence be committed by a natural person representative of the company in order to establish the requisite *mens rea*.[28] The Phase 2 report also found that "In view of the hesitations and contradictions that emerged from the interventions of several panellists, and in the absence of sufficient enforcement action to date, the lead examiners fear that with regard to economic crimes, only the most senior persons would qualify to establish the liability of legal persons."[29] At that time, the Working Group called for further analysis of the application of criminal legal person liability as case law develops.[30] *Inter alia*, recommendation 10 asked Israel to ensure that the level of natural persons that trigger legal person liability be applied broadly to capture decentralised decision-making processes. Recommendation 10 was found not implemented at the time of Israel's Phase 2 Written Follow-up Report in 2012.

18. Israel explains in Phase 3 that the courts have continued since Phase 2 to focus on the functional position (not the formal position) of the natural person acting on behalf of the legal entity, which allows flexibility in the application of the criminal legal person liability regime. This general contention is supported by case law from the Supreme Court,[31] and was advanced by public officials and prosecutors and supported by academics and judges during the on-site visit.[32] The hesitations and contradictions voiced in Phase 2 in relation to this issue were not repeated by any panellists in Phase 3.

19. Annex I B of the 2009 Recommendation provides Good Practice Guidance on Member countries' systems for the liability of legal persons for foreign bribery. The guidance provides that Members' systems should meet one of two specified approaches of legal person liability with regard to the level of authority of the person whose conduct triggers legal person liability.[33] Israel considers that its system of legal person liability reflects approach (a) of Annex I B.

20. The case law pre-dating Phase 3 suggests the possibility of imposing legal person liability on the basis of conduct by a range of different natural persons, for example a bus driver, an editor on-call of a newspaper, and a human resource manager.[34] While the principles applied in these cases may not necessarily be entirely applicable to foreign bribery – for instance the bus driver was convicted of a strict liability offence – the cases suggests flexibility in Israel's legal person liability system. More recent case

28 Phase 2 Report, para. 172-186.

29 Phase 2 Report, para. 185.

30 Phase 2 Report, para. 186.

31 E.g. Supreme Court decision in the *State of Israel v Melisron* Criminal Appeal 99/14, para. 117. The examiners relied on a summary of this case provided by the Israeli authorities.

32 Positions voiced by the judges who participated in the on-site visit do not necessarily reflect the position of the Judicial Authority of Israel.

33 Annex 1 B of the 2009 Recommendation provides: Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches: (a) the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or (b) the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered (i) A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official; (ii) A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and (iii) A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

34 Cases considered at the time of Phase 2 include the Modiim, Baranovitz, Egged Ltd, Modi'in, and Even v Sid Industries cases. See Phase 2 Report, para. 183.

law demonstrates continued flexibility in Israel's system, in particular two judicial decisions handed down in domestic bribery cases, including one at Supreme Court level.

21. The 2014 District Court decision *State of Israel v Charney & Others*[35] (also referred to as the Holyland Case in Israeli media), is a further an example of a gradual broadening of the application of legal person liability. The case was a major domestic bribery case involving a development project in Israel. Among other defendants in this case, Israel secured convictions against three companies. The Court convicted one of the companies in circumstances where the natural person who had committed the bribery act "did not hold any official office", "was not involved in its ongoing management" and "was not an authorized signatory" of the defendant company. The court found that the individual's conduct triggered legal person liability because he had in substance been vested with executive powers. These powers had been vested due to a range of factors, including his role as chairperson of parent companies of the defendant-company, involvement in the marketing and strategy of the Holyland project, and involvement in bribing officials on behalf of the company. The decision was made at the District Court level. It is currently under appeal and should be followed-up. As the decision turned on the specific facts of the case and the organ had been vested with substantial executive power, caution should be exercised in assuming that the principles have sufficiently broad application to meet the level of flexibility required under approach (a) of Annex I B of the 2009 Recommendation. Nevertheless, the decision is in line with the flexibility applied in previous court decisions regarding legal person liability.

22. The 2014 Supreme Court decision *State of Israel v Melisron*[36] also provides clarification in relation to the level of authority of the person whose conduct triggers legal person liability. The Supreme Court held that when examining the situation where the natural person who commits an offence is not a senior officer of the defendant company, such as a regional manager, "there will be room to examine the function that the specific officer fills, and each case should be examined on its merit." This supports Israel's position that, in determining the level of authority of the person, the functional position would be sufficient. However, it should be noted that in this case the natural person was at the level of Chief Financial Officer, although his services were provided to the company as a consultant. The case is examined in further detail later in this section (see Section (iv) below).

23. According to judges interviewed at the on-site visit, despite the recent expansion of the common law, the circumstances in which criminal legal person liability will be imposed require clearer definition in the PL with regard to the level of authority or function of the natural person whose actions will bind the company. The judges had profound knowledge, understanding and practical experience of the application of Israel's legal person criminal liability regime, including presiding over recent, complex cases of bribery and other serious economic offences. The judges expressed that, because of the lack of clarity in the law, it is common for each case involving new circumstances of criminal legal person liability to be considered and settled by the Supreme Court, which creates a level of uncertainty for lower courts. The judges cited some specific examples of where the application of the law might be unclear, including with regard to actions by middle-management, a public affairs officer, a contractor and an advisor to the company. The judges acknowledged during the on-site visit that Israeli courts have widened the application of the functional test in recent years. They further expressly clarified after the on-site visit that conduct by an employee who is not a senior officer could result in legal person liability, but indicated that the PL is not sufficiently clear in this regard.

24. Judges met at the on-site visit were very clear in expressing that Israel's proposed legislative amendments to the criminal legal person liability regime under the PL are likely to address the lack of

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35 *C.C. (District Tel Aviv) 10291-01-12 The State of Israel vs. Charney & Others.* The examiners relied on a summary of this case provided by the Israeli authorities.

36 *State of Israel v Melisron*, Criminal Appeal 99/14 para.117.

clarity and certainty in the PL.[37] After the on-site visit they further described the draft bill as being "formulated in clear and functional language in the spirit of the decisions of the courts in recent years." The proposed amendments would codify the common law approach to the hierarchical and functional tests for identifying the natural person whose actions would lead to legal person liability. These amendments are examined in further detail below (see Section (c) below on proposed legislative amendments to criminal legal person liability).

25. In conclusion, recent court decisions have taken a flexible view of the level of authority of the natural person whose acts can trigger the liability of a legal person. Israel considers that such jurisprudence would fit approach (a) of Annex I to the 2009 Recommendation. In Israel's view, the legislative amendments envisaged would merely consolidate into law what has already been asserted by the courts. Nevertheless, in light of opinions expressed by judges during the on-site visit, Israel is encouraged to proceed with the proposed legislative amendment to consolidate the law with regard to the level of authority or function of the natural person whose actions will bind the company.

Commentary

The Lead Examiners are encouraged by developments in Israel's case law suggesting flexibility in the level of natural persons whose conduct may trigger legal person liability. They nevertheless note the views expressed by some judges that clarification may be needed in the legislation. The Lead Examiners are therefore encouraged by the development of the draft legislative amendment which aims to consolidate into law the current case law. The Lead Examiners recommend that the Working Group follow-up on the adoption of the proposed legislative amendment and the practical application of Israel's legal person liability system as case law develops, including with regard to the outcome of the appeal in the Charney case.

Finally, the Lead Examiners recommend that Israel raise awareness and train the judiciary on the evolving principles of criminal legal person liability under Israeli law, including the principles applied in the recent Melisron case and any future legislative amendments.

(iv) Bribery through intermediaries

26. Annex I C of the Good Practice Guidance asks Member countries to ensure that a legal person cannot avoid responsibility by using an intermediary, including a related legal person, to commit foreign bribery on its behalf. Israel explained in Phase 2 that a company would be held responsible for bribery through an intermediary if the requisite *mens rea* was established in accordance with general principles of criminal law. The Working Group concluded in Phase 2 that absent practice it is unclear that the situation is covered.[38]

27. The evolution of case law since Phase 2 indicates that a legal person would be unlikely to avoid responsibility by using an intermediary. *State of Israel v Melisron*[39] involved securities fraud contrary to article 54 of the Securities Law. This is comparable to foreign bribery under the PL in the sense that it is an intentional, economic, criminal offence with similar penalties (5 years' imprisonment, which would make it a felony under the PL). At first instance, the District Court convicted two private companies and acquitted one public company (Melisron), all of which were part of the Ofer Group of companies and had the same Chief Financial Officer who had committed the fraud. On appeal, the Supreme Court in December 2014 convicted Melisron, and found that the Ofer Group had benefited from the fraud and that

37 As noted above, positions voiced by the judges who participated in the on-site visit do not necessarily reflect the position of the Judicial Authority of Israel.

38 Phase 2 Report, para. 186.

39 Supreme Court decision in the *State of Israel v Melisron*, Criminal Appeal 99/44-14.

the CFO acted as an organ of Melisron and the private companies, and imposed the maximum available fine. Melisron's argument that it should not be held liable on the basis that the CFO was not a salaried member of staff, but rather received management fees paid through the private companies, was rejected. The Court held that "a person whose services were provided to the corporation as part of 'outside' consulting services" can lead to legal person liability, if such person is deemed an organ of the company according to the hierarchical or functional tests.[40]

(v) Prosecution of a legal person in the absence of prosecution/conviction of a natural person

28. The 2009 Recommendation provides that systems for the liability of legal persons should not restrict the liability to cases where the natural person who perpetrated the offence is prosecuted or convicted. While Israel's law clearly does not require prosecution or conviction of a natural person to proceed against a legal person, the Working Group was concerned in Phase 2 that the existence of a requirement under Israeli law to identify a natural person may, in practice, equate to requiring a concurrent or prior prosecution of the natural person. In Phase 2, the Israeli authorities inferred from the *mens rea* requirement that, whereas it is possible to convict a legal person even where the individual responsible for the bribery has not been convicted, the individual responsible for the bribery needs to be identified.[41] All participants questioned on this issue during the Phase 2 on-site visit consistently stated this position. It is also reflected in the judicial procedure which provides that the responsibility of the legal person is determined in the same proceedings as the individual. The Working Group in Phase 2 expressed concern that the liability of a legal person is contingent on the commission of the offence by a specific and identifiable human agent and that, unless this agent is identified, no sanction could be applied against the legal person. Consequently, the Working Group asked Israel "to ensure that the need to identify a natural person does not prevent effective investigation, prosecution and sanctioning of legal persons" (recommendation 10(ii)). This recommendation had not been implemented at the time of Israel's Phase 2 follow-up.

29. In Phase 3, Israel reiterates that it is possible to prosecute and convict a legal person for foreign bribery even where the individual responsible for the bribery has not been prosecuted or convicted – a fact which is not disputed. However, there have been no further developments with regard to this issue in case law, legislation or other policy materials, such as guidelines. Israel continues to point to *Modiim Construction*8 where the legal person had been held responsible even though the natural person had not been identified. In this case, the Supreme Court held that "the personal liability of the corporation is separate from the liability of those acting in its name". The impact of this decision, although considered as a reference as regards the organ theory, is nevertheless limited, as it deals with traffic offence, i.e. a strict liability offence. Israel further refers to *State of Israel v Modi'in Publishing Ltd*90 (hereinafter *Modi'in*), where the court held the legal person liable even though the natural person could not be identified, this time in a case of *mens rea* offence. As already noted by the Working Group in Phase 2, the decision in *Modi'in,* while broadening the possibilities to retain the liability of legal person, does not involve an economic offence. Further, the decision emanates from a District Court and has not been confirmed to date by the Supreme Court.[42] In these circumstances, Phase 2 recommendation 10(ii) remains outstanding.

Commentary

The Lead Examiners note that the questions raised in Phase 2 with regard to the need to identify a natural person remain untested in case law for economic offences. They therefore recommend that the Working Group follow up on the application of Israel's corporate liability regime to

40 Ibid., para. 142.
41 Phase 2 Report, para. 174.
42 Phase 2 Report, para. 175.

ensure that, in practice, the need to identify a natural person does not prevent effective investigation, prosecution and sanctioning of legal persons.

(b) Enforcement against legal persons in practice

30. Israel reports that relevant enforcement authorities, particularly the office of the Deputy State Attorney (Economic Enforcement) and offices of the District Attorneys, have been dealing with liability of legal persons for intentional offences with increased frequency since Phase 2. Senior prosecutors stated that the enforcement focus has shifted markedly to combating financial crime and pursuing its proceeds. The Tel Aviv District Attorney's Office (Taxation and Economic Offences), which is responsible for enforcing fraud and other offences under the Securities Law against public corporations, reported that its enforcement activities have resulted in the conviction of 23 companies in the past three years for intentional, economic offences. In relation to other intentional economic offences, particularly tax, money laundering and fraud, Israel provided data after the on-site visit that demonstrates a recent increase in the number of convictions of legal persons.[43] Prosecutors met at the on-site visit were aware of relevant guidelines encouraging the prosecution of legal persons for foreign bribery, where appropriate.[44] Prosecutors explained that issuing guidelines in relation to criminal enforcement is rare and sends a strong signal to prosecutors working on foreign bribery matters to pursue legal persons.

31. Although the existence of specific policies encouraging prosecutors to consider legal person liability in foreign bribery cases is a positive step, the examiners have been unable to independently verify that such liability is examined routinely in foreign bribery cases in practice. For example, Israeli companies are alleged to have been involved in foreign bribery in connection with the *Agent Case* (see Annex 1 and Part A.5 on cases), but, due to the confidential nature of such information, Israel is unable to confirm or deny whether an assessment of the liability of the Israeli companies was conducted. In relation to a separate matter, the Israeli authorities did not investigate the Israeli company allegedly involved in the *Undercover Sting Case.* In these circumstances, it is difficult to assess whether legal person liability is given sufficient priority in the context of foreign bribery investigations.

Commentary

The Lead Examiners acknowledge the confidential nature of investigations and understand that some information cannot be provided on this basis. However, in the absence of complete information and to ensure full and proper consideration is given to legal person liability, they recommend that Israel continue to ensure that legal person liability is fully explored in examining and investigating foreign bribery allegations, including during the preliminary examination phase, and that cases that may involve legal persons are not prematurely closed.

(c) Proposed legislative amendments to criminal legal person liability regime

32. On 28 October 2014, the Attorney General of Israel published for public consultation a draft bill on the liability of legal persons. The draft bill was prepared by the "Team for Examining Criminal Liability of Corporations and Methods of Punishing Them" headed by the Deputy Attorney General for Criminal Matters and comprised of civil servants, prosecutors and private sector representatives. The Team held consultations with academics. Several members of the Team participated at the on-site visit. Public

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43 The data provided by Israel shows that there were 2 legal persons convicted of these types of offences in 2009; 3 in 2010; 2 in 2011; 1 in 2012; 4 in 2013; and 8 in 2014.

44 Paragraph 11 of the Attorney General Guideline No. 4.1110 provides that "where possible, indictments should be filed against the corporation as well as the persons directly responsible". The State Attorney Guideline No. 915 states that "prosecutors should consider, in appropriate circumstances, the option of filing an indictment against the relevant legal person."

consultation on the bill closed on 20 December 2014 and the Israeli authorities indicated that the bill would be put to the government of Israel for consideration as a high priority after the March 2015 elections. The bill is at a preliminary stage of drafting and represents a proposal by the executive arm of government. It was raised frequently, and received strong support from representatives of the judiciary and legal profession, during the on-site visit. In line with the Working Group's usual practice of not providing a full assessment of draft legislation, an overview of the main objectives of the bill is provided below.

(i) Hierarchical and functional tests for determining legal person liability

33. Israel explains that the draft bill, in its current form, would essentially codify the common law regarding some aspects of the liability of legal persons. The bill clarifies the hierarchical and functional tests for identifying the natural person whose actions would lead to legal person liability. A legal person would bear criminal liability if the offence was committed by a person "holding a senior management position regarding the affairs of the legal person, in connection with his position", or "who has managing authority in the legal person in the area to which the offence was related". The explanatory note to the draft bill explains that the bill would "refine and clarify the existing tests found in case law" and that the phrasing of the current article 23 of the PL is vague and unclear as to whether the hierarchical and functional tests are alternative or cumulative. The note goes on to explain that the common law has interpreted the tests as alternative. The Ministry of Justice, prosecutors and an academic explained during the on-site visit that the amendment would codify what has already been established under common law and, in this sense, does not seek to resolve a problematic area of the law. However, the academic agreed that the common law was not entirely clear and, as noted above, judges expressed the view that the amendment was necessary to ensure the application of the PL to legal persons is better understood and more consistently applied. The proposed amendment would thus bring Israel's system of criminal corporate liability more closely in line with an effective legal person liability regime as defined under Annex I B of the 2009 Recommendation, as mentioned above.

(ii) Defence for a victim company

34. The draft bill would also clarify the common law defence for a company the victim of a crime. Proposed new article 23(a)(3) would provide a defence for a legal person if two conditions were met: (1) the criminal act was not, by its nature, an act that benefits the legal person, and (2) the organ did not intend any benefit to accrue to the corporation.

(iii) Duty of supervision and control

35. The draft bill would introduce a duty of supervision and control for legal persons to prevent criminal misconduct. The duty is drafted as follows: "A legal person must exercise supervision and control and take all reasonable measures for the prevention of the commission of offences occurring within its sphere of activity and management of its business … by a party related to the legal person." Foreign bribery would be expressly included as one of the offences to which the duty applies. A presumption of guilt would arise where an offence is committed by a party related to the legal person. The concept of "related to the legal person" is defined as "an employee of the legal person, an officeholder in the legal person, or a person who provides services for the legal person, or on its behalf, in connection with such services." The onus then shifts to the defendant corporation to prove on the balance of probabilities that it had taken "measures as are reasonable for the performance of its duty" to prevent offences. Whether reasonable measures had been taken by a defendant company would be a matter for the courts to determine.

36. During discussions on-site, judges indicated that under the current legal person liability regime if senior management of a company failed to supervise, or turned a blind eye to criminal misconduct, the

company could be held liable. However, as of the time of this review, there is no case law on this specific issue.[45] The judges further explained that company compliance programmes would be a factor considered in determining legal person liability, including whether and how the company implemented and enforced the programme in practice. They specified that the burden of proof would be on the company. However, members of the executive branch of Israel clarified after the on-site visit that, in their view, failure to supervise an intentional offence is not, on its own, a sufficient basis for the application of legal person liability.

Commentary

As noted in earlier commentary, the Lead Examiners consider that the proposed amendments to the Penal Law to consolidate the current case law would strengthen Israel's legal person liability framework, and encourage Israel to pass the amendments. In addition, the Lead Examiners recommend that the Working Group follow-up the introduction of the proposed bill.

3. Sanctions

(a) Sanctions for natural persons

37. Pursuant to articles 290 and 291 of the PL, foreign bribery by a natural person is punishable by 7 years' imprisonment and a fine. The fine is the higher of approximately ILS 1 130 000[46] (EUR 245 000) or 4 times the value of the benefit obtained or intended to be obtained by the offence. Israel increased sanctions for foreign bribery for natural persons in February 2010, including the introduction of a fine based on the obtained or intended benefit. The previous sanctions were 3.5 years' imprisonment and a fine of up to ILS 202 000 (EUR 45 000) for natural persons. At the time of Israel's Written Follow-up Report, the Working Group welcomed the increased sanctions and found Phase 2 recommendation 12(a) implemented. The current available sanctions applicable to natural persons for foreign bribery are broadly consistent with other comparable offences in Israel.[47] However, the practical application of the new sanctions is untested with regard to foreign and domestic bribery.

(b) Sanctions for legal persons

38. Pursuant to articles 290 and 291 of the PL, foreign bribery by a legal person is punishable by a fine of approximately ILS 2 260 000 (EUR 500 000) or 4 times the value of the benefit obtained or intended to be obtained by the offence. Israel increased sanctions for foreign bribery for legal persons in February 2010. The previous sanction was a fine of ILS 202 000 (EUR 45 000). Israel's sanctions for legal persons for foreign bribery are broadly in line with other comparable offences in Israel. For example, domestic bribery has the same sanctions as foreign bribery, and cartel behaviour attracts the same base maximum fine (but not the possibility of a fine based on the benefit or intended benefit). At the time of Israel's Written Follow-up Report, the Working Group welcomed the increased sanctions, found that the new sanctions implement recommendation 12(b), and decided to follow-up on the application of these penalties in practice to determine whether they are effective, proportionate and dissuasive. However, the

45 In Phase 2, Israel pointed to the *State of Israel v Leumi Investment Bank, CC 2665/2007* (Tel Aviv) as an example of criminal liability being imposed on a corporate entity in circumstances where the company failed to prevent the commission of an offence. However, the Working Group considered this case to be of limited guidance because it involved a plea agreement, thus the principles of law were not contested.

46 Calculated based on five times the fine specific in article 61(a)(4) of the PL.

47 For example, the offences of domestic bribery and theft by a company officer attract the same penalties for natural persons as the foreign bribery offence. Bribe taking, theft by a public official, and money laundering have longer terms of imprisonment (10 years). Ordinary theft and embezzlement, and cartel behaviour, have shorter terms of imprisonment (3 years).

practical application of the new sanctions is untested with regard to foreign and domestic bribery by legal persons.

(c) Dual penalty requirement under article 14(c) of the PL

39. Article 14 of the PL may operate to substantially limit penalties for foreign bribery in certain circumstances. Article 14 PL relates to extraterritorial application of offences. While the dual criminality requirement under article 14(b)(i) no longer applies to foreign bribery, article 14(c) still provides that for offences based on nationality jurisdiction "the penalty imposed for the offence shall not be more severe than that, which could have been imposed under the laws of the state in which the offence was committed". As discussed in Phase 2, this restriction makes sanctions dependent on a foreign country's treatment of the foreign bribery offence.[48] During the on-site visit, senior government officials suggested that article 14(c) should be interpreted as having no application to foreign bribery. The officials argued that because article 15(b) exempts foreign bribery from the dual criminality requirement under article 14(b)(1) PL, the foreign bribery offence would also be exempted from article 14(c) . However, on a strict reading of the law, the foreign bribery exemption under article 15(b) would only apply to article 14(b)(1) and not to other articles. The officials agreed that a legislative amendment would put the issue beyond doubt and indicated that such an amendment would be initiated. Article 14(b)(2) raises similar problems in relation to Israel's jurisdiction over extraterritorial offences (discussed in Section B.5(f) below).

Commentary

The Lead Examiners welcome the increase in the maximum sanctions for foreign bribery committed by natural and legal persons. They recommend that Israel continue to compile statistics on sanctions imposed for foreign bribery, which will enable the Working Group to follow-up on the application of sanctions in bribery cases to ensure they are effective, proportionate and dissuasive in practice. The Lead Examiners encourage Israel to legislate, as indicated by Israel during the on-site visit, to ensure that article 14(c) of the Penal Law cannot apply to the offence of foreign bribery.

(d) Relevant prosecution and sentencing principles regarding sanctions

40. In March 2010, the State Attorney issued official guidelines in order to raise awareness among prosecutors of the 2010 increase in sanctions.[49] The guidelines instruct prosecutors to seek maximum fines in circumstances where the defendant obtained significant economic profit from the offence and to present evidence to enable the court to impose the appropriate fines according to the profit obtained or intended to be obtained by the defendant. Prosecutors are asked to pay particular attention to proving the value of the benefit obtained or intended as early as possible and to seek expert assistance where appropriate.

41. Israel has also introduced a new sentencing regime since Phase 2 by inserting articles 40A-40N into the PL. These amendments took effect from July 2012. Academic commentary explains that the amendments introduce for the first time in Israel statutory directions for courts to follow in sentencing.[50] During the on-site visit, judges expressed that the new laws have improved consistency in sentencing and provided greater clarity. They noted that some commentators have suggested that the amendments have led to stronger sanctions for legal persons (although they opined that stronger sanctions may also be a

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48 See Phase 2 evaluation of Israel, paras. 165-166.

49 State Attorney Guidelines No. 9.15 "Aggravation of Sanctions and Sanctioning Policy for Bribery Offences".

50 Julian Roberts and Oren Gazal-Ayal, "Statutory sentencing reform in Israel: exploring the sentencing law of 2012", *Israel Law Review* 46(3) 20013, pp. 455-479 (available at http://weblaw.haifa.ac.il/he/Faculty/GazalAyal/Publications/sentencing%20reform%20final.pdf).

consequence of a general evolution of attitudes towards economic offences). Lawyers met during the on-site visit also expressed that sentences for economic offences have increased in severity, but did not specifically reference the new sentencing regime as the cause of this change.

42. The new sentencing law directs the court to find a "proportionate sentencing range" (article 40C(a)) and then follow additional directions regarding factors and principles related to sentencing. To determine the proportionate sentencing range, the court must have regard to the social value harmed as a result of the commission of the offence, the degree of this harm, the customary sentencing practices for the particular offence, and the circumstances of the offence. The court is then required to determine the offender's sentence within the sentencing range, taking into consideration a wide range of other factors. These factors include the defendant's efforts to compensate for the damage caused and cooperation with law enforcement authorities (article 40K) and additional circumstances at the court's discretion (article 40L). Under the law, the defendant's economic situation is a "circumstance unrelated to the offence", but courts are able to consider it for the purpose of determining the appropriate range for a monetary fine (article 40H). In this regard, the Supreme Court in *Melisron* held that high financial capabilities of the defendant, especially when the defendant is a legal person, are an aggravating circumstance for the purposes of the sentencing range and allow the court to impose a higher fine.[51]

(e) Additional sanctions - debarment

43. The Working Group noted in Phase 2 that debarment from public procurement is not an automatic sanction for foreign bribery.[52] The situation remains unchanged in Phase 3. As a result, temporary or permanent disqualification from participation in public procurement and exclusion from entitlement to other public benefits are not available to the courts as possible administrative or civil sanctions in addition to the available criminal sanctions. Public procuring authorities may discretionarily exclude companies convicted of foreign bribery from publicly funded contracts, and Israel is developing an ordinance on the denial of a tender on the basis of a foreign bribery conviction (see Section B.11 for further discussion on public advantages).

Commentary

The Lead Examiners welcome the State Attorney Guidelines, which raise awareness of the increased penalties for foreign bribery and encourage prosecutors to seek the maximum penalty for foreign bribery where appropriate. They also welcome the greater consistency and clarity introduced by the new sentencing regime. The Lead Examiners encourage Israel to consider the imposition of additional civil or administrative sanctions. In this regard, the Lead Examiners note that the ongoing development of an ordinance for considering, by public procurement authorities, the denial of a tender on the basis of a foreign bribery conviction, could address this issue.

4. Confiscation of the bribe and the proceeds of bribery

44. In Phase 2, the Working Group did not raise any concerns regarding Israel's framework for seizure and confiscation and decided to follow-up on the use of confiscation in foreign bribery cases. There have been no concluded foreign bribery cases since Phase 2.

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51 Supreme Court decision in the *State of Israel v Melisron*, Criminal Appeal 99/44, para. 138.

52 Phase 2 Report, para. 218.

(a) Operational and legislative framework

(i) Confiscation of the bribe

45. As noted in Phase 2, article 39 of the Criminal Procedure Ordinance 1969 (CPO) provides the primary avenue for court-ordered confiscation. It gives the court discretion to forfeit an object if it belongs to a person convicted of an offence or used to facilitate the commission of an offence. Confiscation may occur where a bribe has been transferred to a non-*bona fide* third party.

46. Article 297 of the PL deals specifically with confiscation on conviction for a bribery offence and allows confiscation of what was given as a bribe. State Attorney Guideline 9.15 refers prosecutors to article 297 and notes special provisions concerning forfeiture for bribery offences.

(ii) Confiscation of the proceeds of bribery

47. Article 39 of the CPO and article 297 of the PL also expressly apply to the confiscation of the proceeds of bribery.

(iii) Non-conviction based confiscation and seizure

48. The Phase 2 report also noted that the power given to police to seize certain objects pursuant to article 32 of the CPO would appear to include the bribe as well as its proceeds. The power under article 32 is discretionary and there is no need for the police to obtain a court order to exercise the power. Paragraph 11 of Attorney General Guideline 4.1110 specifies that, in bribery cases where an investigation is opened, the Israeli Police must consider whether it would be possible to forfeit the bribe, its worth, or its proceeds, and must collect evidence for this purpose.

49. In Phase 3, Israel explains that case law has confirmed that non-conviction based confiscation is available under Israeli law.[53] The Supreme Court has interpreted article 31 of the CPO as allowing for confiscation of property seized by police in the absence of a conviction even if possession of the property itself is not prohibited. The application of this procedure to bribery cases remains untested.

(iv) Proposed legislative amendments

50. Israel reports that the Ministry of Justice is drafting a new law to "create a current and cohesive procedure that will replace the various forfeiture instructions that appear in various pieces of legislation regarding forfeiture of proceeds of crime". Israel reports that the new law would require mandatory forfeiture and would establish a civil forfeiture regime that could be applied to bribery cases.

(v) Property Management Unit

51. In March 2014, Israel established a special forfeiture unit under the Ministry of Justice. The Property Management Unit is responsible for the overall management and realisation of property that has been, or is intended to be, confiscated. The Unit assists law enforcement bodies to manage seized property.

(b) Confiscation in practice

52. In Phase 2, the Working Group found that seizure and confiscation orders had been routinely used in domestic bribery cases and fraud-related cases.[54] In Phase 3, Israel reports that such orders continue

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53 *Ganna v The State of Israel* (O.Cr.R 4118/14).

54 Phase 2 Report, para. 124.

to be routinely issued. During the on-site visit, officials reiterated that confiscation is pursued in all relevant cases and that the value of seizure and confiscation is generally significantly higher than the actual fines imposed. Officials also explained that the high priority given to confiscation is supported by the establishment of a confiscation forum within the State Attorney's Office, managed by the Deputy State Attorney for Economic Enforcement, which meets regularly to promote best practice in confiscation.

53. The total value of confiscation made on an annual basis has increased since 2010. EUR 7.4 million was confiscated in 2010, EUR 2.7 million in 2011, EUR 13.4 million in 2012, and EUR 15.6 million in 2013. This data is not limited to economic offences and cannot be broken-down into specific cases. No other statistics are available to demonstrate the frequency of seizure, freezing and confiscation orders. However, Israel confirmed that forfeiture of funds was ordered in the recent domestic bribery cases of *Charney* and *Ritbelt.*[55] Israel is appealing against the court's decision in *Charney* to confiscate from the bribe payer an amount less than the full value of the bribe. In *Ritbelt*, the Court ordered the bribe payer to pay the value of the benefit derived from the bribe. While the exact benefit could not be determined the court took a flexible approach by taking into consideration the sales the company made during the relevant time (ILS 3 million was forfeited (EUR 680 000)).

Commentary

The Lead Examiners are satisfied that Israel's framework for seizure and confiscation does not raise any specific concerns and welcome the establishment of the Property Management Unit. The Lead Examiners recommend that the Working Group follow-up on the proposed legislative amendments to the confiscation regime. They also recommend that Israel maintain detailed statistics on confiscation measures applied in foreign bribery cases and related money laundering offences, with a view to allowing the Working Group to assess whether sanctions for foreign bribery are effective, proportionate and dissuasive.

5. Investigation and prosecution of the foreign bribery offence

(a) Enforcement agencies, coordination, resources and training

(i) Enforcement agencies and coordination

54. The Israeli Police (IP) is responsible for the detection and investigation of criminal activity in Israel. The National Unit for Fraud Investigations is the main unit responsible for combating corruption. This unit operates under the direction of Lahav 433, an IP body responsible for directing all police units involved in investigating corruption. In complex or sensitive matters like foreign bribery, IP investigations, while remaining autonomous, will often include guidance from an 'accompanying attorney' (a prosecutor) appointed by the State Attorney's Office (SAO). For foreign bribery, the accompanying attorney will usually be a prosecutor from the Economic Department in the SAO or the Tax and Economic Department in the Office of the District Attorney of Tel Aviv, both of which specialise in economic crime cases, including bribery. Both the IP and SAO representatives met (separately) at the on-site visit emphasised their good level of cooperation.

55. The Attorney General (AG) is in charge of public prosecution in general in Israel. The AG is a civil servant (not a Member of Parliament) that is appointed to the position by the Government.[56] The SAO falls under the general authority of the AG and is directly supervised by the State Attorney. The SAO is formally under the authority of the AG and is supervised by the State Attorney. The SAO is responsible for

55 *Roni Ritbelt v The State of Israel* (C.A. 7593/09).

56 Israeli Ministry of Justice website, "The State Attorney's Office".

the actual prosecution of corruption offences, including foreign bribery.[57] The Director of the Department of Criminal Affairs within the SAO holds overall responsibility for foreign bribery cases.[58] This Director oversees the handling of foreign bribery prosecutions by relevant prosecutorial departments and districts. The Israeli authorities emphasised at the on-site visit that granting the responsibility for foreign bribery to such a high-level individual as the Director of the Department of Criminal Affairs is intended to ensure that this offence is treated "comprehensively and decisively". In practice, the Department of Criminal Affairs intervenes in foreign bribery cases at the indictment stage. This involves examining and evaluating evidence gathered by the IP, and deciding, based upon an assessment of the evidence, whether to prosecute. The Director of the Department of Criminal Affairs is responsible for making a reasoned recommendation to the AG (through the State Attorney) on whether to file an indictment or to close the case.

56. Once an indictment is filed, foreign bribery court proceedings would most likely be conducted by prosecutors from either the Economic Department of the SAO or by the Tel Aviv Taxation and Economic District of the SAO. Both units have successfully prosecuted bribery cases. Israeli authorities are now considering assigning all foreign bribery cases to one of these two units in order to enhance expertise and specialisation. A decision has yet to be made as to which unit will be given this responsibility. Regardless of which unit is responsible, in all foreign bribery cases, the prosecution would be overseen by the Director of the Department of Criminal Affairs.

57. Coordination between relevant agencies is aided by the creation since Phase 2 of an Inter-Ministerial Team.[59] The Team is headed by the Director of the Department of Criminal Affairs in the SAO and comprises representatives from the SAO, the IP, the Ministry of Foreign Affairs, the Ministry of Defence, and the Ministry of Justice. After the on-site visit two new representatives were added to the team: an official from the Israeli Tax Authority and a prosecutor from the Tax and Economic Department in the Office of the District Attorney of Tel Aviv. From June 2015, a member of the Israeli Money Laundering and Terrorist Financing Prohibition Authority will also be joining the Team. The Team meets at least every three months, if not more often, and is also in regular contact via email. The role of the Team is to monitor foreign bribery allegations, investigations, and prosecutions to ensure they are handled appropriately and are actively pursued. The Team does not supersede the role of the investigative or prosecutorial agencies; rather it provides a practical coordination and advisory role. The Team is able to provide guidance on the course of action in foreign bribery cases. It also monitors Israel's response to foreign bribery MLA requests, and generally examines ways of improving foreign bribery enforcement.

Commentary

The Lead Examiners welcome the decision to grant the responsibility for foreign bribery cases to a high-level individual within the State Attorney's Office (the Director of the Department of Criminal Affairs) and the Director's dedicated office. They encourage Israel to pursue its intention to assign foreign bribery cases to either the Economic Department of the State Attorney's Office or the Tel Aviv Taxation and Economic District in order to enhance expertise and specialisation.

The Lead Examiners also commend Israel on its creation of the Inter-Ministerial Team and encourage Israel to pursue its efforts to enforce foreign bribery, in particular by strengthening

57 Article 60(D) CPL and Attorney General's Guideline 4.1110, Procedural Guidance, para.5

58 The position of the Deputy State Attorney for Criminal Affairs and his office were created pursuant to AG Guideline 4.1110 and Procedural Guidance, para. 5.

59 The team was appointed pursuant to the Attorney General's Guideline on the procedures for investigating and prosecuting foreign bribery.

and expanding the Team's monitoring and coordinating role and the Team's working relationships with foreign law enforcement authorities.

(ii) Police resources and training

58. The National Unit for Fraud Investigations within Lahav 433 currently includes 130 officers. Of these, 80 are investigators who have formal training as either lawyers or accountants, and the remaining 50 are intelligence officers. During the on-site visit, the IP indicated that these human resources are sufficient to face the current serious domestic corruption scandals, the ongoing foreign bribery investigations, and any other potentially complex multijurisdictional foreign bribery cases, should any of the preliminary examinations progress to formal investigations. Resources may be increased soon in the context of ongoing work on strengthening the corruption-fighting capabilities of Lahav 433.

59. Training is regularly provided to national units on cases of bribery and corruption with a small chapter on foreign bribery. In September 2013 a one-day foreign bribery training course was held for detectives. The National Academy for Police had just opened at the time of the on-site visit, in February 2015, and will include an in-service programme specifically focusing on bribery and fraud. On-site interlocutors strongly asserted that the National Unit for Fraud Investigation does not need training on foreign bribery given its daily involvement in handling domestic bribery cases. However, given the very limited experience of investigating foreign bribery cases to date, practical training may be necessary.

(iii) Prosecution resources and training

60. There are 25 prosecutors in the Economic Department of the SAO, and 52 in the Tel Aviv Taxation and Economic District. At the on-site visit, the SAO participants expressed the view that these resources are currently sufficient.

61. Training on economic offences, money laundering, and confiscation is provided to the SAO by the Institute of Legal Training (a Ministry of Justice body which provides legal training to lawyers and legal advisors within the civil service) and the National College for Integrated Economic and Enforcement Studies (a police college that provide training to law enforcement and other relevant authorities). These events are widely attended. At the on-site visit, SAO representatives also referred to regular financial investigation training, and in particular to 15 sessions recently held in all district offices gathering tax and financial crime specialists. Several conferences have also been held on topics of specific relevance to foreign bribery investigations, including one on international criminal law in 2012 (which included a session on the Convention) and one on legal person liability also in 2013. Given the lack of experience in prosecuting foreign bribery, further specific training on this topic may be required.

Commentary

The Lead Examiners note that Israel has very little experience enforcing the foreign bribery offence, with only four ongoing formal investigations, each at an early stage. The Lead Examiners therefore recommend that Israel provide regular, practical training to law enforcement officials on detecting, investigating and prosecuting the foreign bribery offence. To enhance this training, Israel could consider requesting assistance from law enforcement and prosecutorial agencies in other Convention parties.

(b) Opening and terminating foreign bribery cases

(i) Leads and sources of investigations

62. Of Israel's 7 preliminary examinations and 4 formal investigations, 4 have been opened on the basis of the Israeli authorities' independent discovery of alleged foreign bribery. Of Israel's 14 allegations, 9 have been brought to Israel's attention by the Working Group only (which obtains information from international press reports). Other sources utilised by Israel include media reports, MLA requests, reports from the private sector, and reports from IMPA (see Annex 1 for a summary of Israel's foreign bribery allegations, including the sources of allegations). No case has been started on the basis of a report by an official from the Ministry of Foreign Affairs (see Section B.10(b) on Reporting).

63. During the on-site visit, a senior officer of Lahav 433 stated that the National Unit for Fraud Investigations does not conduct proactive media searches for foreign bribery with links to Israel. Thus, while Israel has detected 1 allegation through the media, there is no system in place to ensure all relevant allegations are detected. In practice, Israel has not detected several allegations until alerted to them by the Working Group, even where the allegations were widely reported in the media. In particular, in two cases, Israel reports to have only learned about the cases from the Working Group, although media reports emerged up to several years prior to this time.

Commentary

The Lead Examiners are encouraged by Israel's independent detection of several foreign bribery allegations, through a variety of sources. The Lead Examiners recommend Israel take steps to ensure media allegations concerning foreign bribery by Israeli nationals or companies are systematically detected. They also strongly recommend that all credible foreign bribery allegations are fully assessed with a view to progressing cases to prosecution, as appropriate.

(iii) Preliminary examinations and formal criminal investigations

64. As in Phase 2, Israel confirms the existence of two stages of investigation: the preliminary examination and the formal criminal investigation. The Criminal Procedure Law provides the framework for criminal investigations, while case law establishes that preliminary examinations are within the competence of the IP and SAO.[60] IP and SAO representatives stated that the practice of preliminary examinations developed to allow them to gather sufficient evidence to meet the threshold of "reasonable suspicion" which is required to open a formal investigation. The preliminary examination stage therefore serves as a useful investigative tool to allow Israel to pursue foreign bribery allegations, even where the available evidence is insufficient to open a formal investigation. Law enforcement authorities may nevertheless start directly with a formal investigation if the threshold of evidence is sufficient, without going through the preliminary examination stage.

65. The evaluation team spent some time trying to establish the difference between a preliminary examination and a formal investigation and it did not always appear clear to on-site panellists. In particular, several different answers were received regarding the stage at which a preliminary examination becomes a formal investigation. After the on-site visit Israel stated that the differentiation "is not always distinct and clear, and is based on the level of suspicion that an offence was committed". The case law provides a similar answer, explaining that, in deciding whether to pursue a formal investigation or preliminary examination, "an assessment is made of the nature of the criminal suspicions against the person who is the subject of the complaint, under the particular circumstances of the case, the nature of the

60 *The Movement for Quality Government v. The Attorney General* (HCJ 3993/01); *Nimrodi v. The Attorney General* **(**HCJ Additional Hearing 7516/03).

offences attributed to him, and an initial examination of the alleged factual basis."[61] In practice, there are few significant differences between the two courses of action. As discussed below (in Section B.5(c) on investigative tools and techniques), in general a wide range of investigative measures are available at both stages, though there are some differences in the investigative techniques that can be used at each stage. While a criminal record of police investigations exists, there is no record of preliminary examinations (though any warrants sought and obtained will be documented).

66. Of the 14 allegations reported by Israel, 4 have progressed to a formal investigation (see Annex 1). Seven other cases have been the subject of a preliminary examination. Of these 7, 4 are ongoing while 3 have been closed: 1 for insufficient evidence and 2 due to convictions in a foreign State. In one case involving Israeli nationals and an Israeli company, the allegation led to the indictment of several Israeli nationals in a Convention party, though charges were subsequently dropped following several acquittals and issues admitting evidence. In the context of a preliminary examination, Israel obtained information from the relevant Convention party; however, this information was reportedly insufficient to proceed to a formal investigation. This raises concerns given that the information was sufficient to prosecute in the other Convention party, so it is unclear why the information failed to meet Israel's standards for merely opening an investigation. In addition, Israel highlights that the cases against the Israeli nationals were dismissed in the relevant Convention party. However, during the on-site visit, Israel stated that investigation or prosecution in a foreign state is not a barrier to investigation or prosecution in Israel and there is no strict rule of inter-jurisdictional double jeopardy. Israel's three remaining allegations have not given rise to any investigative measures (i.e. no preliminary examination or formal investigation, despite the fact that in 1 case the company has reported wrongdoing in its quarterly report).

67. As discussed below (in Section B.5(c) on investigative tools), for reasons of confidentiality, Israel could not provide information on the specific investigative steps taken in several of its examinations. The evaluation team was therefore unable to fully assess the adequacy of any investigative measures. However, from the information provided, such steps appear limited. This may be one possible reason for cases failing to progress to prosecution. Other possible impediments to reaching the formal investigation and prosecution stage were extensively discussed with panellists at the Phase 3 on-site visit. No broader explanation beyond the particular circumstances of each case was provided.

(iv) Decision to open or close an investigation

68. As noted in Israel's Phase 1 and 2 Reports, if the IP learns that an offence has been committed, whether from a complaint or through other means, it must open an investigation.[62] Guidance from the Attorney General (AG) provides that where the IP learns of a suspicion of foreign bribery "the information must be looked into in order to examine whether there is a sufficient evidentiary basis to merit the opening of an investigation".[63] Israel explains that this guidance is intended to ensure the IP examine all foreign bribery allegations to consider opening an investigation.

69. The decision to open or close a formal investigation must be made by the Head of the Investigation and Intelligence Unit of the IP. In foreign bribery cases, the Head will advise the Director of the Department of Criminal Affairs before opening or closing an investigation in order to confirm that this action is justified.[64] The IP will also liaise with the AG's Office and the SAO accompanying attorney in deciding whether to open an investigation. In addition, the Ministry of Defence will be informed where an allegation involves the defence industry, which is also the case in all domestic bribery cases.

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61 *Nimrodi v. The Attorney General* **(**HCJ Additional Hearing 7516/03).

62 Criminal Procedure Law, article 59.

63 Attorney General's Guideline 4.1110.

64 Attorney General's Guideline 4.1110, paras. 1, 2 and 4.

Commentary

The Lead Examiners are seriously concerned that seven years after the enactment of the foreign bribery offence, and in spite of the number of allegations that have surfaced, Israel has had no foreign bribery prosecutions and of its 4 investigations three were opened in the six months preceding this report. While the Lead Examiners are encouraged by recent efforts, they consider that there may be insufficient efforts by Israel in detecting and investigating foreign bribery. They recommend that Israel ensure that foreign bribery allegations are effectively investigated, are not prematurely closed, and are progressed to prosecution as appropriate.

(v) Commencement of prosecutions

70. Upon completion of a foreign bribery investigation, the IP would submit the file to the accompanying attorney who has been assigned to the case by the SAO. The accompanying attorney would, in turn, refer it, with his recommendations, to the office of the Director of the Department of Criminal Affairs. This office will examine and evaluate the evidence gathered. The office can require the IP to continue the investigation if there is insufficient material to lay an indictment.[65] Where it appears to the prosecutor that there is sufficient evidence to issue an indictment, the offence must be prosecuted unless the prosecutor is of the opinion that there is "no public interest" to prosecute. In foreign bribery cases, only the Director of the Department of Criminal Affairs can decide whether to lay an indictment, but only with the consent of the AG.[66] After reviewing the police file, the Director of the Department of Criminal Affairs makes a reasoned recommendation to the AG as to whether to file an indictment or close the case.[67] The AG may refuse to give consent if there is a lack of public interest. In Phase 2, this did not raise a concern for the Working Group. In Phase 3, this issue is discussed in the context of the independence of the AG (see Section B.5(e) below).

(vi) Duration of criminal proceedings

71. Attorney General's guidance requires the prosecution to assess the case and prepare it for indictment in the shortest possible period of time and within set time limits depending on the seriousness of the offence.[68] The relevant guideline was not provided. In the case of foreign bribery, the timeframe for deciding on a possible indictment is 18 months. Israel indicates that the logic behind this rule is that short criminal proceedings are seen as having a stronger deterrent effect. Moreover, the rule aims to prevent the prolonging of criminal proceedings. As stated by senior prosecutors during the on-site visit, the time constraint is positive in that it ensures that prosecutors do not unnecessarily delay the decision to indict and encourages the provision of adequate resources to ensure prompt decision-making. Should additional time be required, the timeframe can be extended with a decision from the District Attorney. There is no penalty for breach of the time limit.

72. The 18 month period starts upon completion of the investigation, when the file is referred to the prosecution by the IP. If the Deputy State Attorney for Criminal Affairs decides that there is not enough

65 Criminal Procedure Law, article 61.

66 Article 291A(b) of the Penal Law provides that no indictment in respect of the foreign bribery offence under article 291A can be issued without the prior written consent of the Attorney General (see also para 7 of AG Guideline 4.1110). Even if this was not an express requirement of article 291A, article 9(b) of the Penal Law requires the consent of the Attorney General for the prosecution of any "foreign offence" (see also para 8 of AG Guideline 4.1110) The bribery of a foreign public official would be a foreign offence where no part of the offence took place within the territory of Israel.

67 Attorney General's Guideline 4.1110, para. 5.

68 Attorney General's Guideline 4.1202 contains rules on the "Duration of treatment by the Prosecution prior to filing an indictment".

evidence and that additional investigative measures have to be taken by the IP, this interrupts the timeframe. Israel added that the timeframe does not include periods of time in which the investigation could not be conducted for reasons that are not under the control of the prosecution, such as medical or mental condition of the suspect, impossibility to locate the suspect, or immunity granted to the suspect by law or by the Court.

73. No such time frame currently exists for the IP investigation phase but Israel indicates that as of December 2014 law makers have been "considering whether to establish similar guidelines regarding investigative proceedings." Should these guidelines limit the maximum timeframe for investigating complex economic crimes, including foreign bribery, this would raise serious concerns for the Working Group. Israel provided reassurance that if such a timeframe were imposed, the complexity of cases would be taken into account, and the arrangement would likely provide for the possibility of an extension.

(vii) Termination or stay of criminal proceedings

74. The AG can order a stay of criminal proceedings at any time after the presentation of the indictment and before sentencing.[69] The prosecution and defence may also mutually request the court to stay proceedings.[70] A stay of proceedings is not an acquittal. Criminal charges can be reinstated with the consent of the AG. In the case of a felony offence such as foreign bribery, this must occur within five years from the date of the stay of proceedings. The prosecution is not limited to any specific grounds in its decision to withdraw an indictment, although it is common practice for reasons to be given. In the absence of enforcement, this aspect could not be further explored in Phase 3.

Commentary

The Lead Examiners note that 18 months appears to be an adequate time frame in which the prosecution must decide to indict in a foreign bribery case. They note that introducing a similar time limit for complex foreign bribery investigations would be problematic and would likely raise concerns for the Working Group on Bribery. They recommend that the Working Group follow-up to ensure problematic investigative time limits are not introduced for foreign bribery and that Israel keep the Working Group apprised of any developments in this regard.

(c) Investigative tools and challenges in the investigation of foreign bribery

(i) Special investigative techniques and tools

75. A range of covert measures are available to the IP in the investigation of foreign bribery to the same extent as for the investigation of other offences, including organised crime. These measures and techniques include investigating and collecting information from open sources, wire-tapping,[71] using undercover agents, using information from intelligence sources, shadowing suspects, executing search warrants (including search of computers),[72] executing communication data warrants,[73] executing freezing orders (including freezing bank accounts and property), and using court orders to receive information from various authorities (including financial institutions such as banks and investment companies).

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69 A stay of proceedings can be made on a conditional basis (Article 231 of the CPL), including upon a commitment to refrain from future offending, a condition (in the case of public officials) requiring the instigation of disciplinary proceedings against the official, or a voluntary agreement to supervision by the Israeli Probationary Authority.

70 Criminal Procedure Law, article 94(b).

71 Wiretapping Law 5739.

72 Criminal Procedure Law, article 23 – 23A.

73 Criminal Procedure Law (Enforcement Powers – Communications Data), section 3-4.

76. As indicated above (in Section B.5(b)(iii)) on preliminary examinations and formal investigations), most of these measures are also available to the IP in preliminary examinations. Nevertheless, measures such as wiretapping, arrests, or police questioning cannot take place in the course of a preliminary examination; only voluntary statements can be taken. Court orders may be sought in the context of preliminary examinations, and are usually granted if there is a reasonable cause, including for covert measures such as data-interception, search warrants or seizure of bank account information. IP representatives also stated that they would use undercover operatives for foreign bribery preliminary examinations, though this does not appear to have been used. SAO and IP representatives indicated that there is no legal impediment to requesting MLA at the stage of a preliminary examination. However, they conceded that some countries may not answer MLA requests in the absence of a formal investigation (see Section B.9 on international cooperation). As stated above (see Section B.5(b)(iii) on preliminary examinations and formal investigations), Israel provided limited information on investigative steps for reasons of confidentiality. From the information available, special investigative steps appear to have been relied on only once (in one preliminary examination the IP sought bank information) (see part (iv) below). This apparent lack of active investigative steps may contribute to Israel's low enforcement rates.

(ii) Bank secrecy

77. Search, seizure, and confiscation orders have been routinely used in domestic bribery and fraud-related cases. This has included accessing bank records and freezing bank accounts. Israeli law allows investigative authorities to overcome confidentiality considerations and obtain information from banks through a court order pursuant to article 43 Criminal Procedure Ordinance (CPO). Article 43 states that when such an order is requested during an undercover investigation, the court may order the bank to refrain from informing the account owner of the criminal investigation. In these cases, informing the account owner about the order would be considered an obstruction of justice. Finally, article 32 CPO allows the investigative authorities to request a court order to freeze the bank account.

(iii) Access to classified information

78. As indicated in the Introduction to this report, Israel is a major defence exporter. Unsurprisingly the defence industry appears in several of the foreign bribery allegations that have surfaced so far, i.e. in at least 2 of the 14 allegations. While these allegations have reportedly given rise to preliminary examinations, both were closed without leading to the opening of a formal investigation. In one case, a MLA request received by Israel could not be completed as the request was for "the release of confidential defence-related information". This led to a discussion during the on-site visit between the evaluation team, the IP and the SAO about the ease with which investigators can access information held by a defence company. The discussion included whether restrictions might exist which may prevent or delay law enforcement authorities' access to certain information – in particular as it relates to terms of reference, negotiations, contracts and books and records.

79. At the on-site visit, IP and Ministry of Defence representatives stated that there is a classification system which classifies information or items according to the level of threat to Israel's security that a potential exposure of the information would entail. Certain sites can also be classified or have restricted access, though IP representatives stated that no site would be classified to such an extent that the IP would not be able to access it to seize evidence. Their ability to use that evidence, however, could be subject to censure. Israel states that the classification of information does not present an obstacle to its transfer to the IP or other investigative authorities in the framework of an investigation. In order to access this information and sites, members of the IP need to have the relevant security clearance level granted by the Israel Security Agency. Declassification or specific authorisation may be necessary to use certain documents in court but both the IP and Ministry of Defence representatives indicated that solutions are available under the law, including holding a closed Court session if necessary. They strongly asserted that

the need to use such information would not impede a criminal case from being formally investigated, prosecuted and heard in court. Israel stressed that for instance, in an alleged case of corruption in an extremely classified military unit, information was revealed to enforcement authorities accompanied by military personnel.

(iv) Investigations in practice

80. Israel provided information on the investigative steps taken in response to 4 of its 14 foreign bribery allegations. In one of Israel's ongoing investigations, the allegation was detected through the Working Group. Israel received an MLA request and provided the requested information. The Inter-Ministerial Team reviewed publicly-available information. Israel used both informal cooperation and formal MLA to seek information from the relevant foreign country. In another ongoing investigation, Israel learned of the allegation through the Working Group. Publicly-available information was reviewed in the context of the Inter-Ministerial Team's consideration of the allegation. Informal contact was made with two foreign states and a formal MLA request is currently being prepared.

81. In one open preliminary examination, the allegation was detected through media reports and reviewed by the Inter-Ministerial Team. Informal cooperation was sought through the IP, the SAO, the Ministry of Foreign Affairs, and the Israeli Money Laundering and Terrorist Financing Prohibition Authority. Two MLA requests were received by Israel and the information requested was provided. Israel intends to use informal cooperation, including overseas missions by the IP, to seek information. In another ongoing preliminary examination, the allegation was detected by the Israeli Money Laundering and Terrorist Financing Prohibition Authority who passed this information to the IP. With the facilitation and assistance of the Inter-Ministerial Team, the IP subpoenaed bank information and obtained some information from the relevant regulator.

Commentary

The Lead Examiners acknowledge the confidential nature of investigations and that information may not be able to be provided on specific cases. Nevertheless, in light of the information available to them, the Lead Examiners are seriously concerned that a lack of active investigative steps may contribute to Israel's low foreign bribery enforcement rates. They recommend that Israel make use of the broad range of investigative measures available during preliminary examinations and formal investigations, including special investigative techniques and access to financial information as appropriate, to ensure that all credible foreign bribery allegations are actively and effectively investigated.

(d) Plea bargaining / Settlements

82. The use of plea bargaining in Israel's criminal justice system is common.[74] The prosecution and defence may reach a settlement on specific factual details in the indictment which may form the basis for a guilty plea and the corresponding sentence. A plea agreement may relate to a specific sentence or an agreement to limit arguments in the sentencing phase. It may also be made without reference to sentencing. A plea bargain may be struck with a natural or legal person defendant. In theory, a foreign bribery matter could be resolved by plea bargain. In Phase 2, Israel's regime for plea bargaining did not raise specific concerns.

[74] Julian Roberts and Oren Gazal-Ayal, "Statutory sentencing reform in Israel: exploring the sentencing law of 2012", Israel Law Review 46(3) 2013, pp. 455-479, p. 471. According to a 2012 study, almost 80% of convictions in Israel result from plea bargains and that over 60% of plea bargains include an agreed sentence recommendation.

83. Israel's plea bargaining framework is governed by common law principles and has not been codified, despite the introduction of new sentencing laws (see part B.3 on sanctions). Prosecutors negotiating a plea bargain follow State Attorney Directive No. 8.1 "Directives for Making a Plea Bargain". The Directive essentially explains the application of the relevant common law principles.

84. A plea bargain must be approved by the court and entered as a judgment. It involves admission of guilt by the defendant and a conviction entered by the Court. The court would follow the parties' joint recommendation on sentencing even if the recommended sentence was below the anticipated proportionate sentence (as calculated under the sentencing provisions of the PL), provided that the sentence balances the benefit to the offender against the public interest.[75] During the on-site visit, judges explained that courts have the authority to overrule a plea bargain but that this would be unusual because the prosecution has better information about the full circumstances of the case, the courts have respect for the exercise of prosecutorial discretion and significant efficiencies are gained through plea bargaining. Judges confirmed that a plea bargain that went against the public interest would be overruled. Prosecutors and judges explained that all relevant details of a case, such as names of the parties, the nature of the misconduct, the sanctions imposed and the court's reasoning, are recorded in the court's decision and published on the website of the Judicial Branch in the same way as any other judgment. Israel provided a translated plea bargain after the on-site visit to demonstrate the level of detail.

85. During the on-site visit, judges also noted the increased use of preliminary hearings to resolve criminal cases. Under article 143A of the Criminal Procedure Law, preliminary hearings allow judges to mediate between the prosecutor and defendant with the aim of serving the public interest while easing the burden of trials on Israeli courts. Should the preliminary hearing be unsuccessful, the matter goes to trial and is presided over by a different judge who has not been privy to the arguments and disclosure of evidence during the preliminary hearing.

Commentary

While Israel's framework for plea bargaining remains untested with regard to foreign bribery cases, the Lead Examiners are satisfied that it does not raise any specific concerns at this time. The Lead Examiners welcome and encourage the use of preliminary hearings to achieve efficient and effective law enforcement outcomes, where appropriate.

(e) Considerations under Article 5 of the Convention and Independence of the Police and Prosecution

(i) Considerations under Article 5 of the Convention

86. In Phase 2, the Working Group welcomed the inclusion in relevant guidelines of an express clarification that decisions to investigate or prosecute foreign bribery cannot be influenced by the considerations prohibited under Article 5 of the Convention.[76]

87. Whether prohibited Article 5 factors are considered in deciding to close foreign bribery cases in practice was reassessed in Phase 3 in light of the low number of investigations and absence of prosecutions. In response to the evaluation team's questions, Israel emphasised that the Inter-Ministerial

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75 Julian Roberts and Oren Gazal-Ayal, "Statutory sentencing reform in Israel: exploring the sentencing law of 2012", Israel Law Review 46(3) 2013, pp. 455-479, p. 471.

76 Phase 2 Report, para. 117. AG Guideline 4.1110 states that: "Among the considerations as to whether to open an investigation or to prosecute for this offence, considerations concerning national economic interests, potential effect on the relations with a foreign country, or the identity of the person or the corporation involved, cannot be taken into consideration." (para 3).

Team, operating in accordance with the values of prosecutorial independence and discretion, is an effective mechanism to ensure the proper implementation of Article 5 (see Section 5(a)(i) above on the Inter-Ministerial Team). As noted above, the Team itself is not responsible for making investigative or prosecutorial decisions; rather it provides a practical coordination and advisory role. Nevertheless, the involvement of certain ministries in the Inter-Ministerial Team may create a perception that Article 5 factors could be considered in foreign bribery cases.[77] In particular, the involvement of the Ministry of Defence and the Ministry of Foreign Affairs has the potential to create the perception that Article 5 factors (such as economic considerations or relations with a foreign state) could be considered in the Team's assessment of a suspected foreign bribery case. After the on-site visit, Israel re-emphasised that prohibited Article 5 factors are not taken into account by the Inter-Ministerial Team and explained that only enforcement agencies participate in the Team's deliberations on case-related enforcement activity.

Commentary

The Lead Examiners reiterate that the creation of the Inter-Ministerial Team is a positive step towards stronger enforcement of Israel's foreign bribery offence. They acknowledge that the involvement of the Ministry of Defence and the Ministry of Foreign Affairs in the Team helps to ensure cross-agency coordination, but, at the same time, may also create a perception that factors prohibited under Article 5 of the Convention could be considered in foreign bribery cases. They recommend that the Working Group follow-up on this issue to ensure that such factors do not influence foreign bribery investigations or prosecutions.

(ii) Independence of the Israel Police

88. The IP is headed by the Inspector General, who is appointed by the government on the basis of a recommendation by the Minister of Public Security. In order to avoid political influence, the Inspector General's term of office is not renewable and does not depend on the term of the government.[78] Legal grounds for this were not provided by Israel. The Minister of Public Security supervises the IP, its management and operation. However, Israel emphasises that the Minister may not be involved in specific investigations.

89. Israel more generally stresses that "non-interference of the political realm in investigations is a fundamental principle in Israeli culture; it is very deeply ingrained and cannot be uprooted in the relevant bodies." The opening by the IP of investigations against high-ranking politicians, including against members of the Knesset (the Israeli Parliament), ministers, a President and a former Prime Minister in recent years help to demonstrate the independence of the IP.[79]

90. There are potential limitations on the IP's independence in the context of investigating foreign bribery. As discussed above (see Section B.5(e)(i)), the involvement of certain ministries in the Inter-Ministerial Team may create a perception that foreign bribery investigations could become susceptible to prohibited Article 5 factors, which in turn may affect investigative decisions of the IP. Further, IP representatives explained that, although not required to do so by law, they would inform the Ministry of Defence about investigations into the conduct of companies or persons in the defence industry. Regarding foreign bribery cases, this information would also come to the attention of the Ministry through its

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77 The Team includes representatives of the Ministry of Foreign Affairs, the Ministry of Defence, and the Counsel and Legislation Department of the Ministry of Justice.

78 The term of appointment is three years and may be extended by one additional year in exceptional circumstances.

79 See e.g. Jonathan Lis, Haaretz "Israel Police chief: Solid evidence against many Yisrael Beiteinu graft suspects" (January 9 2015).

participation in the Inter-Ministerial Team. However, the IP did not raise any concerns about its level of independence.

(iii) Independence of the Attorney General and prosecuting authorities

91. The AG's independence is governed by the AG Guideline 4.1000.[80] The AG and the staff of the SAO operate independently from elected officials. In prosecutorial matters the AG is not bound by the decisions or policies of either the government or the Ministry of Justice. The AG, and all prosecutors answerable to the AG, are required to perform their functions and exercise their authority in criminal matters independently, including in cases involving public figures, such as acting Ministers, the Prime Minister and the President.[81] The AG serves a single six-year term. More details on the AG's guaranties of independence can be found in Israel's Phase 2 report.[82]

92. In Phase 3, Israel emphasised the possibility for any person or interest group to lodge a petition to the Supreme Court sitting as the High Court of Justice (an administrative judicial review) to challenge a decision of the AG regarding an alleged felony. The High Court of Justice may review a decision to open or not open a formal investigation, to indict or not indict an alleged offender, or to close a case for lack of evidence. It rarely pronounces on evidence and rather focuses on the public interest criteria. According to senior prosecutors, this right is very broadly exercised and a specific department within the SAO is dedicated to dealing with petitions to the High Court of Justice.

93. Israel stresses that the independence of both the IP and the prosecution is demonstrated by recent domestic cases in which a number of senior public officials, including a serving Prime Minister, have been investigated and indicted in respect of various criminal charges, notwithstanding the seniority of their positions. The criminal procedures in some of these cases commenced while the defendants were in office, and in some cases, when it became clear that they would be indicted, they resigned or suspended themselves from office. Israel refers in its responses to seven cases in which former ministers (including a former Prime Minister in two cases) were all sanctioned for serious fraud and corruption offences.

94. Although media reports have questioned the decision of the AG in relation to a particular domestic corruption investigation in Israel,[83] panellists at the on-site visit expressed confidence in the level of independence of the AG. In this particular case, the preliminary examination against a prominent political figure did not result in the opening of a formal investigation. Media have noted concerns about the length of time taken to conduct the preliminary examination, the lack of reasons provided for closing the case, and the relationship between the suspect and the AG. Israel indicates that after a review of documents, testimonies and information gathered by the State Comptroller, the Head of the Investigation Department of the IP recommended concluding the examination process because no factual basis was found to justify the opening of a criminal investigation. The District Attorney of Jerusalem (Criminal Matters) and the State Attorney joined the conclusion of the IP. The AG decided to follow their recommendation and to conclude the preliminary examination. During the on-site visit, panellists, including lawyers and academics, voiced that the AG is perceived as independent and noted that AG consent has been given to investigate and indict in a number of other high-profile cases involving senior public officials.

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80 Attorney General's Guidelines 4.1000 (51.000A) "Independent Power of the Attorney General – Criminal Proceedings".

81 Attorney General's Guideline 4.2200 (90.004) "Investigation of Public Figures".

82 Phase 2 Report, paras. 105-108.

83 Haarretz "Dropping of 'Bibi Tours'case raises hard questions" (6 September 2014).

Commentary

The Lead Examiners discussed the independence of the Attorney General with a wide range of participants at the on-site visit. The Lead Examiners note that some media reports have questioned the independence of the AG in relation to a particular domestic corruption investigation in Israel, which if occurred in the context of a foreign bribery case would raise questions about possible interference of prohibited Article 5 factors. However, they were reassured by the views of panellists, including private sector lawyers and academics, who expressed confidence in the Attorney General's independence. The Lead Examiners are also encouraged by the number of investigations and prosecutions against senior public officials that have received the consent of the Attorney General in recent years. The Lead Examiners also note the procedural safeguard in place whereby the Attorney General's consent function is subject to the review of the High Court of Justice through a petition by any individual or group of interest.

(f) Jurisdiction

(i) Removal of the dual criminality requirement and impact of remaining limitations to jurisdiction

95. Since Phase 2, Israel has amended its Penal Law (PL) to address major concerns of the Working Group regarding territorial and nationality jurisdiction (Phase 2 recommendations 9(a) and 9(b)). Amendments to articles 291A and 15(b) of the PL entered into force on 25 February 2010. Article 291A now incorporates in the definition of a "foreign state", "a political entity that is not a State, including the Palestinian Authority". This addresses the Working Group's recommendation on the coverage of an entity that is not a State. Article 15(b) no longer requires dual criminality for the foreign bribery offence. This is achieved by creating an exception to the general dual criminality requirement.

96. However, the double penalty requirement under article 14(c) of the PL remains unchanged. This article is problematic because it makes sanctions dependent on a foreign country's treatment of the foreign bribery offence (see Section B.3.above on Sanctions). A similar concern is raised by article 14(b)(2) of the PL (similarly unchanged from Phase 2), which limits Israel's jurisdiction over extraterritorial offences if there is a restriction on criminal liability that applies to the offence under a foreign country's law. This provision could potentially limit liability for foreign bribery if, for example, the State where the offence was committed had not established legal person liability for bribery or allowed a defence for foreign bribery that is beyond the scope of the Convention. In the absence of case law, the effectiveness of the above amendments and the impact of the remaining concerns could not be fully assessed in Phase 3.

(ii) Territorial jurisdiction

97. The level of connection with Israel required to assert territorial jurisdiction under the PL still raises issues, as identified in Phase 2. Article 7 of the PL establishes the principle of territorial jurisdiction and categorises offences by location as either "domestic offences" or "foreign offences". A domestic offence is defined under article 7(1) as "an offence all or part of which was committed within Israeli territory". Israeli legislation and case law seem to point to a definition of "domestic" criminal offences which allows for a significant range of jurisdiction over extra-territorial acts. However, prosecutors at the on-site visit in Phase 2 expressed that a telephone conversation, fax or email emanating from Israel, or a transfer of funds through an Israeli bank, would not in principle be sufficient to establish territorial jurisdiction over an offence of foreign bribery which largely took place elsewhere. The part of the act committed in Israel would need to be "a significant act" in the commission of the offence – such as the making of the offer, or an authorisation to bribe, or the receipt of the proceeds of a bribe. Similarly, the preparation or complicity of an act otherwise committed outside of Israel would not be sufficient for territorial jurisdiction to be exercised. The Working Group in Phase 2 decided to follow-up on this issue

given that it may create difficulty in asserting territorial jurisdiction in cases involving acts by foreign subsidiaries of Israeli companies (follow-up issue 13(b)).

98. The Israeli authorities reiterate in Phase 3 that territorial jurisdiction is broadly interpreted by Israeli courts and that acts committed in Israel are sufficient for the purpose of territorial jurisdiction. After the on-site visit, Israel provided short summaries of five cases where territorial jurisdiction was applied in circumstances that could arguably be described as having no extensive physical connection to Israel.[84] The cases relate to a range of offences including, in general terms, money laundering, fraud, gambling and assault. However, contradictory information was provided in relation to this issue by lawyers at the on-site visit. In light of the different views, the issue identified in Phase 2 requires ongoing follow-up by the Working Group.

(iii) Nationality jurisdiction

99. In all instances where an offence is not a "domestic offence" under article 7, the offence will be categorised as a "foreign offence", to which two forms of jurisdiction may apply: nationality jurisdiction; and jurisdiction over crimes under international treaties. Nationality jurisdiction is expressly provided for in respect of "foreign offences" which amount to a felony, thus covering the foreign bribery offence (article 15 of the PL). Nationality jurisdiction applies to Israeli citizens as well as residents of Israel. Jurisdiction over crimes under international treaties provides for jurisdiction over an offence committed by a person who is not an Israeli citizen or resident, as a result of Israel's Party status to an international convention (article 16 of the PL). However, as Israel indicated at the on-site visit, domestic law would supersede contradicting international treaty obligations, despite the interpretative presumption established by the Israeli Supreme Court that the laws of Israel should correspond with Israel's international obligations. As such, and as noted in Phase 2, the double penalty requirement provided in article 14(c) would not be superseded by provisions relating to jurisdiction over crimes under international treaties (see above Section B.2 on sanctions).

100. With regard to legal persons, the Phase 2 report discussed how Israeli courts determine the nationality and residence of legal persons, namely whether they use the criterion of incorporation or of control.[85] In practice, the Phase 2 report notes that the criterion of control is likely to be difficult to establish and raises similar issues to those discussed in the section on the liability of legal persons, in particular, the need to identify a natural perpetrator. As in Phase 2, nationality jurisdiction has yet to be applied to a legal person for the foreign bribery offence. During the on-site visit, public prosecutors saw no obstacle to exercising nationality jurisdiction over the Israeli alleged beneficial owner of a legal person not incorporated in Israel and involved in a foreign bribery allegation. This situation has arisen in one of Israel's ongoing preliminary examinations. In line with Israel's position, there should be no jurisdictional impediment to proceeding with this matter if it leads to a formal investigation.

(iii) Jurisdiction over legal persons

101. Pursuant to articles 7, 12 and 23 of the PL, Israel considers that it will have territorial jurisdiction over legal persons where the crime or part of the crime was committed in Israel, whether the legal person was incorporated in Israel or abroad. Israel is unaware of cases where nationality jurisdiction was exerted over a legal person incorporated abroad when its controlling owner was Israeli. However, its authorities

84 In support of the proposition that territorial jurisdiction is interpreted broadly by the Israeli courts, Israel cites the following case 5 examples: Criminal Appeal 7593/08 Ritbelt v State of Israel; CC (T.A.) 4202-09 State of Israel v Shlomo Recht; Kahana v State of Israel (P.C.A) P.D.NA(3) (1997); C.C. (Be'er Sheva) 8207/02; RR (District Tel Aviva) 90861/07 Carlton v The National Unit for Investigation of Fraud, Tak-Dis 07(2), 11247 (2007).

85 Phase 2 Report, para. 157-158.

consider that it is reasonable to assume that Israel would have nationality jurisdiction over legal persons who were not incorporated in Israel, if the crime was committed by an Israeli citizen or resident who was the controlling owner of the legal person, and the natural person's actions could be attributed to the legal person, according to article 23 of the PL. After the on-site visit, Israel provided two case law decisions in support of this view. However, these cases merely illustrate the enforcement of the legal person liability regime as interpreted by the Israeli courts.[86] One of Israel's ongoing preliminary examinations involve legal persons controlled by Israeli nationals. This issue may therefore be of relevance in this preliminary examinations.

Commentary

The Lead Examiners welcome the February 2010 amendments to the Penal Law removing the dual criminality requirement under article 15(b) and including the Palestinian Council within the definition of "Foreign State" in article 291A for the purposes of the foreign bribery offence.

However, the Lead Examiners note that two problematic articles remain in the Penal Law: articles 14(b)(2) and 14(c). Article 14(b)(2) restricts Israel's jurisdiction in relation to extraterritorial offences if there are exceptions or defences to criminal liability under the foreign country's law. Article 14(c) limits sanctions to those available under the foreign country's law (discussed further in section B.3(c) on sanctions). Hence, the Working Group's Phase 2 concern regarding double criminality requirements is only partially alleviated. The Lead Examiners recommend that Israel amend the Penal Law to ensure that article 14(b)(2) does not limit Israel's jurisdiction over extraterritorial foreign bribery offences.

In the absence of case law, the Working Group should continue to follow-up the effectiveness in practice of territorial jurisdiction over offences committed in whole or in part abroad, in particular with regard to acts involving foreign subsidiaries or a legal person incorporated abroad when its controlling owner is Israeli.

The Lead Examiners also note that, in the absence of case law, principles applicable to the exercise of jurisdiction over legal persons for foreign bribery remain uncertain in Israel. They therefore recommend that the Working Group continue to follow-up this issue as practice develops.

(g) Statute of limitations

102. The statute of limitations applicable to foreign bribery cases involving legal or natural persons is 10 years from the date of the commission of the offence, pursuant to article 9(a)(2) of the Criminal Procedure Law. The statute of limitations is stopped by any investigatory action carried out by law enforcement (including an incoming or outgoing MLA request), the issuing of an indictment or a court proceeding regarding the offence. In these events, the limitation period would restart on the date of the last court proceeding or investigatory action, or on the date in which the indictment was issued (whichever is the latest).

103. In Phase 2, the Working Group did not raise any concerns regarding Israel's statute of limitations. There have been no changes to the statute of limitation as regards to foreign bribery. No concerns have been identified in Phase 3.

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[86] CC (Tel Aviv) 62657-07-14 The State of Israel v. Oron (in proceedings), and CC(Tel Aviv) 8116-03 The State of Israel v. David Appel,

6. Money laundering

(a) The money laundering offence and enforcement

104. The scope of the Money Laundering Offence remains unchanged since Phase 2. Articles 3 and 4 of the Prohibition on Money Laundering Law 2000 (PMLL) establish criminal liability for the laundering of money (or property) originating directly or indirectly from, or used to commit or enable the commission of, a wide range of predicate offences, including the foreign bribery offence ().[87] The predicate offences extend to conduct that occurred in another country (article 2 of the PMLL). Article 3 prohibits a property transaction[88] "with the object of concealing or disguising its source, the identity of the owners of the rights, the location, movement or disposition with respect to such property" and establishes a penalty of ten years of imprisonment and a substantial fine.[89] Article 4 applies to less culpable conduct; namely where a person performs a property transaction "knowing that it is prohibited property". There is no element of concealing or disguising under this offence. The penalty is seven years of imprisonment and a fine half the value of that applicable to article 3.

105. A monetary threshold applies to the offence under article 4 of the PMLL.[90] Although international conventions do not generally allow for such thresholds, Israeli authorities explained in Phase 2 that the threshold is intended to restrict the money laundering offence to significant cases and to prevent the IMPA from having to deal with negligible cases. However, prosecuting the laundering of a relatively small amount of money could be highly advantageous in the context of a foreign bribery matter. Furthermore, the monetary value of money laundering is not necessarily the only relevant factor in determining the gravity of the offence. MONEYVAL has also raised concerns about the threshold.[91] In Phase 3, IMPA and Ministry of Justice panellists stated that there is currently a proposal being considered to remove this threshold altogether or alternatively to reduce it. An amendment to the PMLL is currently being drafted to, among other things, reduce or remove the threshold applicable to article 4.

106. It is not entirely clear whether dual criminality of the predicate offence is required in order to prosecute money laundering where the predicate offence is committed abroad. This issue is relevant to Article 7 of the Convention, which states that for the purpose of the application of money laundering legislation, foreign bribery should be an offence "without regard to the place where the bribery occurred." Section 2 PMLL requires that the predicate offence "shall also be deemed an offence when committed in another state, provided that it also constitutes an offence under the laws of that state." After the on-site visit, Israel admitted that in the absence of case law, it is impossible to know how the courts will apply the dual criminality requirement in respect of the foreign bribery offence. However, Israel pointed to case law showing that in connection with domestic predicate offences, the court took a flexible and not a literal

87 PMLL, First Schedule, para. 6; PL, article 291A.

88 "A property transaction" is defined under article 1 of the PMLL as "vesting or receipt of ownership or of any other right in property, whether or not for consideration, as well as a transaction with property amounting to delivery, receipt, holding, conversion, a banking transaction, investment, a securities transaction or possession thereof, brokerage, extension of or taking of credit, import, export and creation of a trust, as well as mixing prohibited property with other property, even where it is not prohibited property".

89 The fine is twenty times greater than the indeterminate fine which may be imposed by the court for an offence punishable by more than 3 years imprisonment, approximately ILS 4.5 million (EUR 1 million).

90 Monies in excess of ILS 500 000 (EUR 100 000) or real estate, securities, artefacts, and other specified items if their value is ILS 150 000 (EUR 30 500) or more, cumulated within a period of three months.

91 Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), MONEYVAL(2013)24, Report on Fourth Assessment Visit, Anti-Money Laundering and Combating the Financing of Terrorism, ISRAEL, 12 December 2013, p.10.

approach.[92] Israel thus considers that it is reasonable to assume that a court would deem it sufficient that an act constitutes an offence in the country of origin even if it is not a foreign bribery offence.

107. The PMLL includes powers to seize monies, and use monies seized (article 11). Property obtained in violation of articles 3 or 4 may be forfeited in both criminal and civil proceedings (articles 21 and 22 of the PMLL).

108. Regarding enforcement of the money-laundering offence, the situation has not evolved from Phase 2 when there had been no money laundering indictments based on the laundering of proceeds derived from the foreign bribery offence. The reason given at the time of Phase 2 was that the foreign bribery offence only entered into force in July 2008. More generally, given the strikingly low level of convictions for money laundering based on the predicate offence of domestic bribery at the time of Phase 2, the Working Group decided to follow-up on the number of convictions for money laundering in future evaluations (follow-up issue 13(g)). In Phase 3, Israel provided data on investigations, prosecutions and convictions for the offence of money laundering between 2008 and 2012, which shows that a minimum of 17 and a maximum of 37 persons have been convicted for money laundering each year.

Commentary

The Lead Examiners consider that the monetary threshold for the money laundering offence under article 4 of the Prohibition on Money Laundering Law 2000 (PMLL) may be detrimental to the enforcement of laundering of the proceeds of bribery. The Lead Examiners encourage Israel to pursue its project to submit an amendment bill to the Knesset to remove or reduce the monetary threshold.

The Lead Examiners also recommend that the Working Group follow-up case law developments regarding the interpretation of the dual criminality requirement under section 2 of the PMLL. The purpose of following-up this issue is to ensure that Israel meets the requirement in Article 7 of the Convention that foreign bribery be a predicate offence to money laundering without regard to the place where the bribery occurred. This is important in cases where the bribery takes place in countries that have not criminalised foreign bribery.

In the absence of convictions predicated on foreign bribery, the Lead Examiners recommend that the Working Group continue to follow-up on the number of convictions for money laundering, including those predicated on foreign bribery, in future evaluations.

92 In the *State of Israel v. Balva* (Criminal Case (Jerusalem) 18291-12-12) – *The State of Israel v. Balva Yaron et al* (March 18th 2014) (Published by Nevo), where the offence laundered was an anti-trust offence, which is not recognised as a predicate offence under the PMLL, the court accepted in an interim ruling that there is prima facie evidence for the existence of the offence of money laundering, as the acts also established an offence of obtaining something by deceit, which is a predicate offence. In *The State of Israel v. Gabay* (Criminal Case (Tel Aviv) 40210/06) – *The State of Israel v. Gabay Abraham et al* (Takding-District 2008(2), 13729 (May 29th 2008)), the predicate offence was obtaining something by deceit, when the "thing" that was fraudulently obtained was the excise tax that was saved, when the relevant article of the Excise Law has not been explicitly included as a predicate offence in the PMLL. The court rejected the defence attorneys' contention that once the legislature refrained from explicitly including the relevant article of the Excise Law, it cannot be "circumvented" through prosecution for the crime of obtaining something by deceit.

(b) Anti-money laundering measures

(i) Identification of the predicate offence

109. An effective system designed to detect and deter money laundering may uncover underlying predicate offences, such as foreign bribery. In Israel, unusual activity reports (UARs) are made to Israel's financial intelligence unit (FIU), the Israeli Money Laundering and Terrorism Financing Prohibition Authority (IMPA), an independent body established under the PMLL. In Phase 2, the Working Group found that IMPA appears to operate in a well organised and professional manner. In Phase 3, IMPA representatives indicated that they are endeavouring to identify the predicate offence to the extent possible, through liaising with other relevant law enforcement agencies in Israel (the Israeli Tax Authority or IP) and the FIUs of foreign countries. The task is facilitated by banks which, whenever possible, will report information on possible predicate offences when making UARs (which are different to the more typical suspicious transaction reports, as explained in Section (b)(iv) below). Bank representatives indicated at the on-site visit that they systematically include this information in their UARs. Whether this has led to the successful identification of foreign bribery as a predicate offence is discussed below in Section (b)(iv).

(ii) Awareness and training on foreign bribery as a predicate offence to money laundering

110. Israel reports several measures that have been taken since Phase 2 to improve the efficacy of UARs. These include: training events and feedback meetings among the reporting entities (e.g. on the identification of "red flags" for AML/CFT reports); publication of relevant guidance and booklets prepared with the relevant supervisors; and individual appraisal meetings. Projects intended to improve timeliness include a pilot for the formulation of more structured UARs. At the on-site visit, reporting entities recognised the usefulness of these measures, but indicated that they receive no feedback from the IMPA on the efficacy of UARs. IMPA disagrees with these views , expressing that the quality of UARs has significantly improved and it has provided regular feedback to financial institutions on UARs. In any event, none of these measures refer to the development of tools that would directly contribute to a better identification of the predicate offence of foreign bribery, although these measures may have an indirect contribution.

(iii) Preventive measures

111. Financial institutions are required to conduct ongoing "Know Your Customer" (KYC) activities. These include the obligation for banking corporations to check whether a customer is a politically-exposed person (PEP) and considered a high-risk customer account. A PEP is defined by the Proper Conduct of Banking Business Directive No 411 (Directive 411) as a non-resident who holds an important public position abroad, such as heads of state or cities; senior politicians; senior government, judicial or military officials; and officials of political parties, and includes their spouses and companies under their control. On 24 January 2010, the Supervisor of Banks introduced comprehensive amendments to Directive 411.[93] The amendments also include considerations to be taken into account by banking institutions when formulating their KYC policies. In addition, the amended order for banking corporations[94] imposes an obligation on such corporations to request information from the customer to determine whether the customer is a PEP.

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93 High-risk customer accounts are subject to increased monitoring by banking corporations pursuant to Directive 411, with section 15(b) stipulating that a banking corporation shall conduct heightened surveillance of high-risk customer accounts; and section 15(d) stating that "a banking corporation shall invoke heightened due-diligence measures vis-à-vis high-risk customers…".

94 Prohibition of Money Laundering (the Banking Corporations Requirement regarding Identification, Reporting, and Record-keeping for the Prevention of Money Laundering and Financing of Terrorism (Amendment) Order 5771-2011. The Constitution, Law and Justice Committee of Israel's Parliament approved this order on 29 October 2013 and it entered into force on 2 August 2014.

New orders targeting specific entities, including Precious Stones Dealers' Order (see Section(b)(iv) below), also contain a definition of a PEP and impose an obligation to request information from a customer.

112. On 12 May 2014 the Knesset approved the Prohibition of Money Laundering Order 2014 (MSP's Order). The MSP's Order is designed to amend the deficiencies in the current Order as highlighted in the 2014 MONEYVAL Fourth Round Evaluation Report (hMER),[95] including applying the KYC procedure with respect to non-occasional customers. The procedure includes, *inter alia*, identifying the source of funds with respect to the service provided, the customer's occupation and the purpose of the services. In the case of a foreign resident, the procedure includes knowing the customer's affinity to Israel and whether or not the customer is a PEP; and in the case of a business, the procedure includes the type of business in which it is engaged. It also includes an obligation to conduct ongoing due diligence in relation to a repeat service recipient. The identification obligation was enhanced by reducing the identification threshold for occasional customers to ILS 10 000 (EUR 2 330) for transaction involving cash and ILS 5 000 (EUR 1 165) if it involves a state or territory of high risk (for non-cash transaction the threshold is ILS 50 000 (EUR 11 650)). The Order will come into force nine months after the date of its publication on 30 March 2015.

(iv) Transaction reporting obligations

- Reporting obligations

113. Transaction reporting requirements are governed in Israel by the PMLL and regulations applicable to different financial institution sectors.[96] Financial institutions must report two types of transactions. Firstly, cash and other transactions over certain values must be reported (known as "currency transaction reports" or "CTRs"). Authorities from IMPA advised during the on-site visit that the applicable threshold has now been standardised to transactions over the sum of ILS 50 000 (EUR 10 000).[97] In Phase 2, the threshold depended upon the type of transaction and the financial institution sector involved. The second type of transaction to be reported by financial institutions is UARs. This reporting relies on financial institutions' ongoing monitoring, which includes verifications as to whether a customer is a PEP and considered a high-risk customer account (see discussion on PEPs in Section (b)(iii) above). In Phase 2, the Working Group had some concerns about the efficacy of UARs, as opposed to the reporting of "suspicious" transactions, and decided that the efficacy of UARs should be followed up in future monitoring work (follow-up issue 13(g)).

- Reporting entities

114. The MONEYVAL follow-up report of 2014 indicates that at the time of the report there were still no reporting requirements in place for real estate agents, dealers in precious metals and stones, trust and company service providers, lawyers, notaries, other independent legal professions and accountants. With regard to dealers in precious metals and stones, the MER emphasised a high level of concern because Israel is the largest global exporter of polished diamonds, exporting to a large number of countries. On

95 See Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), MONEYVAL(2013)24, Report on Fourth Assessment Visit, Anti-Money Laundering and Combating the Financing of Terrorism, ISRAEL, 12 December 2013.

96 Ordinances are applicable to banking corporations, currency service providers, portfolio managers, provident funds, members of the stock exchange, insurers, and the Postal Bank. Since 15 September 2014, Israel's AML/CTF regime has been applicable to the precious stones sector. Related reporting obligations for the sector will come into force on 15 September 2016.

97 Israel clarified after the on-site visit that there is an exception for cross-border wire transfers, to which a higher threshold of ILS 1 million (EUR 200 000) applies.

7 May 2012 the Knesset approved an amendment to the PMLL, which, *inter alia*, applies the money laundering regime to dealers of precious stones, in conformity with international standards. The amendment is complemented by an Order published on 15 September 2014 on the Identification, Reporting and Record-Keeping Requirements of Dealers in Precious Stones to Prevent Money Laundering and the Financing of Terrorism (the Precious Stones Dealers Order). The Order will come into force in September 2015. The reporting requirements will only come into force on 15 September 2016, which was noted with concern in the MER follow-up report. Nonetheless, these legislative steps address a serious concern raised in the MER.

115. Israel also adopted an amendment to the PMLL (Amendment No. 13) on 30 July 2014, and on 17 November 2014 enacted an order which applies AML/CFT obligations on Business Service Providers (BSP). The amendment imposes AML/CFT obligations (customer due diligence obligations, KYC procedure, identification, verification and record-keeping) on lawyers and accountants who engage in a number of listed financial activities on behalf of their clients. The Order specifies the obligation for BSP to perform customer due diligence and determine the ML\TF risk of the transaction. The Order will come into force in September 2015. However BSP are still not subject to reporting obligations and MONEYVAL expressed significant concerns in this regard. MONEYVAL also expressed significant concerns over the fact that the real estate sector is not subject to customer due diligence and reporting obligations, although this is mitigated by the fact that lawyers are involved in all real estate transactions.

- IMPA reporting to the police and cooperation

116. IMPA is responsible for analysing UARs and CTRs and forwarding them to law enforcement as appropriate. To assist in this task, IMPA is empowered under the PMLL to obtain information (including information normally subject to bank secrecy) from reporting entities. IMPA also shares information spontaneously with its foreign counterparts. According to IMPA, it takes only a day or so to process a UAR, after which a decision would be made as to whether to pass the information on to the Israeli Police (IP).[98] The criteria for forwarding UARs were developed in cooperation with the IP and include PEPs and corruption-related offences. IMPA regularly requests and receives written feedback from the IP that includes statistics regarding the use of IMPA's intelligence reports. IMPA employs 38 staff (not including outsourced information technology employees). Israel also operates an Intelligence Fusion Centre[99] through which raw data from the IP, the Israeli Tax Authority, IMPA, and occasionally the Israel Securities Authority is processed. Israel also pointed to the establishment in May 2013 of an in-house designated police "Working Station" at IMPA to improve both the timeliness and the quality of exchange of information between IMPA and the IP.

117. In Phase 3, Israel indicated that since Phase 2, no cases of bribing a foreign public official have been detected by Israel's anti-money laundering authorities. However statistics provided by Israel show a capacity to detect bribe payments through money laundering transactions: 8 to 10% of UARs identified between 2011 and 2013 involved the laundering of bribery and for the same period, the number of PEPs involved was between 6 and 7.1%.

118. While cases of foreign bribery are yet to be detected by IMPA, a trend seems to be developing towards sharing information potentially linked to foreign bribery allegations with the IP, even if this has happened in a limited number of allegations to date. During the on-site visit, Israel stated that on three occasions, IMPA transferred information to the IP which may be connected to foreign bribery as a

98 IMPA intelligence reports are transferred to the Financial Enforcement Unit of the IP Intelligence Division, and occasionally to the Head of the Investigations and Intelligence Department of the IP, as appropriate. Matters may also be referred to IMPA by the IP.

99 Managed by the IP and located in the Intelligence Division of the Investigations and Intelligence Department of the IP.

predicate offence of money laundering. In two of these cases, IMPA transferred information of its own initiative. This information has been presented to the Director of the Department of Criminal Affairs at the State Attorney's Office, who heads the Inter-Ministerial Team dedicated to combating bribery of foreign public officials (see Section B.5 above), and the potential connection to the foreign bribery offence is being examined. In the third case, IMPA transferred information at the request of the IP in connection with one of the cases at Annex 1. (The possibility of IMPA joining the Inter-Ministerial Team is considered in Section B.5(b)(ii) above).

Commentary

Although the Lead Examiners are encouraged by the recent transmission of information in connection with three allegations of foreign bribery, they consider that Israel's anti-money laundering system could be used more effectively to detect and prevent laundering of the proceeds of foreign bribery.

The Lead Examiners welcome the expected entry into force of legislative amendments to address some deficiencies in Israel's regime regarding preventive measures and reporting obligations of business service providers (lawyers and accountants) and dealers of precious stones.

The Lead Examiners urge Israel to promptly ensure that reporting entities, supervisory authorities, and the Israeli Money Laundering and Terrorism Financing Prohibition Authority (IMPA), continue to receive appropriate directives and training on the identification and reporting of information that could be linked to foreign bribery. The Lead Examiners recommend that Israel issue guidelines and typologies to reporting entities that specifically refer to foreign bribery.

The Lead Examiners also recommend that IMPA provide better feedback to reporting institutions regarding Unusual Activity Reports (UARs) with a view to improving the quality of reporting. The Working Group should continue to follow-up the efficacy of UARs in future monitoring work.

Finally, the Lead Examiners welcome the strengthened cooperation between the IP and the IMPA, including the establishment as of May 2013 of an in-house designated police "Working Station" at IMPA. They recommend that Israel take all appropriate steps to ensure that this enhanced capacity be effectively used to detect bribe payments through money laundering transactions and continue to share information potentially connected to bribery.

7. Accounting requirements, external audit, and company compliance and ethics programmes

(a) Accounting requirements

119. Israel's main accounting requirements applicable to the private sector and government companies have not changed substantially since Phase 2. The full International Financial Reporting Standards (IFRS) were made mandatory for all Israeli listed companies in 2008 and require companies to prepare financial statements in accordance with IFRS. There are some exceptions for dual listed companies, foreign issuers and banking institutions.[100] All other companies may prepare financial statements in accordance with IFRS, Israeli Accounting Standards that are established by the Israeli Accounting Standards Board (ILASB) or US Generally Accepted Accounting Principles (GAAP). Some of the Israeli Accounting Standards are based on IFRS standards that have been fully integrated or partially adapted to the Israeli context by the

[100] See IFRS, Application Around the World Jurisdiction Profile: Israel (5 June 2013).

ILASB on a standard-by-standard basis. Listed government companies have similar accounting and reporting standards to other listed entities, and other government companies apply either IFRS or Israeli Accounting Standards (see part (b) below on external audit requirements). In addition to these obligations, the Tax Directives (Management of Accounting Books) 1973[101] establishes general bookkeeping obligations applicable to all taxpayers as well as particular requirements that are determined on the basis of the business sector to which the taxpayer belongs, business turnover and the number of employees.

120. False accounting is prohibited under article 423 of the PL, which prohibits a "founder, manager, member or officer of a legal person" from entering or causing to be entered "a false particular in a document of the legal person with the intent to deceive". [102] Natural persons may be sanctioned by up to five years of imprisonment and/or a fine amounting to the greater of ILS 226 000 (EUR 60 000) or up to four times the value of the damage caused or of the benefit obtained through the offence. Legal persons are liable to the same financial sanction. The PL defines "deceit" in broad terms such that it would appear to cover false accounting misconduct prohibited under Article 8 of the Convention.[103] During the on-site visit, police officers demonstrated strong awareness of the offence and confirmed that article 423 applies to legal persons.[104] They also explained that it is routinely considered by police in corruption investigations, for example in the *Charney* case (see Section B.2 on legal person liability). The Israel Securities Authority also has the power to investigate conduct contrary to article 423 of the PL in addition to its powers to enforce article 53 of the Securities Law, which relates to listed companies that commit false accounting in the context of failing to meet reporting obligations. Israel's focus in Phase 3 on article 423 of the PL alleviates a concern that the Working Group had in Phase 2 regarding the coverage of the false accounting provisions under the Income Tax Ordinance. At the time of Phase 2, Israel indicated that the Income Tax Ordinance was the only legal basis for the false accounting offence, which the Working Group identified as problematic for the reasons explained below.

121. The false accounting provisions under articles 216(5) and 220 of the Income Tax Ordinance are also part of Israel's accounting framework, although these provisions alone may not fully meet the requirements of Article 8 of the Convention. Article 216(5) of the Income Tax Ordinance provides that a failure to keep account books in accordance with directions of the Taxation Director is punishable by a maximum sanction of one year of imprisonment and a fine equivalent to ILS 29 200 (EUR 6 700). As noted above, bookkeeping obligations differ across business sectors and depend on factors such as business turnover and number of employees. In these circumstances, it is difficult to fully assess whether the obligations established by the various directions of the Director comprehensively cover the conduct described in Article 8 of the Convention in relation to all businesses. Of greater concern, the sanctions under article 216(5) may not be effective, proportionate and dissuasive with regard to sanctioning false accounting for cases involving large bribe payments, particularly when compared to the sanctions for the

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101 The Tax Directives are established under the authority of the Director of the Tax Authority pursuant to Article 130 of the Income Tax Ordinance.

102 Article 423 of the Penal Law: "If a founder, manager, member or officer of a body corporate enters or causes to be entered a false particular in a document of the body corporate with the intent to deceive, or if he refrains from entering in it any particular which he should have entered with the intent to deceive, then he is liable to five years imprisonment; for purposes of this section and sections 242 and 425, 'body corporate' includes a body corporate about to be established."

103 Article 414 of the Penal Law defines "deceit" as an assertion about any matter in the past, present or future, made in writing, orally or by conduct, which the person who makes it knows to be untrue or does not believe to be true, and defines "to deceive" as to induce a person by deceit to perform or to refrain from performing any act.

104 Article. 23(a) of the Penal Law provides that a body corporate shall bear criminal liability for an offense that requires proof of criminal intent or negligence, if – under the circumstances of the case and in the light of the position, authority and responsibility of the person in the management of the affairs of the body corporate – the act by which he committed the offense, his criminal intent or his negligence are to be deemed the act, the criminal intent or the negligence of the body corporate.

foreign bribery offence itself. During on-site discussions about the relatively low sanctions under article 216(5), tax officials referred to a separate offence in article 220 of the Income Tax Ordinance that imposes a penalty of 7 years of imprisonment and a fine of up to ILS 226 000 (EUR 52 000). However, article 220 is expressly connected to an intention to evade tax. Such a requirement would not be compliant with Article 8 of the Convention as it would not necessarily apply to false accounting for the purpose of bribing foreign public officials or of hiding such bribery.

122. As discussed above, Israel's obligations to prohibit false accounting under Article 8 of the Convention are implemented by article 423 of the PL. In light of the various other statutory provisions which relate to false accounting, awareness-raising and strong coordination between the relevant authorities is necessary to ensure that, where appropriate, false accounting contrary to Article 8 of the Convention is punished pursuant to the PL, whether this is led by police investigation or the Israel Securities Authority. Israel's efforts already taken in this regard, including the recent inclusion of the Israeli Tax Authority in the Inter-Ministerial Team, are encouraging.

123. Accountants who are involved in false accounting are subject to disciplinary proceedings by the Israel Auditors Council (IAC), in addition to facing sanctions under the PL or Income Tax Ordinance. Legal advisors of the Israeli Tax Authority and prosecutors of the State Attorney's Office are obliged to inform the IAC of an accountant's conviction, thus enabling the IAC to initiate proceedings.

Commentary

The Lead Examiners consider that Israel's obligations to prohibit false accounting under Article 8 of the Convention are implemented by article 423 of the Penal Law. Accordingly, they encourage Israel to continue to raise awareness in respect of this provision among relevant authorities.

(b) External audit

(i) Framework

124. All Israeli companies are subject to external audit on an annual basis, with the exception of companies with turnover less than a certain threshold. Listed companies are also subject to quarterly review by the external auditor; the auditor's opinion in the quarterly report forms part of the published financial statements of the audited company. Under article 154 of the Companies Law (CL), all companies are required to appoint an auditing accountant to undertake an annual audit of the company's financial statements and to give an opinion on those statements. As of 2015, private companies with an annual turnover not exceeding ILS 620 000[105] (EUR 143 364) are not required to appoint an auditing accountant unless at least 10% of the shareholders require it. There are over 300 000 companies registered in Israel, which includes 78 government companies. Israel is unable to indicate the number or percentage of companies that fall under the auditing threshold.

125. Some US Sarbanes-Oxley (SOX) principles were adapted to the Israeli legal system by amendments to the Securities Regulations (Periodic and Immediate Reports) 1970 with effect from 2010. Articles 9B and 38C of the Securities Regulations require every annual or quarterly financial report submitted to the Israel Securities Authority to contain declarations stating that the CEO and CFO have examined the reports and that the reports reflect the true financial position of the company. In addition, company reports must also include an assessment by management, the board of directors (annually and

[105] Adjusted annually to the consumer price index.

quarterly) and the external auditor (annually)[106] of the effectiveness of company internal controls. During the on-site visit, representatives of the accounting and auditing profession disagreed on what effect Israeli SOX has had on the independence of external auditors. One panellist voiced that it has made no practical difference, but another considered that the prohibition on auditors providing additional advice to the client company had enhanced auditor independence.

(ii) Detection and reporting

126. Israel confirms in Phase 3 that no foreign bribery cases have been detected through the activities of external auditors. Phase 2 recommendation 11(b)(ii) asked Israel to take steps to encourage accountants, internal auditors and external auditors to detect and report foreign bribery. This recommendation was only partially implemented on the basis that guidelines and training for the profession were required.

127. External auditors who participated during the Phase 3 on-site visit indicated that detection of foreign bribery by auditors was a very low priority and did not feature routinely when preparing and conducting audits. The requirements for accountants and external auditors to detect and report suspicions of fraud are based on ISA 240, which includes a requirement that auditors report suspicions of fraud to company management, and in the event management is implicated in the fraud, to those charged with governance of the company. Israel has not adopted ISA 250, which relates to consideration of laws and regulations in an audit. Its adoption is part of the work plan for the Committee on Auditing Standards of the Institute of Certified Public Accountants in Israel. The Companies Law requires senior management to convene a meeting if an auditor raises a suspicion. However, a representative of the accounting profession met during the on-site visit explained that in practice this occurs very rarely because auditors fear retribution and lack proper protections. Other representatives of the profession voiced that auditors do report suspicions of bribery to company management as a matter of company policy, although they considered there is no legal obligation to do so. There was broad agreement among auditors and accountants met during the on-site visit that only very limited procedures are implemented in their work with respect to detecting foreign bribery. One representative of the accounting profession recommended that Israel adopt a clearer and stronger obligation for auditors to detect and report instances of foreign bribery, including reporting to law enforcement authorities, and that this obligation should be accompanied by stronger protections of auditor independence.

128. There is no requirement on accountants and auditors to report suspicions of fraud, including foreign bribery, to external authorities (except in relation to government companies, as discussed below) unless obliged by article 262 of the PL. Article 262 requires a person who is aware of a felony to use all reasonable means to prevent its commission and the Israeli authorities consider this would oblige an auditor to report an impending or ongoing felony to police. This obligation would not apply to a completed offence and was not mentioned by auditors or accountants during the on-site visit. Israel has not reported any instances of such reporting.

129. External auditing requirements applicable to state-owned enterprises (SOEs) are generally consistent with those applicable to the private sector, but also include specific auditing standards and special reporting obligations. The Israel Government Companies Authority (IGCA) is responsible for overseeing SOEs. Listed SOEs are also overseen by the Israel Securities Authority. The independence of auditing accountants in SOEs is protected through provisions in the Government Companies Law 1975 and IGCA circulars. In 2014, IGCA issued a circular aimed at strengthening the independence of external auditors by clarifying the fees and terms of service, requiring a declaration of conflicts of interest, and limiting the provision of non-audit-related services. Further, the IGCA circular of 17 March 2014 requires

[106] Effective 2013, small companies are exempt from the Israeli SOX requirement regarding the effectiveness of the company's internal controls; although small companies are required to attach a brief declaration by management to this effect.

an external auditor of an SOE "to report a discovery of improper conduct by the government company, a violation of the Government Companies Law (1975) or of IGCA circulars" to the company's board of directors and the IGCA, and in certain circumstances, solely to the IGCA. Detection and reporting of foreign bribery is not specifically referenced in any of these materials.

Commentary

The Lead Examiners are encouraged by the new circular requiring external auditors of state-owned enterprises to report improper conduct, including foreign bribery, to the board of directors and the Israel Government Companies Authority. The Lead Examiners recommend that Israel encourage accountants, external auditors and internal auditors of non-state-owned companies to detect and report suspicions of foreign bribery to company management and corporate monitoring bodies, including through the provision of relevant training and awareness-raising activities.

The Lead Examiners recommend that Israel also consider requiring external auditors to report suspected acts of foreign bribery to external competent authorities, in particular where management of the company fails to act on internal reports by the auditor, and ensure that auditors making such reports reasonably and in good faith are protected from legal action.

(c) Company internal controls, ethics and compliance programmes or measures

(i) Internal company controls

130. All public companies are required to appoint an internal auditor pursuant to article 146 of the Companies Law. The appointment is made by the board of directors on the proposal of the audit committee. Audit committees are also mandatory in public companies pursuant to article 114 of the Companies Law and may be established in private companies pursuant to article 118 of the Companies Law. Israel enhanced the role of internal audit committees in response to Phase 2 recommendation 11(a), by amending the Companies Law to broaden the scope of the audit committee's activities and adjust the composition of the audit committee to ensure greater independence. These amendments took effect from May 2011. Specifically in relation to government companies, in May 2014, IGCA issued a circular requiring government companies to examine their internal controls at least every 3 years. The circular also establishes a new procedure whereby the IGCA will select government companies for additional evaluation of the quality of the company's internal audit.

131. Israel has also adopted additional measures since Phase 2 to strengthen internal auditing, but information obtained during the on-site visit suggests internal auditors play a very limited role in preventing, detecting and reporting foreign bribery. Israeli SOX provisions, which came into effect in 2010, require external audit of internal company controls of all public companies, except small public companies.[107] Non-profit organisations with an annual revenue cycle exceeding ILS 10 million (EUR 2.3 million) are also required to appoint an internal auditor with effect from February 2015. During the on-site visit, auditors confirmed the obligation to report instances of criminal misconduct, including foreign bribery, to internal company management in the case of private and public companies. Statutory rules on the independence of internal auditors and audit committees were commended by the OECD Corporate Governance Committee.[108] However, one panellist expressed serious concern that in practice internal auditors and audit committees are not independent and are usually at the behest of a controlling party of the company. Another panellist cited recent surveys of Israeli businesses that showed the use of anti-bribery

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107 Small public companies are defined as having market capitalisation less than ILS 300 million (EUR 69.9 million) and bond value of less than ILS 200 million (EUR 46.6 million). Any company listed in the TA-100 or TA-Yeter-50 indexes cannot be classified as a small public company.

108 See OECD (2012), Related Party Transactions and Minority Shareholder Rights, OECD Publishing, p. 103.

controls in companies is uncommon. The IGCA was aware of at least one occasion where an internal auditor of a government company in the construction industry detected a potential incident of domestic bribery and reported the matter to the relevant external authorities through the external auditor. None of Israel's foreign bribery investigations in Israel have been detected through the internal company controls.

(ii) Company ethics and compliance programmes

132. Israel has made substantial efforts since Phase 2 to encourage companies to adopt internal compliance programmes to address foreign bribery risks. The Ministry of Justice has a foreign bribery brochure that encourages internal mechanisms to prevent foreign bribery (including reference to the OECD Good Practice Guidance on Internal Controls at Annex II of the 2009 Recommendation), training programmes and reporting to company management.[109] The Ministry has also presented several times per year on this topic to auditors and the private sector. Other initiatives have been taken by the Ministry of Foreign Affairs, Ministry of Economy, and the Israel Export and International Cooperation Institute, including distribution of the Ministry of Justice brochure and conferences on internal compliance programmes. A representative of the Ministry of Economy explained during the on-site visit that the Ministry has identified 60 major exporters and a further 1 200 small and medium enterprise (SME) exporters for one-to-one discussions about the need to adopt corporate social responsibility measures including anti-bribery. These entities have been identified based on their expansion in markets outside of Israel resulting in greater exposure to foreign corruption risks. Israel also notes that efforts by the Israel Securities Authority (ISA) include issuing a circular that encourages the adopting of compliance programs and explains the criteria the ISA uses in evaluating their effectiveness, and consultations with industry on this topic several times a year. The ISA reported wide use of this guidance by Israeli companies. However, the ISA's activities relate generally to compliance with the Securities Law and not specifically to anti-bribery compliance.

133. The Ministry of Defence has also taken important steps to encourage ethics and compliance programmes, such as inclusion of the OECD Good Practice Guidance on Internal Controls in its anti-corruption guidelines, but could do more to enforce its rules in this area. This issue is examined in more detail below (see Section 11(c) on defence exports).

134. The private and non-government sectors have also conducted activities to encourage anti-corruption compliance programmes. During the on-site visit, business organisations reported a general increase in the number of companies adopting anti-corruption compliance programmes and employing compliance officers, which one panellist described as being non-existent five years ago.

Commentary

The Lead Examiners commend Israel's efforts to encourage companies to adopt internal controls, ethics and compliance programmes.

8. Tax measures for combating bribery

(a) Non-deductibility of bribes

135. Under Israeli law, several provisions operate to prohibit the deductibility of bribes. As was the case in Phase 2, article 32(16) of the Income Tax Ordinance 1961 prohibits the deduction of a payment where "there is a reasonable basis to believe it constitutes a violation of any law". As noted in Phase 2, bribe payments are not explicitly listed as a prohibited deduction in this law. In response to a Phase 2 recommendation, Israel issued Income Tax Circular 2/2011. The Circular provides guidance on

109 See http://index.justice.gov.il/En/about/mankal/BattleBriberyCorruption/Documents/102010.pdf

article 32(16), by stating that the article "includes a prohibition of the deduction for tax purposes of bribery payments given to foreign public officials in international transactions". Israel confirms that the Circular is binding on tax officials.[110] This view was supported during the on-site visit. The Circular is publicly available on the website of the Ministry of Justice and the Israeli Tax Authority (ITA).

136. As noted in Phase 2 and above, article 32(16) provides that a deduction must be denied where a tax official has a "reasonable basis for believing that the payment thereof constitutes a violation of any law", including foreign bribery. Tax authorities at the on-site visit confirmed that this assessment is made independently by the tax official on the basis of relevant red flags as described in the Income Tax Circular 2/2011. There is some inconsistency regarding the description of the threshold for denying deductibility. While "reasonable basis to believe" the deduction is illegal is used in article 32(16), the ITA's 2014 Work Plan refers to both "a real suspicion" and where a "suspicion is verified".[111] During the on-site visit officials referred to various different thresholds. The potential confusion which could be created by the different description of the threshold in article 32(16) and the 2014 Work Plan may prevent officials from denying deductions related to foreign bribery.

137. Following a conviction, tax examiners have five years within which to re-examine a tax report.[112] An ITA representative is part of the Inter-Ministerial Team on foreign bribery. One of the reasons for the ITA's involvement in the Team is to ensure that the ITA is informed of any foreign bribery convictions for the purpose re-examining relevant tax reports and pursuing any foreign bribery-related tax offences.

138. In Phase 2 the Working Group identified a potential loophole in Israel's regime on tax deductibility in the form on undocumented expenses for board and lodging overseas.[113] The Phase 2 report discusses the case of *Company Ltd v The Netanya Assessing Officer* ("the *Company X* case"). In this case, the Court allowed the deduction of USD 300 000 (EUR 266 425) of undocumented overseas board and lodging expenses. In allowing the deduction, the Court relied on witness testimony. In Phase 3, Israel provided the Income Tax Regulations (Deduction of Certain Expenses) 5732-1972 which provide a cap for undocumented expenses, including board and lodging abroad.[114] Income Tax Circular 2/2012 also attempts to address this issue by regulating the evidence tax examiners should consider in deciding upon undocumented deductions.

Commentary

The Lead Examiners commend Israel for issuing Income Tax Circular 2/2011 and explicitly prohibiting the tax deductibility of bribes. Nonetheless, they note with concern that the ITA's 2014 Work Plan is not consistent with Israel's legislation in its descriptions of the threshold required in order for a tax examiner to deny a deduction. The Lead Examiners recommend that Israel take steps to clarify this ambiguity.

The Lead Examiners are also concerned that despite certain safeguards, Israel's current legislative framework may still provide a loophole through which bribes can be deducted as undocumented expenses. They recommend that the Working Group follow-up on the practical application of the non-deductibility of bribes, including the application of Income Tax Circular 2/2012, to ensure that foreign bribery payments cannot be deducted.

110 Phase 2 Follow-up Report, pg. 19.
111 These thresholds are mentioned in the ITA's 2014 Work Plan.
112 Income Tax Ordinance, article 147(a)(2).
113 Phase 2 Report, para. 59.
114 Income Tax Regulations (Deduction of Certain Expenses) 5732-1972, section 2.

(b) Awareness-raising and detection

139. At the time of Phase 2, the Working Group raised concerns about tax examiners' lack of awareness of foreign bribery.[115] Since Phase 2, Israel has made efforts in this area. Circular 2/2011 (see section (a) above) has been widely disseminated and mandatory training is now provided to tax examiners. The OECD's Bribery Awareness Handbook for Tax Examiners has also been publicised, including via the ITA's website. New employees of the ITA receive foreign bribery training as part of their intensive introductory course. Ongoing training is also provided on the foreign bribery offence. In early 2015, a letter was disseminated to all tax examiners highlighting the importance of reporting all suspicions of foreign bribery to the Israeli Police (as discussed below). During the on-site visit, tax officials displayed knowledge of foreign bribery red flags.[116] Specific reference was made to the defence industry as a high-risk sector, but not to the diamond or pharmaceutical industries.

140. Since Phase 2, Israel has also enhanced its institutional capacity by establishing in 2011 the Yahalom Tax Unit, a specialised investigatory unit of the ITA. Yahalom is dedicated to organised crime, including foreign bribery. It adds to the Intelligence Fusion Centre which Israel developed just prior to Phase 2, and which remains responsible for analysing criminal information and producing reports.[117] In general, even without these units, Israeli tax examiners have broad powers to investigate tax returns, including the ability to request returns, information and accounting books, to ask for information about suppliers and customers, and to access official information.[118] In addition, the Minister of Public Security (who oversees the Israeli Police) may authorise a tax inspector to take investigative measures usually reserved for the Israeli Police, including accessing bank account information.[119] In addition, as noted above, the ITA is a member of the Inter-Ministerial Team on foreign bribery.

141. Despite the awareness-raising and detection mechanisms available, to date, the ITA has not detected any foreign bribery cases during tax examinations. Tax examiners have, however, detected domestic bribery in several instances.[120]

Commentary

The Lead Examiners are encouraged by Israel's efforts to raise tax examiners' awareness of foreign bribery. They recommend that Israel continue to provide guidance and training on foreign bribery to tax examiners, including on the importance of detecting foreign bribery and the priority given to this offence.

(c) Reporting foreign bribery and sharing tax information with law enforcement

(i) Domestic law enforcement authorities

142. The Income Tax Ordinance prohibits tax officials from disclosing any information obtained for tax assessment purposes.[121] At the time of Phase 2, Israel was drafting a circular which would extend an exception to this prohibition to allow tax information to be shared with law enforcement authorities in

115 Phase 2 Report, para. 60-62.

116 Officials referred specifically to factors such as payments abroad, commissions, marketing expenses, high balance amounts, long-standing relationships, and the business environment in which the company operates.

117 Phase 2 Report, para. 65.

118 Income Tax Ordinance, article 135.

119 Tax Ordinance, article 227.

120 *State of Israel v. Cohen* (CC 4039/05, 2 July 2008); *State of Israel v. Brand* (CC 37008-09-11, 2013).

121 Income Tax Ordinance, articles 231 and 234.

certain circumstances. The Working Group decided to follow-up on the effectiveness of this new exception (follow-up issue 13(j)). This exception to tax secrecy is now in force. Under Circular 2/2011, there are two situations in which tax secrecy can be lifted in response to a suspicion of foreign bribery: first, upon request of the police, the Director of the ITA may exercise his/her discretion to share tax information with the police, and secondly, a tax official may proactively request that the Director of the ITA lift tax secrecy and disclose the information to relevant law enforcement authorities.[122] In the case of foreign bribery, the information will be provided to the National Investigation and Intelligence Division in the Israeli Police. A representative of this unit and a representative of the ITA sit on the Inter-Ministerial Team on foreign bribery; this should ensure any reports of foreign bribery from the ITA are relayed to the Team.

143. Israel reports that there has been a sharp increase in the number of information disclosure requests that have been approved. Israel confirmed that no reports of foreign bribery have been made to the Israeli Police, the State Attorney's Office, or the Inter-Ministerial Team. This may be due to a lack of awareness of tax officials regarding foreign bribery and a consequent lack of detection, despite Israel's awareness-raising efforts (addressed above). Participants at the on-site visit also noted that tax information could be shared with law enforcement through joint investigative teams without the authorisation of the Director of the ITA. This is positive and may contribute to increasing detection of foreign bribery by tax authorities, provided tax officials have the necessary awareness and knowledge to allow for such detection.

(ii) Other countries

144. At the time of Phase 2, Israel was a party to 40 double tax agreements. Most of these agreements did not include the optional language from Article 26.2 of the OECD Model Tax Convention[123] allowing the sharing of information received for tax purposes with domestic law enforcement authorities for non-tax purposes under certain conditions. In its Written Follow-up Report, Israel stated that its tax treaties now included language allowing the exchange of information for non-tax purposes. However, this statement was contradicted in Phase 3 when Israel confirmed that its bilateral tax treaties do not allow for the sharing of information received for tax purposes with law enforcement or for non-tax purposes. Israel confirmed this position during the on-site visit and further stated that while "several" treaties existed which allowed the sharing of information for non-tax purposes, the Government's position was not to include this optional language due to privacy considerations, leaving Israel "unable to sign treaties with this language". Prior to the adoption of this report, Israel advised that the Government was reconsidering this position.

145. As in Phase 2, Israel is still not a Party to the OECD Convention on Mutual Administrative Assistance in Tax Matters (the Tax Convention) and is the only OECD country which has not signed this Convention. Officials at the on-site visit confirmed that Israel intended to join the Tax Convention, with the entry into force likely to take place towards the end of 2018 subject to required legislative amendments. These amendments will presumably include a required amendment to allow Israel to share information for non-tax purposes (as is required under the Tax Convention).

Commentary

The Lead Examiners are concerned that the detection and investigation of foreign bribery may be hampered by Israel's inability to share tax information with foreign law enforcement for non-tax purposes. They recommend that Israel consider systematically including the language of Article 26.2 of the OECD Model Tax Convention (on the use of information for non-tax purposes) in all future bilateral tax treaties.

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122 The relevant law enforcement authorities are the Israeli Police, the Israel Securities Authority, the FIU, the National Insurance Institute, and Customs.

123 Article 26 of the OECD Model Tax Convention.

They Lead Examiners are encouraged by Israel's intention to accede to the Convention on Mutual Administrative Assistance in Tax Matters and encourage Israel to pursue this intention.

9. International cooperation

(a) Mutual legal assistance

(i) Authorities involved in mutual legal assistance

146. Israel's mutual legal assistance (MLA) framework involves a range of authorities. The competent authority for the granting of MLA is the Minister of Justice, who has delegated the authority to a number of law enforcement officials. Only the Minister has the authority to refuse an MLA request. Incoming requests are ordinarily received by the Directorate of Courts, which determines to whom the request should be sent for further review. Requests regarding investigative activities in criminal matters are referred to the Israel Police Legal Assistance Unit. Requests for judicial assistance are referred to the courts for execution. Israel explains in Phase 3 that the State Attorney's Office (Department of International Affairs) also plays an important coordination and support role, particularly with regard to MLA sought in foreign bribery cases. The State Attorney's Office also promotes coordination between relevant agencies in the MLA framework through the Inter-Ministerial Team headed by the Director of the Department of Criminal Affairs in the State Attorney's Office.

(ii) Legal framework for incoming and outgoing mutual legal assistance

147. In Phase 2, the Working Group found that Israel's legislative framework with regard to MLA is satisfactory. MLA is governed by the International Legal Assistance Law 1998 and the International Legal Assistance Regulations 1999. Israeli authorities are empowered under the law to provide any sort of assistance requested as if the matter to which the request relates had occurred and was being investigated in Israel. Dual criminality is not a precondition *per se* to the provision of assistance, and assistance may be granted in the absence of a treaty. Israel explains that it is able to provide assistance with respect to cases involving natural and legal persons.

148. In Phase 3, Israel reports recent enhancements, or proposed enhancements, to its framework for international cooperation. In October 2010, Israel amended the International Legal Assistance Law 1998 to give the Minister for Justice discretionary power to exempt requesting jurisdictions from providing undertakings for compensation with respect to requests involving the seizure or forfeiture of assets. Israel identified that the requirement to provide such an undertaking discouraged foreign jurisdictions from seeking assistance. Another amendment came into effect on 9 June 2014 to enable a freezing order made on the basis of a foreign request to be extended by the court an indefinite number of times, whereas previously there was a one year limit. Israel reports that this change substantially enhances Israel's ability to freeze and recover assets in response to an incoming MLA request. Finally, if passed, the draft Crime Register and Rehabilitation (Various Amendments) Bill 2014 would expand the number of overseas agencies with which Israeli Police could provide police to police cooperation, primarily in the context of promoting public peace and security.

(iii) Incoming MLA requests

149. In Phase 2, the Working Group raised concerns about the level of police resources dedicated to dealing with incoming MLA requests.[124] The related Phase 2 recommendation (recommendation 8(a)) was deemed fully implemented and converted into a follow-up issue. At the time of Phase 2, the Mutual Legal Assistance Unit of the Israeli Police had just 3 staff handling all incoming and outgoing MLA requests,

[124] Phase 2 Report, para. 128.

which averaged 205 incoming and 105 outgoing requests each year. The number of staff had been increased to 6 by the time of Israel's Written Follow-up Report.

150. In Phase 3, the available police resources and the actual provision of MLA in foreign bribery cases appear to be adequate. Israel reports that on average there are 200 incoming and 130 outgoing MLA requests each year. During the on-site visit, police representatives confirmed that there are 6 staff in the police MLA Unit and that the full resources of the Israeli Police could be utilised in responding to an incoming MLA request through referral to a field unit under central coordination by the MLA Unit. Panellists expressed that incoming MLA requests related to foreign bribery cases are given high priority. After the on-site visit, Israel clarified that between 2012 and 2014, 6 such requests were received by the MLA Unit from parties to the Convention.[125] Israel has provided assistance in relation to all 6 requests, with the response time ranging from approximately 3 to 25 months and averaging 11 months.[126]

151. However, it is difficult to fully assess whether protection of sensitive information may pose a problematic barrier to the provision of MLA by Israel. Israel reports that, since Phase 2, one foreign bribery-related incoming MLA request made by a non-Party to the Convention was denied in order to protect confidential and defence-related information. During the on-site visit, the Israeli authorities explained that it would be possible to provide declassified information in certain circumstances, but that the wide scope of the request in this particular case precluded providing even declassified information. The prosecution authorities explained that this is the only corruption-related case in which Israel has declined to provide assistance to a requesting country and that international cooperation in defence-related cases is common. Israel highlights that it has provided MLA in response to two other requests connected to foreign bribery in the defence sector.

152. The MLA Unit explained that comprehensive data on incoming and outgoing MLA is not maintained. Information about foreign bribery-related MLA requests is recorded manually, and a computerised system to capture all incoming and outgoing MLA activity is being developed.

Commentary

The Lead Examiners are satisfied that Israel's general legal framework governing international cooperation does not raise any specific concerns and are encouraged by the recent enhancements and proposed enhancements to the framework.

The Lead Examiners recommend that Israel proceed with its expressed intention to establish a computerised system to maintain statistics on incoming and outgoing MLA, including information on the types of offences involved, the time required to execute requests, and the reasons for not granting assistance where applicable.

(iv) Outgoing MLA requests

153. Overall, there appears to be room for greater proactivity in seeking MLA in relation to foreign bribery investigations. Regarding outgoing requests, at the time of the on-site visit, Israel had sought MLA in the context of one ongoing formal investigation. After the on-site visit Israel confirmed that a second MLA request had been sought in a separate ongoing case. During the on-site visit, State Attorney's Office and Israeli Police authorities indicated that there are no legal barriers with regard to seeking MLA at the

125 This figure does not include updated or supplementary requests, or the defence-related request described in the next paragraph.

126 In relation to the response time of 25 months, it should be noted that the requesting country made an updated request approximately 13 months after the initial request, thus causing a delay in the provision of assistance.

stage of a preliminary examination. However, they acknowledged that some countries may be unwilling or unable to answer a request in the absence of a formal investigation. The authorities also stated that there are no resource constraints with regard to seeking MLA. They further explained that there is a general reluctance to seek MLA in circumstances where the prospects of receiving a response are poor because of the lack of an established relationship with the recipient country and that seeking informal police-to-police assistance is often preferable to pursuing MLA. Israel did not seek MLA in relation to any of the 3 closed preliminary examinations (see Annex 1). However, police agreed during the on-site visit that seeking MLA can be an important step in investigations, including when other avenues of evidence collection have been exhausted.

Commentary

The Lead Examiners recognise that many countries face difficulty in obtaining international cooperation in foreign bribery cases. However, they are concerned that Israel is not always effectively and proactively seeking formal international cooperation as a tool to obtain and assess evidence of foreign bribery. They note that Israel has closed 3 preliminary examinations without seeking such cooperation. The Lead Examiners recommend that Israel increase its use of formal mutual legal assistance processes, as appropriate, and continue to utilise informal means of cooperation. The Lead Examiners also recommend that the Working Group follow-up to ensure that the practice of conducting preliminary examinations does not impede seeking and receiving assistance from foreign countries.

(b) Extradition

154. In Phase 2, the Working Group raised no concerns regarding the legal framework concerning extradition, but noted concerns that resources dedicated to extradition may be inadequate. The Extradition Law 1954 permits the extradition of persons who are accused or have been convicted in the requesting State of any offence punishable by at least one year of imprisonment, which would include foreign bribery. Any extradition request must be made pursuant to an extradition agreement between Israel and the requesting State, pursuant to article 2A(a)(1) of the Extradition Law. The Convention could serve as an extradition agreement for these purposes. Israeli confirms in Phase 3 that it has not received any request for extradition relating to the crime of foreign bribery.

10. Public awareness and the reporting of foreign bribery

155. This section addresses awareness-raising efforts, reporting of foreign bribery, and whistleblowing. The reporting obligations of accounting and auditing professionals, tax officials, and officials involved in the disbursement of public advantages are respectively addressed under Sections 7, 8 and 11.

(a) Awareness of the Convention and of the foreign bribery offence

(i) Public sector awareness

156. Since Phase 2, Israel has continued to raise awareness within the public sector. The Ministry of Foreign Affairs (MFA) circulates an annual memorandum on foreign bribery to senior officials both abroad and in Israel and instructs those officials to disseminate the information to officials at all levels. MFA also provides training to all officials posted abroad (i.e. all Israeli officials posted abroad under the authority of an Israeli Embassy or Consulate, including diplomatic representatives and police and military attachés). The Foreign Trade Administration (within the Ministry of Economy) includes foreign bribery in its training for officials abroad. The Ministry of Defence has hosted a presentation for officials on

corruption in the defence sector. The Ministry of Justice (MOJ) has distributed an updated brochure on foreign bribery to relevant officials in the public sector.

157. During the on-site visit, a senior official from the Ministry of Finance stated that Israel "needs to balance fighting corruption with financial concerns". The evaluation team raised concerns that this statement might suggest that bribery is a necessary part of doing business abroad, particularly in light of comments made by a representative of the private sector (see section B.10(a)(ii) below). In a response following the on-site visit, Israel stated that the official referred to the balance between enforcement, and providing companies with the tools to "handle complex situations in international transactions". Moreover, during the on-site visit, the Deputy Attorney General (Criminal Law) provided assurances that "the struggle against corruption overrides any financial considerations" and provided case examples to this effect. Israel indicates that other relevant agencies, including those which liaise with the private sector, echo the views expressed by the Deputy Attorney General (Criminal Law) and reject the notion that bribery is a necessary business tool. Nonetheless, the corrosive effects of foreign bribery on Israel's economy may not yet be clear for all relevant public sector officials.

(ii) Private sector awareness

158. Israel's efforts to raise awareness in the private sector have been consistently maintained over the 6 years since Phase 2. A broad range of on-site panellists, including companies, stated that there was "greater and greater awareness" of foreign bribery in the private sector. Panellists stated that attitudes towards foreign bribery have changed mainly as a result of increased activity of Israeli companies abroad and international enforcement activity by other countries, although several representatives gave credit to activities by the Israeli government. Judges agreed that there has been a general shift in public and judicial attitudes towards viewing white-collar crime as more serious, potentially due to increased penalties for economic offences and a growing awareness of the importance of combating economic offences.

159. The MOJ continues to maintain a website dedicated to foreign bribery, accessible in Hebrew and English.[127] The webpage includes links to previous Working Group evaluation reports (a practice that is encouraged by the evaluation procedures but which is often not undertaken by the Parties to the Convention). Israel reports that the webpage is regularly updated. The MOJ has also organised and participated in conferences on foreign bribery, appeared on national radio to discuss this issue, and given presentations in various forums.

160. The Foreign Trade Administration (within the Ministry of Economy) has developed and distributed a leaflet on the foreign bribery offence to manufacturers, exporters, trade associations, and consultants via email, and made it available on the Ministry's website. Similarly, Israel continues to use an updated MOJ brochure on foreign bribery which is available in English, Hebrew and Arabic.[128] The brochure has been distributed to hundreds of companies, including some of Israel's largest companies, by a range of agencies including the MOJ, MAALA (a business organisation which promotes corporate responsibility), and the Manufacturers Association of Israel (an organisation with over 2000 members, representing 95% of Israel's industrial production). The Israel Export and International Cooperation Institute (a non-governmental organisation (NGO) which promotes Israeli trade) also distributed the brochure to Israeli exporters, and the Israel Export Institute's SME centre to SMEs.[129]

161. The vast majority of Israeli companies qualify as SMEs by global standards (an on-site panellist from the Ministry of Economy estimated 95% of Israel's industry were SMEs). MOJ targets SMEs in its

127 Israel Ministry of Justice "Israel Strengthens the Battle against Bribery and Corruption".

128 Questionnaire Response pg. 200.

129 The Ma'ala website (in English); the Israel Export & International Cooperation Institute website (in English).

conferences and seminars and in the distribution of its brochure. One of the SMEs represented at the on-site visit was not aware of these efforts or any targeted awareness-raising by the Israeli government.

162. The Ministry of Defence has taken some steps to raise awareness among defence exporters. Many of these efforts have been focused on encouraging the implementation of compliance programmes (see Sections B.7(c) and B.11(c) on defence export licences). General awareness-raising efforts have been made, though no specific information was provided on recent measures (i.e. since 2011). In 2010 and 2011 the Ministry held or participated in four conferences on foreign bribery. The Defence Export Controls Agency (DECA) reportedly also posts relevant anti-corruption information on its website.[130] Information was reportedly included in DECA newsletters, though no specific further details were provided to the evaluation team. Israel also reports that defence exporters have taken part in private-sector anti-corruption conferences.

163. Targeted awareness-raising in other high-risk industries is an area in which Israel could improve. More emphasis could be placed on highlighting Israel's offence, the government's commitment to enforcing this offence, and the detrimental effect of foreign bribery for businesses' sustained profitability. The outdated view that foreign bribery is a necessary part of doing business abroad appears to remain, at least in some sectors. During the on-site visit, a representative of a high-risk industry (with operations in high-risk countries) passionately asserted that Israeli companies must bribe foreign officials in order to compete abroad and ensure the sustainability of the industry which would otherwise rapidly decline (as occurred in another country with large operations in this sector). The panellist forcefully stated that Israel should not be prosecuting such conduct as this was the responsibility of the foreign state. A second panellist from the same organisation indicated agreement with these assertions. Another panellist from a different organisation disagreed, asserting that foreign bribery must be addressed by the supply-side governments as well as the demand-side governments, and stating that Israeli companies can and should be able to obtain business on the basis of their products and services, not due to "malpractices". Nonetheless, it is clear that at least some individuals operating in high risk sectors still do not understand the negative effects of foreign bribery on businesses (e.g. increased business costs, reputational risk, and the lower returns available in an unequal playing field). In this context, it is worth noting that several panellists on-site highlighted the importance of enforcement as an awareness-raising and deterrence mechanism.

164. The private sector and NGOs have played a prominent and active role in Israel's awareness-raising. In addition to the activities mentioned above, MAALA has developed a presentation on foreign bribery for its members operating abroad. It has also included bribery-related issues in its annual Corporate Social Responsibility (CSR) index. A CSR toolkit for SMEs is currently in the final stage of development. The toolkit will reportedly address corruption and provide guidance on indicators of bribery, both foreign and domestic. The Manufacturers Association of Israel has regularly included presentations by experts on the foreign bribery offence, the Convention, and related topics in its Corporate Responsibility and Anti-Bribery Business Forum (which meets quarterly and has over 300 members). A number of other presentations, seminars, and workshops have been hosted by the private sector, several of which focus specifically on foreign bribery,[131] and several Israeli law schools have now included foreign bribery within their curriculum.

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130 The website is primarily available in Hebrew. The English section did not contain any information on corruption or the Convention.

131 For example, an IEICI seminar on foreign bribery (March 2014), two seminars by MAALA on integrity in business (March 2014) and corruption and foreign bribery (March 2012); the inclusion of foreign bribery in the annual Business Ethics course held by the Jerusalem Centre for Ethics; and a seminar on bribery in the corporate arena by a leading Israeli law firm (October 2013).

Commentary

The Lead Examiners are encouraged by the consistent efforts made by Israel to raise awareness of the foreign bribery offence. Nonetheless, they feel there is further room for improvement. The Lead Examiners are concerned that some individuals may hold the view that foreign bribery is necessary for Israeli companies to compete abroad. They therefore recommend that Israel continue to raise awareness across the public and private sectors, especially in high-risk industries, of the corrosive effects of foreign bribery, including not only the ethical considerations, but also the detrimental effects of foreign bribery on companies engaging in such conduct and on Israel's economy as a whole.

(b) Reporting suspected acts of foreign bribery

165. In Phase 2, the Working Group recommended that Israel consider strengthening "reporting of credible information relating to foreign bribery to law enforcement authorities, including through the possibility of establishing a statutory obligation" (recommendation 4(a)). This recommendation was given in the context of Israel considering the introduction of a general statutory obligation for all public officials to report serious offences. This recommendation was partially implemented at the time of Israel's Written Follow-up Report on the basis that some awareness-raising had been undertaken and the statutory obligation remained under consideration but had not been enacted. The statutory obligation remains un-enacted in Phase 3.

166. There have been no significant changes to reporting requirements for the Israeli public sector since Phase 2. A Civil Service Commission Circular requires all public officials to report foreign bribery.[132] In addition, the Code of Conduct for the MFA includes a specific foreign bribery reporting requirement.[133] A breach of either of these obligations is punishable by disciplinary action. Reports from diplomatic representatives are made to the MFA Legal Department,[134] which is required to refer them to the Inter-Ministerial Team on foreign bribery. An MFA official at the on-site visit confirmed that the information is not filtered before being reported to the Inter-Ministerial Team. All other public officials are required to report "substantial information of suspicions" of foreign bribery to their supervisor, who will pass the report to the Head of the Disciplinary Committee in the Civil Service Commission, who assesses whether to transmit the report to the Israeli Police.[135] Public officials are also entitled to report directly to the police. Plans remain in place for a general statutory reporting obligation for public officials and a bill is currently being drafted. Given the current reporting requirements for foreign bribery, this bill will not change current practice as it relates to foreign bribery (it will merely change the source of the obligation to report).

167. MFA officials abroad are reminded about foreign bribery and their reporting obligations annually through a circular. Before being posted, all Israeli officials abroad (i.e. all Israeli officials posted under the authority of an Israeli Embassy or Consulate, including diplomatic representatives and police and military attachés) must sign an affidavit stating that they have read this circular and are aware of their obligations. In 2013 this circular was updated to instruct officials to report all suspicions of foreign bribery involving Israeli citizens or companies. Israel reports that it intends to emphasise in an upcoming circular that MFA officials have an obligation to actively search the local media for foreign bribery allegations. This would be a welcome development. In the absence of such an emphasis on media monitoring, the MFA's reporting requirements appear ineffective; in at least three instances media allegations of foreign bribery were not identified by foreign representations (and were instead learned about through the Working Group). As

132 Civil Service Commission Circular, October 2009.

133 Section 16, Ministry of Foreign Affairs Code of Conduct.

134 MFA Code of Conduct.

135 Civil Service Commission Circular of October 2009.

reports are made through the MFA Legal Department, this Department will keep records of any reports received. This should assist the Working Group in assessing the effectiveness of the reporting obligation, including after the forthcoming emphasis on media monitoring.

168. As in Phase 2, the public can report foreign bribery to the Israeli Police through an emergency phone number, by filing a complaint in person, by making a written complaint, or through the police website. Such reports may be made anonymously. Where a report is received by the police, it is entered into a computerised system. Reports relating to foreign bribery are brought to the attention of the National Investigation and Intelligence Division, which has a member on the Inter-Ministerial Team on foreign bribery. There is no general obligation on the public to report foreign bribery. No public reports of foreign bribery have been received. Since Phase 2, the Israel Securities Authority has established a reporting hotline through which individuals can report breaches in the capital market. This appears to be focussed on regulatory breaches (e.g. accounting violations), but could also be used for foreign bribery.

169. As discussed by the Group in Phase 2, the Chief Censor of Israel can prohibit the publication of certain material where there is a "near certainty" that publication would result in substantial injury to national security or public order.[136] The Working Group raised concerns that this may prevent the disclosure of foreign bribery allegations. Israel addressed this concern in 2010 by issuing a directive requiring the Chief Censor to report all suspicions of foreign bribery to the Israeli Deputy State Attorney of Special Affairs.[137] Since this obligation came into force, no publications regarding foreign bribery (or financial offences in general) have been censored and consequently, no reports of foreign bribery have been passed on to the Deputy State Attorney's office. Allegations relating to the Israeli defence industry have received press coverage in Israel (see Annex 1 on cases).

Commentary

The Lead Examiners recommend that Israel pursue its intention to emphasise in its upcoming circular to officials from the Ministry of Foreign Affairs the importance of searching the media for allegations of foreign bribery involving Israeli individuals or companies, and reporting those allegations in accordance with their obligations.

(c) Whistleblower protection

170. In Phase 2, the Working Group noted that while public and private sector whistleblowers received protection under Israeli law, public sector employees are entitled to some additional protections.[138] The Group recommended that Israel consider enhancing private sector whistleblower protection (recommendation 3(a)). This recommendation was not implemented at the time of Israel's Written Follow-up Report as no changes had been made to the private-sector whistleblowing framework.[139]

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136 Phase 2 Report, para. 33; Defence Regulations 1945. The Chief Censor reported that most publications submitted to her office for consideration are not censored. In 2014, 87% of publications which were submitted to her office were not censored. This was a lower number than usual due to fighting in the Gaza Strip.

137 This recommendation was repeated in the course of Israel's assessment for OECD accession. The Chair of the WGB wrote to Israel in December 2009 identifying the suppression of information by the Censor as a key concern for the WGB in relation to Israel's accession progress. Israel subsequently implemented the obligation for the Censor to report to the Deputy Attorney's office. In the context of accession discussions, the WGB considered that this action allayed their concerns.

138 Phase 2 Report, para. 36.

139 Phase 2 Follow-up Report, pg. 14-16.

171. In Phase 3, as in Phase 2, the Protection of Employees (Exposure of Offences of Unethical Conduct or Improper Administration) Law 1997 prevents public and private sector employers from taking retaliatory action in response to a complaint by an employee.[140] Employees who are dismissed or mistreated as a result of whistleblowing are entitled to compensation or reinstatement (provided the employer has more than 25 employees). Public sector employees are entitled to additional protection in the form of protective orders offered by the Ombudsman under the State Comptroller Law and the Civil Service Regulation. The Ombudsman cannot investigate any matter which is already before the courts. In Phase 2, the Working Group raised concerns that this limitation would prevent the Ombudsman providing protection to an individual who reports an offence to law enforcement where the offence is then investigated and prosecuted. In Phase 3, Israel has clarified that this would not be the case; the limitation on the Ombudsman applies only where court proceedings have commenced which are centred on the protection of the employee.

172. During the on-site visit, panellists broadly agreed that Israel's whistleblower legislation was satisfactory and operated as intended. Israel has also made several improvements to its whistleblower protection framework since Phase 2. First, in November 2014 Israel amended its legislation on legal aid (free legal representation) to ensure that legal aid is provided to all public or private sector whistleblowers, without any need to demonstrate a lack of personal funds.[141] The explanatory note to the bill introducing the amendment makes specific reference to encouraging the reporting of corruption and the Working Group's Phase 2 Recommendation 3(a). Secondly, in November 2014 Israel amended the State Comptrollers Law (which applies only to public sector whistleblowers) to allow the Ombudsman to issue protective orders for individuals who suffered mistreatment as a result of aiding a whistleblower.

173. In relation to the awareness of whistleblower protections, in Phase 2, the Group recommended that Israel raise awareness of public and private whistleblower protection, including the Ombudsman's limitations (see above) (recommendation 3(b)). This recommendation was partially implemented at the time of Israel's Written Follow-up Report. Since Phase 2, the Office of the State Comptroller and Ombudsman has taken steps to raise its profile, including hosting a conference, television appearance, social media presence, and an updated website and annual report. In addition, a national advertising campaign commenced at the beginning of 2015 and decisions of the Ombudsman are now published online. This awareness-raising is focused on protections for the public sector. Israel states that its foreign bribery awareness-raising (discussed above) includes information on the protections available to the private sector. No more specific steps appear to have been taken to raise general awareness of private-sector whistle-blower protections. Perhaps unsurprisingly then, panellists at the on-site visit reported that there was a block to whistleblowing in Israel's culture and that whistleblowing is seen as "really immoral". This perception is highly likely to deter potential whistleblowers from reporting foreign bribery. No reports of foreign bribery have been received from whistleblowers, though during the on-site visit the Israeli Police confirmed that several domestic bribery cases originated from whistleblowers.

Commentary

The Lead Examiners are encouraged by Israel's recent improvements to its whistleblower protection framework which provides protection for public and private sector whistleblowers. However, the Lead Examiners are concerned that there is a reluctance towards whistleblowing in Israel which may prevent potential whistleblowers from taking action. They recommend that Israel take steps to encourage whistleblowing in foreign bribery cases, for example, by raising

140 Phase 2 Report, para. 36; Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law 1997.

141 Legal aid will be available in proceedings under the Protection of Employees (Exposure of Offences of Unethical Conduct or Improper Administration) Law 1997 and the State Comptroller Law, as well as for internal employment proceedings, and for any relevant appeals.

awareness of the protections available to private sector whistleblowers and ensuring that easily accessible channels are available for such whistleblowers.

11. Public advantages

(a) Public procurement

174. Public procurement policies in Israel are set by the Government Procurement Administration within the Accountant General's office. At the time of Phase 2, Israel had no explicit policy on the denial of tenders on the basis of a foreign bribery conviction; this decision was left to the discretion of the procuring authority. Consequently, the Working Group recommended that Israel establish formal, written policies for denying public procurement contracts to legal and natural persons who have been convicted of foreign bribery (recommendation 12(c)). At the time of Israel's Written Follow-up Report, an ordinance (the Takam Administrative Ordinance) was being drafted which would provide a written policy on the denial of public procurement contracts to those convicted of foreign bribery. This was expected to be adopted in 2012. In the absence of this Ordinance, it was unclear if existing debarment procedures were effective in practice. Consequently, this recommendation was considered partially implemented.

175. In Phase 3, as in Phase 2, a foreign bribery conviction may result in exclusion from tender, but this will depend on the procuring authorities' discretion to (a) request access to the criminal records of suppliers,[142] and (b) exclude a supplier from the tender on the basis of a foreign bribery conviction. Officials at the on-site visit indicated that while international debarment lists can be taken into account, they are not routinely or consistently consulted. As in Phase 2, there are no written policies for denying public procurement contracts on the basis of a foreign bribery conviction. Officials at the on-site visit indicated that such a policy would be advisable, which is why the Takam Administrative Ordinance was drafted. However, as at the time of Israel's Written Follow-up, the Ordinance remains in draft form. Israel explains that the delay is due to a government decision to proceed with intended amendments to the legislation governing public procurement before adopting the Ordinance. The relevant amendments will make explicit the ability of procuring authorities to consider criminal history information in procurement decisions.

176. Procuring authorities are not required to take internal controls and compliance measures into account in tender decisions. Israel explained that such a requirement could be included in a specific tender, but they were not aware of this having occurred in practice.

Commentary

The Lead Examiners recommend that Israel proceed with plans to adopt the Takam Administrative Ordinance, or take other appropriate measures, to adopt an explicit policy for considering the denial of public procurement contracts on the basis of a foreign bribery conviction. Israel should encourage public procurement authorities to consider, as appropriate, internal controls, ethics and compliance programmes or measures and the debarment lists of the multilateral development banks in their decisions to grant public procurement contracts.

(b) Officially supported export credits

177. In Israel, the agency responsible for offering export credits and guarantees in international business transactions is the Israel Export Insurance Corporation Ltd (ASHRA). ASHRA is a member of the OECD Working Party on Export Credits and Credit Guarantees. As explained in Phase 2, ASHRA does not provide export finance; instead it provides insurance to the banks of applicant countries and/or

142 Crime Register and Rehabilitation Law 1981.

exporters. At the time of Phase 2, ASHRA had just implemented a new Internal Procedure which required due diligence to be undertaken where an applicant raises a suspicion of bribery, however, there was no clear threshold as to when a 'suspicion' would arise. Accordingly, the Working Group decided to follow-up on the practical implementation of this Procedure (follow-up issue 13(l)).

178. In Phase 3, as in Phase 2, ASHRA has policies in place to prevent and deter bribery. All applicants are required to sign a declaration stating that they, and those acting on their behalf, have not and will not engage in foreign bribery and are not listed on a publicly-available debarment list. Any charges or convictions in the preceding five years must be declared. Breaches of these declarations will result in the forfeiture of rights to compensation and the repayment of any compensation received. ASHRA also recommends that all applicants develop, apply and document internal anti-bribery systems.

179. The effectiveness of these policies depends on adequate due diligence procedures and staff awareness. ASHRA undertakes a preliminary check on all applicants to verify the accuracy of the information provided. At the on-site visit, an ASHRA representative confirmed that international debarment lists are "systematically checked" (pursuant to ASHRA's internal written procedures); however, ASHRA does not routinely check that companies have adequate internal controls. Enhanced due diligence is conducted when suspicions arise. If foreign bribery is suspected, ASHRA staff are obliged by internal written procedures to report it to law enforcement. Israel reports that no foreign bribery suspicions have been encountered by ASHRA staff, meaning these measures remain to be tested in practice. ASHRA conducted staff training on foreign bribery in 2009 and 2012, and additional training is scheduled for mid-2015. As was the case in Phase 2, ASHRA's website provides links to the Convention, the Ministry of Justice's webpage and Anti-Bribery Brochure, the World Bank's listing of ineligible firms, and the Export Credits Recommendation.

Commentary

The Lead Examiners are concerned that the foreign bribery training provided by ASHRA has not been conducted regularly. They therefore recommend that regular and ongoing training and awareness-raising be provided to ASHRA staff. They further recommend that Israel encourage ASHRA to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics and compliance programmes or measures in their decisions to grant export credit.

(c) Defence exports

180. Given the size of Israel's defence sector, and this sector's susceptibility to corruption, particular attention should be given to the public advantages and administrative sanctions available for defence exporters. This was discussed in detail in Phase 2.[143] The Defence Export Controls Agency (DECA) of the Ministry of Defence is responsible for granting marketing and exporting licences to defence exporters. In Phase 2, the Working Group recommended that DECA encourage compliance measures in the defence industry, undertake due diligence when granting licences, and consider debarment where foreign bribery has been committed (recommendation 6). This recommendation was converted to a follow-up at the time of Israel's Written Follow-up Report in light of several steps being taken by Israel (discussed below).[144]

181. In 2010, the Ministry of Defence introduced a mandatory non-bribery declaration for defence exporters applying for a marketing or exporting licence. In the absence of such a declaration, the licence would not be granted. Early the same year, Israel also issued an instruction encouraging exporters to implement a compliance programme. This instruction did not include any advice on the contents of such a

143 Phase 2 Report, paras. 44-47.

144 Phase 2 Follow-up Report, pg. 18.

programme. In November 2010, DECA published guidance on implementing an anti-corruption compliance programme on its website. This guidance includes reference to Annex 2 to the 2009 Recommendation (on Internal Controls) and covers a number of areas including compliance officers, hospitality, tone-from-the-top, agents and business partners, and internal accounting. From 2011, the implementation of a compliance programme became a precondition for the granting of export and marketing licences for major defence exporters. Such exporters reportedly account for approximately 90% of Israel's total defence exports. The Ministry of Defence has regularly approached the remaining 10% of smaller exporters to encourage them to adopt such programmes as well.[145] Ministry of Defence representatives at the on-site visit considered that many defence exporters which are not required to have compliance programmes are adopting compliance measures. It is intended that by March 2016 the requirement will cover exporters who are responsible for 96% of Israeli defence exports. In this context, better use could be made of the useful help that is provided to companies in DECA's guidance on compliance programmes. While the guidance is available on DECA's website and referred to in conferences, it was not mentioned in the most recent correspondence with defence exporters in relation to compliance programmes (January 2015).

182. During the on-site visit, multiple panellists noted with concern that there is insufficient due diligence by DECA; in particular, no steps are taken to verify the existence of a compliance programme beyond a statement from the exporter that such a programme has been enacted. So, while the obligation to implement a programme may exist, it is not enforced. No clear information was provided on-site on any other due diligence measures conducted before granting defence export or marketing licences (for example the consulting of international debarment lists). Following the on-site visit, Israel indicated that DECA does consult Israel's criminal register before granting a licence request. The Ministry of Defence is reportedly examining options to improve due diligence in this area.

183. If foreign bribery is committed by a defence exporter, relevant licences can be revoked. During the on-site visit, the Ministry of Defence explained that licences are suspended on a case by case basis and the threshold is "very, very high" in order to withstand judicial review. It is unclear whether this is the same threshold that will be applied in order to deny an application for export licences. If it is, this threshold would likely be too high to create any real deterrent for foreign bribery. If it is not, it is unclear why different thresholds are employed.

184. The high threshold may explain why this power is rarely used in practice. Six of Israel's 19 allegations of foreign bribery involve defence exporters. Of the companies involved in these 6 allegations, only 1 has had their export licence suspended (in the *Undercover Sting Case*). This occurred after charges were filed abroad in 2010. The licence was reissued after charges were dropped in 2012. In the remaining 5 allegations involving defence exporters, no action has been taken to suspend or revoke licences, despite investigative steps in the foreign jurisdiction (including the conviction of the natural person and the blacklisting of the company). Israel explains that these cases occurred before the entry into force of the Ministry's specific anti-bribery policies (e.g. the non-bribery declaration). However, the steps taken in the *Undercover Sting Case* show that even in the absence of specific policies, the Ministry was still able to take action against suspected briber-payers, but it chose not to do so in the 5 other cases. It remains to be seen whether the Ministry's specific anti-bribery policies will lead to more proactivity in the future. In the absence of adequate due diligence procedures, it is debatable how much assistance policies alone can provide.

145 Letters were provided to exporters in 2010, 2011, 2013, and 2014.

Commentary

The Lead Examiners welcome the requirements that defence exporters implement a compliance programme regarding the foreign bribery offence and make a non-bribery declaration in order to obtain an export or marketing licence. They also welcome the guidance of the Defence Export Controls Agency (DECA) on implementing a sufficient compliance programme and encourage Israel to make full use of this guidance in awareness-raising and communication activities.

Despite these positive steps, the Lead Examiners are concerned about the insufficient due diligence by DECA. They recommend that Israel take steps to (i) establish formal guidelines on the conduct of due diligence in the granting of defence export and marketing licences, including the consultation of international debarment lists and the verification of a defence exporter's statement that a compliance programme has been enacted (for example, by seeing a copy of the programme); and (ii) train relevant DECA officials on these guidelines and foreign bribery risks.

(d) Official development assistance (ODA)

185. Debarment from ODA-funded contracts on the basis of a foreign bribery conviction is of limited relevance for Israel. As was the case in Phase 2, Israel's ODA is provided largely through training and knowledge-sharing. The assistance totalled USD 201.9 million (EUR 179.4 million) in 2013. Due to the nature of this assistance, the 1996 Recommendation of the Development Assistance Committee (DAC) on Anti-Corruption Proposal for Bilateral Aid Procurement (the DAC Recommendation) does not apply to Israel and Israel is not a member of DAC. The Agency for International Development Cooperation (MASHAV), a division within the Ministry of Foreign Affairs, is in charge of planning, implementing and co-ordinating Israel's development cooperation. As with all contracts for international transactions administered by the Ministry of Foreign Affairs, ODA contracts require a declaration that the applicant has not been convicted of bribery and contain a clause providing that the contract will be terminated in the event of a bribery conviction. Some awareness-raising and training has been conducted for MASHAV employees and experts, but more would be needed should Israel's ODA increase. In Phase 2, the Working Group decided to follow-up as practice develops on the nature and extent of ODA projects in Israel, in case Israel's ODA significantly expanded (follow-up issue 13(m)). As of Phase 3, such an expansion has not occurred.

Commentary

The Lead Examiners recommend that the Working Group follow-up on the nature and extent of official development assistance undertaken by Israel and whether measures are adopted, if necessary, to prevent, detect and report foreign bribery, and to encourage MASHAV to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics and compliance programmes or measures in their decisions to grant official development assistance.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

186. The Working Group welcomes the range of measures taken since Phase 2 to enhance Israel's anti-foreign bribery framework, including the establishment of an Inter-Ministerial Team to better coordinate enforcement activity, increased sanctions for legal and natural persons, and the development of a bill that would consolidate its legal person liability framework. The Group also appreciates Israel's efforts to encourage companies to adopt anti-corruption compliance programmes, raise public and private sector awareness of foreign bribery, and explicitly prohibit the tax deductibility of bribes. While the Working Group is encouraged by the recently-opened foreign bribery investigations, it remains seriously concerned that the overall enforcement activity is too low, with no prosecutions to date. Four matters having been progressed to formal investigations, of which three were opened in the past six months. The Working Group urges Israel to become more proactive in detecting, investigating and prosecuting foreign bribery allegations.

187. Regarding outstanding recommendations from the Phase 2 evaluation, Israel has now fully implemented recommendation 3(a) on whistleblower protections. Recommendations 3(b) on whistleblower protection, 4(a) on reporting of foreign bribery and 11(b) on encouraging accountants and auditors to detect foreign bribery, remain partially implemented. Developments in case law and proposed amendments to the Penal Law would largely address the concerns identified in recommendation 10 on the liability of legal persons. Further, Israel has indicated it will introduce an explicit policy for public procurement authorities to consider the denial of public benefits on the basis of a foreign bribery conviction, which would address outstanding recommendation 12(c).

188. In conclusion, based on the findings in this report on Israel's implementation of the Anti-Bribery Convention, the 2009 Anti-Bribery Recommendation and related instruments, the Working Group: (1) makes the following recommendations to enhance implementation of these instruments in Part 1; and (2) will follow-up the issues identified in Part 2.

189. The Working Group invites Israel to report in writing on implementation of recommendations 3(b) and 5(b) and on enforcement action in one year (i.e., by June 2016). The Working Group invites Israel to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e., by June 2017). The Working Group also invites Israel to provide detailed information on its foreign bribery-related enforcement actions when it submits these reports.

1. Recommendations of the Working Group

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

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

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

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

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

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

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

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

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

d) In relation to using media reports to detect foreign bribery: (i) review and improve existing mechanisms within the Israeli Police for gathering such information, and (ii) raise awareness among the Ministry of Foreign Affairs of the importance of searching the media and reporting allegations to the appropriate authorities [Convention, Article 5; 2009 Recommendation V, VIII, IX(i)&(ii)].

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

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

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

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

Recommendations for ensuring effective prevention and detection of foreign bribery

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Regarding the reporting of foreign bribery, the Working Group recommends that Israel take steps to encourage whistleblowing in foreign bribery cases, for example, by raising awareness of the

protections and reporting channels available to private sector whistleblowers [2009 Recommendation IX(iii) and Annex I.A].

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

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

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

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

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

2. Follow-up by the Working Group

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

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

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

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

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

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

f) The role of the Inter-Ministerial Team in foreign bribery enforcement [Convention, Article 5; 2009 Recommendation V].

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

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

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

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

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

ANNEX 1: SUMMARIES OF ISRAEL'S FOREIGN BRIBERY ENFORCEMENT ACTIONS

The following are anonymised descriptions of some of the allegations of foreign bribery involving Israeli nationals or companies. As discussed in this Report (see Section A.5), since the entry into force of the Convention in Israel in 2009, 14 allegations of foreign bribery have emerged. Of these, 4 are the subject of a formal investigation (see sub-section (a) below). Seven resulted in a preliminary examination, 4 of which are ongoing (sub-section (b)), while 3 have been closed (sub-section (c)). The remaining 3 allegations are not the subject of a preliminary examination or formal investigation but are being reviewed by the Inter-Ministerial Team (sub-section (d)). Due to confidentiality and related sensitivities, Israel was not in a position to discuss what investigative steps had been taken in respect of specific cases. In addition to these 14 allegations, 5 other foreign bribery cases were the subject of preliminary examinations, but were closed upon determining that the acts predated the entry into force of Israel's foreign bribery offence (sub-section (e)).

(a) Ongoing formal investigations

Of these 4 formal investigations, 1 was opened in 2014 and the other 3 were opened in the first half of 2015.

Case #1 – Big Company #2 Case: The investigation was opened on the basis of an incoming MLA request received from a country Party to the Convention. MLA has also been sought by Israel. Israel informed the evaluation team of this investigation during the on-site visit.

Case #2 – Procurement Case: Israel became aware of this allegation through the Working Group, which obtains information from international media reports. This case involves an Israeli legal person and natural person, who allegedly paid a bribe to a public official in a country not Party to the Convention in return for a public procurement contract. The bribe was reportedly channelled through several intermediaries. Israeli law enforcement authorities are reportedly in contact with their counterparts in the foreign country, and Israel provided information in response to an MLA request received from the foreign authorities in relation to investigations into the public official. The investigation was opened after the on-site visit, and the evaluation team was informed shortly prior to the adoption of the report.

Case #3 – Technology Case: Israel learned of this allegation through the Working Group. Authorities in a country not Party to the Convention opened an investigation into an Israeli company, in relation to allegations that the company paid large bribes to high-level officials in order to win a technology contract. The bribes were allegedly paid through an Israeli national. Israel reports that it is in contact with the authorities in the country of the foreign public official and with a third country Party to the Convention. The investigation was opened after the on-site visit, and the evaluation team was informed shortly prior to the adoption of the report.

Case #4 – Infrastructure Case: This case was detected through a complaint made to the Israeli authorities by a private person, and involves allegations of bribery of a foreign public official in a country not Party to the Convention. The evaluation team was informed of this formal investigation after the on-site visit.

(b) Ongoing preliminary examinations

The ongoing preliminary examinations were opened between 2011 and 2015.

Case #5 –Mining Case #1: Israel was alerted to this allegation through the Working Group. A mining company owned by an Israeli national allegedly used intermediaries to pay very large bribes to high-level

officials in a country not Party to the Convention in relation to mining operations. An inquiry by the foreign country concluded that operating licenses had been obtained through corruption and these were revoked. Two other Convention Parties are actively investigating this case and an alleged intermediary was convicted for related charges in one party. MLA requests have been received from the two Convention parties investigating the case and have been executed by Israel. Aside from the gathering of information in the context of responding to these MLA requests, no other investigative steps have been taken. Israel states that legal person liability is being considered, as is reportedly done in all cases.

Case #6 –Mining Case #2: Israel learned about this allegation from the Working Group. A mining company incorporated in another country Party to the Convention allegedly paid bribes to officials in a non-Party, in relation to mining operations. The bribes were reportedly channelled through companies controlled by an Israeli natural person. Another Convention party opened an investigation into the mining company. Israel opened a preliminary examination, and informally sought and received information from the investigating Convention party.

Case #7 – Big Company #1 Case: Israel learned of this allegation through its independent review of media reports. An agent of an Israeli company reportedly paid a bribe to a foreign official. Israel reports that a preliminary examination is ongoing; however, a review of the information available indicates that a formal investigation is unlikely.

Case #8 – IMPA Case #1: After the on-site visit, Israel reported a new case which was detected by the Israeli Money Laundering and Terror Financing Prohibition Authority (IMPA). Information was transferred from IMPA to the Israeli Police regarding a suspicion of offences under the Prohibition of Money Laundering Law which may relate to a foreign bribery offence. The Israeli Police have commenced a preliminary examination.

(c) Closed preliminary examinations

Case #9 – Undercover Sting Case: Israel learned about the case through media reports and the Working Group and opened a preliminary examination. A law enforcement agency in a Convention party arranged a sting operation to catch companies and individuals committing foreign bribery. As part of this operation, an Israeli company and several Israeli nationals agreed to bribe a high-level official in a country not Party to the Convention. The operation led to several indictments in the relevant Convention party including against the four Israeli nationals. Following several acquittals at trial and issues admitting evidence, all remaining charges were dismissed (including those against the Israeli nationals). Israel sought and obtained information from the other Convention party. However, the information obtained was reportedly insufficient to open an investigation.

Case #10 – Agent Case: Israel learned of this case through the Working Group. An Israeli national (who operated as an agent on behalf of four Israeli companies) was arrested in connection with the alleged bribery of government officials from a country not Party to the Convention in order to secure a deal worth several million USD for one of the companies. Israel opened a preliminary examination and sought information from the foreign country but the request was denied on the grounds of confidentiality. The Israeli agent was tried, convicted and imprisoned in the foreign country. Israel reports that the information available to the Israeli Police was originally insufficient to open an investigation into the Israeli companies. However, Israel subsequently indicated it was conducting a further review of the material available.

Case #11 – Arbitration Case: Israel learned of the case from the Working Group and opened a preliminary examination. The Israeli co-owner of a company based in a country not Party to the Convention allegedly paid a large bribe to a high-level official in a third country, also not Party to the Convention, in relation to an arbitration decision. Another Israeli national allegedly aided in this endeavour. An investigation was

opened in the country of the foreign public official and both Israeli nationals were prosecuted, convicted, and sentenced to prison, although they were later pardoned and released after paying a substantial sum. The Israeli Police concluded that there was no merit in pursuing the investigation as the individuals had been tried and convicted elsewhere.

(d) Allegations which are not subject to a preliminary examination or formal investigation

While these allegations are not subject to a preliminary examination or formal investigation, Israel indicates they are being reviewed by the Inter-Ministerial Team.

Allegation #1 – Big Company #3 Case: Israel learned of this allegation through the Working Group. An Israeli company reported in its quarterly report that it may have violated corruption laws in multiple countries. Authorities in another Convention party are investigating and Israel is reportedly in contact with these authorities. No preliminary examination or formal investigation had been opened as of the time of this report.

Allegation #2 –Equipment Case: After the on-site visit, allegations emerged in the media that an Israeli national had paid a large bribe to a high-level official in a country not Party to the Convention, in relation to a public procurement contract. Upon being made aware of the case by the evaluation team, Israel is seeking to obtain information through the Ministry of Foreign Affairs.

Allegation #3 – IMPA Case #2: After the on-site visit, Israel reported a second allegation which had been detected by IMPA. Information was transferred from IMPA to the IP regarding suspicions of money laundering which may relate to a foreign bribery offence. An initial evaluation indicates that it is unlikely that foreign bribery occurred; however the evaluation had not yet been completed as of the time of this report.

(e) Closed preliminary examinations concerning bribery allegations that predate Israel's foreign bribery offence

The following cases concern facts that predate Israel's criminalisation of foreign bribery. The Israeli law enforcement authorities opened preliminary examinations into these cases, which were subsequently closed upon determination that the acts had occurred prior to the entry into force of the foreign bribery offence.

Case #12 – Manufacturing Case: An Israeli manufacturing company entered into a joint-venture with several state-owned companies in a country not Party to the Convention. Criminal corruption charges were filed in the foreign country against officers of the joint venture. An investment dispute subsequently arose and a resulting tribunal decision on the dispute found that the Israeli company appeared to have paid USD 4 million in bribes to foreign public officials or to 'consultants' with close ties to the government. Israel reports to have learned of the case through the Working Group. On the basis of the information contained in the tribunal decision, Israel concluded that the bribes pre-dated the entry into force of Israel's foreign bribery offence. The decision not to investigate was taken by the Director of the Department of Criminal Affairs in the State Attorney's Office (the head of the Inter-Ministerial Team) in consultation with the Team, and the available information was transmitted to the Israeli Tax Authority.

Case #13 – Arms Deal Case: Several high-level public officials from a country not Party to the Convention were dismissed after local media reported corruption in the context of arms deals. One of the companies alleged to have paid bribes is owned and operated by an Israeli national. Israel learned of the case through the Working Group. Israel's preliminary examination determined that the acts were determined to have occurred prior to the entry into force of the foreign bribery offence.

Case #14 – SOE Case #1: An Israeli state-owned company allegedly paid bribes in a country not Party to the Convention in order to win substantial procurement contracts. An investigation was launched in the foreign country, several officials were charged, and the company was blacklisted. Israel was alerted to this case through the media and the Working Group. A preliminary examination was commenced and contacts established, but Israel reports that it was unable to obtain information from the foreign country despite repeated efforts. The preliminary examination was closed after the prosecutors in the Inter-Ministerial Team reviewed a court decision in the foreign country which indicated that the relevant acts occurred before the entry into force of Israel's foreign bribery offence.

Case #15 – SOE Case #2: An Israeli state-owned company reportedly paid bribes to officials in a country not Party to the Convention in order to win a public procurement contract. The allegations were revealed in the media and solidified during the course of an investigation in the foreign country. Israel learned of the case from the Working Group and media reports. A MLA request was received by Israel from the foreign country, but could not be completed as the request was for the release of confidential defence-related information. Israel's preliminary examination concluded, based on sources including public and governmental information, that the alleged acts occurred prior to the enactment of Israel's foreign bribery offence.

Case #16 – Arms Company Case: The alleged bribery acts in this case predate the entry into force of the foreign bribery offence in Israel. Allegations emerged that an Israeli armament company had paid bribes to officials in a country not Party to the Convention in relation to an armament contract. An investigation was opened into the foreign officials. Israel was alerted to the case through the Working Group, and the Israeli Police opened a preliminary examination. On the basis of public and governmental information, this examination was closed as the acts appeared to have occurred prior to the entry into force of Israel's foreign bribery offence. MLA was provided to the foreign country.

ANNEX 2: PHASE 2 RECOMMENDATIONS TO ISRAEL AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2012

	RECOMMENDATIONS	**WRITTEN FOLLOW-UP**
Recommendations for Preventing and Detecting Bribery of Foreign Public Officials		
1.	Regarding awareness-raising in the public sector, the Working Group recommends that Israel take steps to continue to raise the level of awareness of the Convention and the foreign bribery offence, including further attention to the detrimental effects of foreign bribery, within the public sector generally as well as specifically within the Ministry of Foreign Affairs Center for International Cooperation (MASHAV) and the Defense Export Controls Directorate of the Ministry of Defense (Revised Recommendation I).	satisfactorily implemented
2.	Regarding measures in the private sector, the Working Group recommends that Israel:	
	a) Continue to raise the level of awareness of the Convention and the foreign bribery offence, including further attention to the detrimental effects of foreign bribery and the extraterritorial effect of the offence, amongst the public generally as well as specifically within the business sector and defence industry, including through the engagement of businesses operating abroad by Israeli overseas diplomatic representatives (Revised Recommendation I).	satisfactorily implemented
	b) Consider making key resources on the Convention and the foreign bribery offence available in Arabic, English and Russian (Revised Recommendation I).	satisfactorily implemented
3.	Regarding whistleblower protection, the Working Group recommends that Israel:	
	a) Consider enhancing the level of protection against discriminatory or disciplinary action afforded to private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities (Revised Recommendation I and V(C)(iv)).	not implemented
	b) Take further steps to raise awareness within the public and private sectors of the availability of whistleblower protection, including awareness of the limitation upon the Ombudsman to take protective action concerning matters which are pending in court or in which a court has given a decision (Revised Recommendation I).	partially implemented
4.	Regarding reporting of foreign bribery, the Working Group recommends that Israel:	
	a) Consider taking appropriate measures to strengthen the detection of foreign bribery through the reporting of credible information relating to foreign bribery to law enforcement authorities, including through the possibility of establishing a statutory obligation for all public sector employees to report to law enforcement authorities information or suspicions that a serious criminal offence is or has been committed by an Israeli company or individual, with an accompanying clarification that any such obligation applies to the reporting of foreign bribery (Revised Recommendation I).	partially implemented
	b) Impose an obligation on the Military Censor to forward any information to	satisfactorily

	law enforcement authorities and/or the Attorney General where that information has been suppressed by the Censor (whether in part or in full) and the information alleges the involvement of an Israeli company or individual in foreign bribery (Revised Recommendation I).	implemented *converted to follow-up issue*
5.	Regarding officially supported export credits, the Working Group recommends that the Israel Export Insurance Corporate Ltd (Ashr'a): (i) continue to undertake training on the detection of bribery and how to deal with clients who use foreign agents; and (ii) consider requiring clients to incorporate anti-bribery clauses when engaging sub-contractors (Revised Recommendation I and VI(ii)).	satisfactorily implemented
6.	Regarding detection within the defence industry, the Working Group recommends that Israel: (i) encourage the defence industry in Israel to develop strong anti-corruption measures and engage in international anti-corruption initiatives concerning the defence sector; (ii) ensure that, when providing licenses for exporting military equipment and dual-use goods, the Defense Export Controls Directorate of the Ministry of Defense considers whether applicants have been involved in bribery as well as the level of risk of corruption in relation to arms procurement in the destination country; and (iii) consider the temporary or permanent disqualification of enterprises convicted of bribing foreign public officials from applying for export licenses (Revised Recommendation I and VI(ii)).	satisfactorily implemented *converted to follow-up issue*
7.	Regarding taxation, the Working Group recommends that Israel:	
	a) Clarify the prohibition on the deductibility of payments made "in contravention of any law" by introducing an express denial of the deductibility of foreign bribe payments either in tax legislation or through another mechanism that is binding and publicly available (Revised Recommendation IV; 2009 Recommendation on Tax Measures I(i)).	satisfactorily implemented
	b) Expressly communicate to tax officials the non-tax deductibility of bribes and the need to be attentive to any outflows of money that could represent bribes to foreign public officials, including commissions, bonus, gratuities as well as non-documented expenses incurred abroad, through the issuance of guidelines or manuals, and training programs (2009 Recommendation on Tax Measures).	satisfactorily implemented
	c) Continue to include in existing and future tax treaties the Commentary to Article 26(2) of the OECD Model Tax Convention, allowing for the reciprocal sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities in relation to corruption offences (Revised Recommendation IV; 2009 Recommendation on Tax Measures).	satisfactorily implemented
Recommendations for Preventing and Detecting Bribery of Foreign Public Officials		
8.	Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Israel:	
	a) Take further steps as a matter of priority to ensure that the Police Legal Assistance Unit is adequately resourced to enable it to provide prompt and effective legal assistance (Convention, Article 9(1); Revised Recommendation VII).	satisfactorily implemented *converted to follow-up issue*
	b) (b) Complete without undue delay its preliminary enquiries concerning allegations of foreign bribery by Israeli companies, including through appropriate measures for the exchange of information about these allegations with the foreign public officials' country, and decide whether to commence formal investigations into these matters (Convention, Article 5;	satisfactorily implemented

	Revised Recommendation I and VII(i)).	
9.	Regarding jurisdiction over the foreign bribery offence, the Working Group recommends that Israel:	
	a) Given the stringent requirements of dual criminality for the application of nationality jurisdiction, ensure the full effectiveness of nationality jurisdiction, especially in the case of legal persons (Convention, Article 4(2)).	satisfactorily implemented
	b) Proceed promptly with the amendment of Article 291A of the Penal Law 1977 to include a specific reference to "a political entity that is not a State, including the Palestinian Authority" in the definition of a "Foreign State" (Convention, Article 4(1)).	satisfactorily implemented
10.	Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Israel ensure: (i) the active prosecution of legal persons who engage in foreign bribery, including State-owned or State-controlled companies; (ii) that the need to identify a natural person does not prevent effective investigation, prosecution and sanctioning of legal persons; and (iii) that the level of natural persons in respect of which the criminal liability of legal persons can be engaged is applied broadly enough to capture the situation of legal persons that have decentralised decision-making processes (Convention, Article 2; Revised Recommendation I).	not implemented
11.	Regarding accounting and auditing, the Working Group recommends that Israel:	
	a) Take measures to encourage Israeli companies that are active in foreign markets to: (i) continue to develop and adopt adequate internal company controls and standards of conduct with a particular focus on the control of foreign operations and on compliance with the law criminalising foreign bribery; and (ii) develop and strengthen monitoring bodies (such as audit committees) and ensure that they are independent of management and have the effective power and competence to fully perform their functions (Revised Recommendation V(C)).	satisfactorily implemented
	b) In consultation with relevant professional associations: (i) develop and implement more stringent requirements to effectively ensure the independence of external auditors; (ii) take steps to encourage the detection and reporting of suspected bribery of foreign public officials by accountants and internal and external auditors, in particular through guidelines and training for these professionals and through raising the awareness of management and supervisory boards of companies about these issues (Revised Recommendation V(B) and V(C)).	partially implemented
12.	Regarding sanctions for foreign bribery, the Working Group recommends that Israel:	
	a) Increase the level of penal sanctions available against natural persons convicted of the foreign bribery offence to provide for effective, proportionate and dissuasive sanctions (Convention, Article 3(1)).	satisfactorily implemented *converted to follow-up issue*
	b) Increase the level of financial sanctions available against legal persons convicted of the foreign bribery offence to provide for effective, proportionate and dissuasive sanctions (Convention, Article 3(1)).	satisfactorily implemented *converted to follow-up issue*
	c) Establish formal, written policies for denying ODA contracts and public procurement contracts to legal and natural persons who have been convicted of foreign bribery, and debarment of defence industry companies convicted of foreign bribery (Convention, Article 3(4); Commentary paragraph 24;	partially implemented

	Revised Recommendation VI).	

Follow-up by the Working Group

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

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

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

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

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

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

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

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

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

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

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

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

l) The application in practice of new internal procedures adopted by Ashr'a, particularly as this applies to due diligence, and enhanced due diligence procedures where there are suspicions that applicants or clients have been or are involved in payment of bribes to foreign public officials.

m) The nature and extent of official development assistance projects undertaken by Israel, with a

view to determining whether this is extended from the current mandate and practice of MASHAV and whether further structures for the detection and prevention of foreign bribery should be implemented accordingly (Revised Recommendation I and VI(iii)).

ANNEX 3: LEGISLATIVE EXTRACTS

Penal Law 1977, as amended

Article 7. Offences by location

"Domestic offence" – (1) an offence, all or part of which was committed within Israel territory; (2) an act in preparation for the commission of an offence, an attempt, an attempt to induce another to commit an offence, or a conspiracy to commit an offence committed abroad, on condition that all or part of the offence was intended to be committed within Israel territory;

"foreign offence" – an offence that is not a domestic offence;

"Israel territory", for the purposes of this section – the area of Israel sovereignty, including the strip of its coastal waters, as well as every vessel and every aircraft registered in Israel.

Article 14. Offences Against an Israeli Citizen or a Resident of Israel

(a) The penal laws of Israel shall apply to ex-territorial[146] offences against the life, body, health or freedom of an Israeli citizen or of a resident of Israel, for which the maximum penalty is one year imprisonment or more.

(b) If an offence was committed on a territory that is subject to the jurisdiction of another state, the penal laws of Israel shall apply to it only if all the following conditions are met: (1) it is also an offence under the laws of that state; (2) no exemption to criminal liability applies to the offence under the laws of that state; (3) the person was not already acquitted of it in that state, or – if he was convicted – he did not serve the penalty imposed on him for it.

(c) The penalty imposed for the offence shall not be more severe than that, which could have been imposed under the laws of the state in which the offence was committed.[147]

Article 15. Offence Committed by an Israeli Citizen or by a Resident of Israel

(a) The penal laws of Israel shall apply to an ex-territorial[148] offence of the categories of felony or misdemeanour, which was committed by a person who - when the offence was committed or thereafter - was an Israeli citizen or a resident of Israel; if a person was extradited from Israel to another country for that offence, and was tried for it there, the Israeli penal laws shall no longer apply to the offence.

(b) The exemptions set forth in Article 14(b) and (c) shall also apply regarding the applicability of the penal laws of Israel under this Article; nevertheless, the exemption set forth in Article 14(b)(1) shall not apply if the offence is one of the following, and was committed by a person who – at the time when the offence was committed - was an Israeli citizen:

(…) (2A) Bribing a foreign public official under Article 291A; (…).

146. Note: Translation provided in Phase 3 uses "foreign offences"

147. Note: Translation provided in Phase 3 reads: "No penalty shall be imposed for the offence that is more severe than that which could have been imposed under the Laws of the State in which the offence was committed".

148. Note: Translation provided in Phase 3 uses "foreign offences"

Article 16. Offence against international law

(a) Israel penal laws shall apply to foreign offences, which the State of Israel undertook – under multilateral international conventions that are open to accession – to punish, and that even if they were committed by a person who is not an Israel citizen or an Israel resident and no matter where they were committed.

(b) The restrictions said in article 14(b)(2) and (3) and (c) shall also apply to the applicability of Israel penal laws under this section.

Article 23. Criminal liability o fa legal person

(a) A legal person shall bear criminal liability (…)

(2) for an offence that requires proof of criminal intent or negligence, if – under the circumstances of the case and in the light of the position, authority and responsibility of the person in the management of the affairs of the legal person – the act by which he committed the offence, his criminal intent or his negligence are to be deemed the act, the criminal intent or the negligence of the legal person.

Article 28. Exemption because of remorse

A person who attempts to commit an offence shall not bear criminal liability for the attempt if he proves that, solely of his own accord, and from repentance, he abstained from completing the act or contributed substantially to the prevention of the consequences on which the completion of the offence depended; however, the aforesaid shall not derogate from criminal liability for another, completed, offence involved in the act.

Article 34(a). Exemption because of remorse

If a person incited another or was an accessory, then he shall not bear criminal liability for enticement or for being an accessory, if he prevented the commission or completion of the offence, or if he informed the authorities of the offence in time in order to prevent its commission or its completion, or if – to that end – he acted to the best of his ability in some other manner; however, the aforesaid does not derogate from criminal liability for another completed offence connected to the same act.

Article 61. Indeterminate fine

(a) Notwithstanding anything provided in any Law, when a Court is empowered to impose a fine, it may impose

(1) if imprisonment for not more than six months, or only a fine, or a fine of no fixed amount is prescribed for the offence – impose a fine of up to 14,400 ILS;

(2) if imprisonment for more than six months, but not more than one year is prescribed for the offence – impose a fine of up to 29,200 ILS;

(3) if imprisonment for more than one year, but not more than three years is prescribed for the offence – impose a fine of up to 75,300 ILS;

(4) if imprisonment for more than three years is prescribed for the offence – impose a fine of up to 226,000 ILS;

(b) This article shall not derogate from any provision that empowers a Court to impose fines in excess of the amounts stated in sub-article (a), or from the provisions of article 63.

(c) If a Law prescribes a fine for ongoing offence or an additional fine for every day that the offence continues, then the Court may – instead of that fine – impose a fine of up to 1,400 ILS.

(d) This article is not intended to change the amounts which the Court is competent to impose as fines for noncompliance with an order that concerns testimony or the production of documents, or for contempt of Court.

Article 290. Bribe taking

(a) a public official who takes a bribe for an act related to his functions, is liable to ten years imprisonment or the higher of the following fines:

(1) Five times the fine specified in Article 61(a)(4), and if the offence was committed by a legal person - ten times the amount specified in Article 61(a)(4).

(2) Four times the value of the benefit obtained or intended to be obtained by the offence.

(b) In this Article, "public official" - including an employee of a legal person that provides a service to the public.

Article 291. Bribe Giving[149]

A person who gives a bribe to a public official as defined in Article 290(b), for an act in relation with his functions, is liable to seven years imprisonment or a fine as specified in Article 290(a).

Article 291A. Bribing a Foreign Public Official[150]

(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.[151]

(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 is not limited to, any governmental unit in the foreign country, including national, district or local unit, and also includes a political entity that is not a state, including the Palestinian Council.[152]

149. Note: In Phase 3, this offence is labelled “Bribery”.

150. Note: In Phase 3, this offence is labelled “Bribery of a foreign public official”.

151. Note: the translation provided in Phase 3 uses the following language: “…shall be treated as a person who gives a bribe according to article 291”.

152. Note: the translation provided in Phase 3 reads: “"foreign country" including any governmental unit in the foreign country, including a national, district or local unit, and including a political entity which is not a state, including the Palestinian Council”;

"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 organisation, and any person holding a public office or exercising a public function for a public international organisation;

"public international organisation" means an organisation formed by two or more countries, or by organisations formed by two or more countries.

Article 293. Methods of bribery

In connection with a bribe it is immaterial:

(1) whether it was in cash or in kind, a service or any other benefit;

(2) whether it was given for an act or an omission, or for a delay, acceleration or impediment, for preference or for discrimination;

(3) whether it was for a specific act or to obtain preferential treatment in general;

(4) whether it was for an act of the person who took it or for his influence on the act of another person;

(5) whether it was given by the person himself or through another person; whether it was given directly to the person who took it or to another for him; whether in advance or after the event; and whether it is enjoyed by the person who took it or by another;

(6) whether the function of the person who took was one of authority or service, permanent or temporary, general or specific, and whether its performance was with or without remuneration, voluntarily or in the discharge of an obligation;

(7) whether it was taken for a deviation from the performance of his obligation or for an act which the public servant must perform by virtue of his position.

Article 294. Further provisions

(…) (b) If a person offered or promised a bribe, he shall be treated like person who gave a bribe, even if he met with refusal.

Article 295(c). Bribery intermediaries or prohibited consideration for a person with significant influence

If a person gave money, valuable consideration, a service or some other benefit to a person said in subsections (a) or (b), then he shall be treated like a person who gave, and if a person accepted as said in subsection (b1), then he shall be liable to half the penalty prescribed in that subsection.

Article 297. Confiscation and reparation

(a) When a person has been convicted of an offence under this Article, the Court may, in addition to the imposed penalty:

(1) order confiscation of what was given as a bribe or what may has taken its place;

(2) obligate the person who gave the bribe to pay to the Treasury the value of the benefit he derived from the bribe.

(b) The provisions of this article shall not preclude a civil claim.

Article 423. False entry in documents of body corporate

If a founder, manager, member or officer of a legal person enters or causes to be entered a false particular in a document of the legal person with the intent to deceive, or if he refrains from entering in it any particular which he should have entered with the intent to deceive, then he is liable to five years imprisonment; for purposes of this article and of articles 424 and 425, "**legal person**" includes a legal person about to be established.

ANNEX 4: LIST OF PARTICIPANTS IN THE ON-SITE VISIT

Government Ministries and Agencies

- Ministry of Defence
- Ministry of Economy
- Ministry of Finance
- Ministry of Foreign Affairs (MFA)
- Ministry of Justice (MOJ)
- ASHRA - The Israel Foreign Trade Risks Insurance Corporation Ltd
- Chief Military Censor
- Israel Government Companies Authority
- Israel Securities Authority
- Prime Minister's Office
- State Comptroller and Ombudsman
- Tax Authority

Law enforcement authorities and Judiciary

- District Attorney's Office
- State Attorney's Office
- Israeli Money Laundering and Terror Financing Prohibition Authority
- Israel Police
- District Court Judge
- Magistrates Court Judge

Private Sector

Private enterprises

- ADAMA Agricultural Solutions Ltd.
- Amdocs
- Delta Galil
- Haifa Chemicals
- ORBIT Communication Systems Ltd.
- Rafael Advanced Defence Systems Ltd.
- Siemens Israel
- Silver Shadow
- SunTree Ltd.

Business associations

- Institute of Certified Public Accountants in Israel
- Institute of Internal Auditors in Israel
- Israel Auditors' Council
- Chemical, Pharmaceutical & Cleantech Society
- Israel Advanced Technology Industries
- Israel Diamond Exchange Ltd.
- Israel Export and International Cooperation Institute
- Maala
- Manufacturers Association of Israel

Financial institutions

- Abroker Trading and Securities Ltd.
- Bank of Israel
- Benleumi Bank
- I.B.I Investment House

Legal profession and academics

- Adini, Berger, Gabbay, Advocates
- Chen, Yaari, Rosen-Ozer & Co.
- Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co
- Herzog, Fox & Neeman Law Office
- University of Haifa
- Solo practitioners

Accounting and auditing profession

- Deloitte
- KPMG

Civil Society

- Transparency International Israel
- The Movement for Quality Government in Israel
- TheMarker
- Freelance journalists

ANNEX 5: LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

Acronyms

AG	Attorney General
AML/CFT	Anti-Money Laundering/Counter Financing of Terrorism
ASHRA	Israeli Export Credit Agency
BSP	Business Service Provider
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CPO	Criminal Procedure Ordinance
CSR	Corporate Social Responsibility
CTR	Currency Transaction Report
DAC	OECD Development Assistance Committee
DECD	Defence Export Control Agency
EUR	Euro (currency)
FIU	Financial Investigation Unit
GAAP	Generally Accepted Accounting Principles
GDP	Gross Domestic Product
IASB	Israeli Accounting Standards Board
ICSID	International Centre for Settlement of Investment Disputes
IFRS	International Financial Report Standards
ILS	Israeli Shekel (currency)
IMPA	Israeli Money Laundering and Terrorist Financing Prohibition Authority
IP	Israeli Police
ISA	International Standards on Auditing
ITA	Israeli Tax Authority
KYC	Know Your Customer
MASHAV	Israeli Agency for International Development Cooperation
MER	Mutual Evaluation Report by the FATF
MFA	Ministry of Foreign Affairs
MLA	Mutual legal assistance
MOJ	Ministry of Justice
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MSP	Prohibition of Money Laundering
OECD	Organisation for Economic Cooperation and Development
ODA	Official development assistance
PEP	Politically exposed person
PL	Penal Law
PMLL	Prohibition on Money Laundering Law
SME	Small and medium sized enterprises
SOE	State Owned Enterprise
SOX	US Sarbanes-Oxley Act
UAR	Unusual Activity Report
US	United States
USD	United States Dollar

Abbreviations

2009 Recommendation	OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009)
Convention	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
Working Group	OECD Working Group on Bribery in International Business Transactions