

The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).



Israel Securities Authority

Corporate Department

www.isa.gov.il

Staff Position

The authority's staff position brought hereunder, are professional positions which reflect the decisions and the positions of the staff in issues concerning the implementation of securities' laws. The content of the published positions guides the authority and the staff in carrying out their powers, and the public can use them and apply them in similar circumstances.

6th Av 5775
22nd July 2015

Legal Staff Position 105-30: Manifestation on the existence of dependence between the value appraiser and the corporation, and manifestation concerning the value appraiser whose appraisals are extremely essential to the corporation

On the 26th August 2015 we updated the staff position in order to reflect, in its simple framework, the examination of revenue in clause (7c) in part A.

The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).

Legal Staff Position 105-30: Manifestation on the existence of dependence between the value appraiser and the corporation, and manifestation concerning the value appraiser whose appraisals are extremely essential to the corporation

This legal position deals with two matters;/ dependence of value appraisers, and also – information on a value appraiser whose collected value appraisals are most essential to the business of the corporation.

A. **Dependence of a Value Appraiser**

Background:

The international standards of financial reporting (IFRS) and the Securities Law, together with its regulations, do not obligate, usually, the reporting corporation to be assisted by an independent value appraiser, for assessing their value. However, a reporting corporation will frequently decide the use the services of a value appraiser, as above, for a variety of reasons, which include, amongst others: giving an objective look to the results of the appraisal; establishment, and increase reliability to the report; lack of sufficient expertise amongst the staff inside the corporation; or – as a result of a requirement of other parties (such as loaners or courts) to use an independent appraiser for various purposes. At the same time, the fact that the value appraiser is dependent on the reporting corporation is liable to affect the level of reliance of the users of the report on the value appraisal.

Regarding periodic value appraisals, that have been defined as “substantial” or “very substantial”¹, regulation 8b(b) of the securities regulations (Periodic and Immediate Reports), 5730 – 1970 (henceforth – “Regulations for Periodic and Immediate Reports) defined that:

*“In assessing value, expression will be given, inter alia, to the following:.....
(2) the existence of dependence between the corporation and a value appraiser; and if there was such dependence – the corporation will state the substance of the dependence, and will explain why the above-mentioned value appraiser was preferred to other, independent value appraisers.”²*

The regulations do not specify what circumstances dependence creates, and therefore the need for this part of the this legal position (henceforth – “The Legal Position”) which clarifies when manifestation is required in such a case.

**The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).**

A draft of the legal position was published for public comment on 8th February 2015. The period for receiving comments from the public ended on 15th March 2015, however the authority's staff also took into account comments and reaction received after that date. In the same way, comments and reaction received in writing, and those received orally were taken into consideration. For details of the public's principal reaction, and the way it was treated, refer to **appendix A**, attached to the position.

1 Regarding this matter, refer also to SLB-105-23 in relation to parameters for the substantial examination of value appraisals, and also questions and answers that were published in connection with this legal position.

2 The need to give a manifestation regarding the value appraiser's dependence exists also in additional situations as a result of the implementation of regulation 8b. These include: regarding a substantial, or essential value appraisals in the framework of a prospectus, from regulation 62b of the securities regulations (details of the prospectus, and the draft of the prospectus – structure and form) 5729 – 1969 (henceforth – "Regulations for Details of Prospectus"); regarding value appraisals that serve to determine the value of remuneration in a transaction with a controlling shareholder, as per regulation 3a9 of the securities regulations (Transaction between a Company and its Controlling Shareholder) 5751 – 2001; regarding substantial value appraisal for determining the value of remuneration in an irregular private offer, as per regulation 15 of the securities regulations (Private Offer of Shares in a Registered Company), 5750 – 2000; regarding value appraisals which are used for the purpose of purchase offers, as per regulation 16a of the securities regulations (Purchase Offer) 5750 – 2000; regarding an essential value appraisal in quarterly reports, as per regulation 49 of the regulations for Periodic and Immediate Reports; regarding a value appraisal for debt arrangements, as per regulation 37.u.4 of the regulations for Periodic and Immediate Reports; regarding a value appraisal for the purposes of a merger, as per regulation 37.l. of the regulations for Periodic and Immediate Reports, and in other circumstances.

**The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).**

Staff Position (Part 1):

a. In this Position Statement –

“Value Appraiser” – Someone who was directly involved in assessing the value, including a worker in a value assessing team, who is managerially responsible, or able to exert significant influence in the process of value appraisal, and a company under the control of each of them.

b. General

According to the position of the staff, the financial test of dependence is an objective, external test. That is, they would consider a value appraiser as dependent upon a reporting corporation, if there are circumstances which could, in the eyes of a reasonable person, aware of all the relevant facts, harm the judgement of the value appraiser for the purpose of undertaking a value appraisal.³

Furthermore, and without detracting from the aforementioned generality, there will be presented below, specific circumstances, where if one or more of them exists, it means that it can be presumed that the value appraiser is dependent on the reporting corporation. In the above event, according to the regulations, the corporation must issue a manifestation that the value appraiser is dependent upon the reporting company, to specify the nature of the aforementioned dependence, and to explain why the value appraiser was preferred over other, independent value appraisers. It is understood that if a corporation believes that, despite the existence of the circumstances, the value appraiser is not dependent, it can also explain why it is of this opinion.

- c. Without detracting from the generality of what has been said before, it can be presumed that a value appraiser is dependent on the reporting corporation, if to the best of the knowledge of the reporting corporation, or to the best of the knowledge of the value appraiser, one or more of the following options exists. If one of the options exists, as stated, a manifestation to that end will be given, as stated in regulation 8b(b).
1. The value appraiser, a member of his family or his partner, are controlling shareholders in the reporting corporation, or were so in the two years prior to the value appraisal, or expect to become so in the period after the value appraisal.
 2. The value appraiser, a member of his family or his partner were or are officials in the reporting corporation, in a corporation under their control, or in a corporation under the control of the controlling shareholder, in the two years prior to the value appraisal, or expect to become so in the period after the value appraisal.

The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).

3. If there are, were in the two years prior to the date of the value appraisal, or expected to be after the date of the value appraisal, significant commercial connections (except conducting value appraisals, and including supplier-customer connections, connections in the giving and receiving of services, rental of property, partnership in business, common transactions, partnership in assets, giving or receiving loans, etc.) between the value appraiser, a member of his family or his partner, and the reporting corporation, its controlling shareholder or a corporation controlled by any one of them.

Despite what has been stated above, a single, one-time, albeit significant transaction will not be considered to have created dependence, as long as it was conducted in a regular business procedure, and at market conditions, as long as a manifestation was given as to the nature of the transaction, and the fact of its significance, and if the transaction is an expected transaction, that has not yet come about – a manifestation will also be given that the transaction is expected to come about after the value appraisal.

4. The fees of a value appraiser are dependent on the performance of the reporting corporation, or on the success of the commercial act connected to the value appraisal.

Despite what has been said, a place where it has been determined in advanced that the value appraiser's fees will rise in a ratio that is not significant in relation to the total fees, and that it was agreed in advance that, as a result of the success of a first public flotation, and turning the corporation into a reporting corporation, will not be considered to have created dependence, as long as a manifestation thereto has been given, and to the increase in fees as a result of the success of the flotation.

5. The fees of a value appraiser, in part or in whole, is conditional upon the results of the value appraisal.
6. The value appraiser, a member of his family or his partner, held, from the time of the association until the time that the opinion was given (or its publication, whichever was later) a substantial quantity of the reporting corporation's securities, or securities of the subject of the value appraisal, or of another corporation whose value is derived from, or is liable to be substantially influenced by, the value appraisal.

For these purposes, "Substantial Quantity" will be examined from the point of view of the value appraiser, or a member of his family, and it may be presumed that it is substantial if the value of the securities is equal or greater, to the best of the knowledge of the value appraiser, than five per cent of the total assets of the value appraiser, his family member or his partner, on their own merits, as long as a manifestation is given on the holding of the securities.

For this purpose, "The Holding" -with the exemption of a holding in blind loyalty, i\an indirect holding by means of an exchange traded note or trust fund, etc.

7. More than fifteen per cent of the value appraiser's income in the three years that ended⁴ on the date of the value appraisal, emanate from the reporting corporation, the controlling shareholder or a corporation controlled by any of them.

**The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).**

For the purpose of this clause, in the first three years of the value appraiser's activity the level of income will be a rate of twenty-five per cent, instead of fifteen.

⁴ This presumption was amended in August 2015, so that the examination will be performed over a three year period, instead of a period of a year, as was determined in the original position. See clause 18 in the table in Appendix A.

8. The value appraiser is a member of staff at the reporting company, its controlling shareholder, or a corporation controlled by one of them, or that in the process of preparing the value appraisal, the value appraiser conducted negotiations, or expected to be employed by them after the value appraisal.
9. The value appraisal relates to a property that the value appraiser valued in the past, for the purpose of a decision taken by the reporting corporation, its controlling shareholder, or a corporation controlled by any one of them, to purchase it, and two years have not yet passed since the purchase of the above-mentioned property, or that the value appraiser served, in the two years prior to the value appraisal, as an agent, or consultant in a transaction connected to the asset, or expects to act in the role of agent or consultant in a transaction after giving the opinion.
10. There is a substantial debt for fees, the original due date of which has passed, between the reporting corporation, its controlling shareholder, or a corporation controlled by any one of them, between the value appraiser.
11. The value appraiser, a member of his family or his partner, is taking part or has taken part, in the two years prior to the date of the value appraisal, in making management decisions for the reporting corporation, or at the time of conducting the value appraisal, the value appraiser, or a member of his family, holds expectations about participating in future managerial decision making.

For the purpose of this clause, "Management Decisions" – including giving advice which might influence, directly or indirectly, significantly, the value of the item that is being valued.

12. There is a continuing legal conflict, or a legal conflict in account of which a claim has been filed in court, between the value appraiser and the reporting corporation, its controlling shareholder or a corporation controlled by one of them.
13. The value appraiser received from the reporting company, its controlling shareholder, or a corporation controlled by one of them, an indemnity in connection with an opinion that he gave in his value appraisal, which does not leave the value appraiser significantly exposed to any potential, future damage, connected with his opinion.

For the purposes of this clause –

Giving an indemnity which leaves the value appraiser exposed to at least more than three times his fees, as an indemnity which does not create dependence, and vice

**The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).**

versa; giving an indemnity concerning information that was received from the company only, and about which the value appraiser in the value appraisal that it was received from the company, and that in his appraisal he relied upon it, will be considered as an indemnity that does not create dependence;

In order to remove all doubt, the presumptions that were detailed above, are subject to contradiction, and a corporation which believes that, despite their existence, there is no dependence, will specify, in addition to the above-mentioned manifestation, the reasons for his opinion.

B. Manifestation regarding a Value Appraiser whose appraisals are Essential to the Corporation

Background:

Regulation 8b of the regulations for periodic and immediate reports deals with value appraisal that is substantial or essential. Moreover, it is conceivable that there are instances in which a corporation has an appraiser of an essential value, who deals with a number of value appraisals in the company, so that the company's financial reports rely on him greatly – and that is the case, even if each one of the value appraisals is not essential on its own. According to the authority's staff position, in such an instance, the manifestation of the fact that there is a value appraiser whose value appraisals, collectively, are essential to the company's financial reports, is an important detail for a reasonable investor.

Staff Position (Part 2)

a. In this position –

“Appraiser of Essential Value” – A value appraiser who conducts, for the reporting corporation a value appraisal whose purpose is the basis of determining the value of data in a periodic report, including determining that there is no need to change the value of aforementioned data, at a total sum (in absolute values) greater than twenty-five per cent of the total assets of the corporation, as presented in the united financial report for the last day of the year being reported.

- b. If the reporting corporation has an appraiser of an essential value, a manifestation will be given, in the report, of the following:
- The identity of the appraiser of the essential value.
 - Manifestation of the total capital, assets, obligations, revenue and expenditure (as relevant), which were assessed by him;
 - Details of the association with the value appraiser, according to clause two of the third addendum to the regulations for periodic and immediate reports, with the obligatory changes.

The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).

c. Preparations for the Implementation of the Legal Position

In order to allow the reporting corporations and the value appraisers to prepare themselves suitably for the implementation of the examinations and manifestations specified in this staff position, the authority's staff will not intervene if the reporting corporations will choose to act in accordance with the position, concerning value appraisals that have been initially prepared for the purpose of a periodic report for the year 2015 on onwards.

Concerning value appraisals for the purpose of immediate reports, including for the purpose of transactions with controlling shareholders, the authority's staff will not intervene, if the reporting corporations will choose to act in accordance with this position, starting from October 2015 and onwards.

The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).

Appendix A – Public Comments and Reaction to the Draft of the Legal Position

A draft of the legal position was published for the purpose of public reaction and comments on 8th February 2015. The period for accepting public comment ended on 15th March 2015, however, when formulating this legal position, the authority also took into account written and verbal comments and reactions which were received after that date. The authority's staff wishes to thank the public for their helpful comments.

The table on the following pages includes details of the principal public comments, with the response of the authority's staff to the aforementioned comments.

(Continuation on following page).

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

Topic of Comment	Content of Comment Received	Response of Authority's Staff
General Comments	<ol style="list-style-type: none"> 1. <u>Determination of prohibitions within the position</u> – a certain respondent expressed his misgivings that the characteristics of the market in Israel (including: high centrality, high leverage; remuneration of management dependent on accountant profits; frequent transactions with interested parties; and also – asymmetry in information between the investor and the other parties) oblige the use of above average severe limitations in the framework of the draft of the legal position. According to the position of the respondent, amongst other comments, the obligation to provide a manifestation concerning dependence as defined in clause 8b(b) of the regulations for periodic and immediate reports, does not create any benefit for the investor, , and does not produce any deterrent for the value appraiser of for the controlling shareholder. According to the position of the respondent, amongst other comments, prohibitions must be determined in the position, concerning certain conditions of associations, over and above the claim that they might create dependence. 2. <u>Fixing a “cooling off” period for certain holdings</u> – certain respondents stated that for some of the suppositions no “period of obsolescence” had been fixed, after their violation, at the end of which, the suppositions would no longer be considered such that create dependence, unless the circumstances continue to exist. 3. <u>Differentiation between a transaction with a controlling shareholder and a transaction not with a controlling shareholder</u> – a certain respondent proposed creating a distinction in the suppositions in the legal position concerning dependence between value appraisals in reports for the purpose of a transaction with a controlling shareholder, and the other reported value appraisals. The respondent stated that regarding transactions with controlling shareholders, the ruling in Israel enforced the “Entire Fairness” approach, which relates both to the elements of proper procedure, and also to the correctness of the remuneration that has been agreed. According to the respondent, many subjective estimates are required for a value appraisal, and therefore the identity (and level of dependence) of 	<ol style="list-style-type: none"> 1. The comment was not accepted. In this context, we wish to stress that the authority's staff places great importance on the quality of value appraisals that are used for reporting, and as part thereof, places importance also on the degree of the appraiser's professionalism, the degree of his objectivity, and as part thereof – also the absence of dependence between the appraiser and the reporting corporation. It was this importance that led the staff to instigate the publication of the legal position, and it was this importance that led it to instigate regular checks, audits and other regularizations, in all things connected with value appraisal. It would be right to state and to stress that the international accountancy standards (and also the auditing standards accepted in Israel and in the world) <u>permit</u> a corporation to conduct value appraisal by means of a dependent appraiser, including the corporation's own staff – however, in the aforementioned situation it is clearly understood that the value appraisal is liable to be characterized by relatively low levels of objectivity and reliability. Therefore, in the regulations for periodic and immediate reports, it was determined that there would be an <u>obligation for manifestation only</u> concerning the existence of dependence of the value appraiser. It would be proper to state that the legal position is intended to be a legal interpretation of the above mentioned requirement for a manifestation, and there is nothing in it that might change the requirements of the regulations. 2. The comment was accepted. In some of the suppositions (see suppositions 1, 9 and 10) a comment has been added regarding a “period of obsolescence”, after which the circumstances would no longer be considered as such that create dependence. 3. The comments were not accepted. The authority's staff would like to stress that the list of presumptions that was composed in the position is not an exhaustive list, and it is only intended to interpret the required manifestation by regulation 8b(b) of the regulations for periodic and immediate reports. Amongst other things, the legal position is not intended to include various prohibitions on the method of fixing fees, prohibitions for a system of indemnity, and it is not intended to determine the identity of the appraiser (cf. the staff's response to comment no. 1 above, on a similar issue). Neither does the position deal with, and is not intended to deal with the question whether a transaction with a controlling shareholder complied with legal, procedural, or certain substantial conditions. It would be right to point out that neither does

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>the value appraiser are liable to have a significant influence on the price of the transaction and its overall fairness. As part of this, the respondent proposes widening the requirements regarding the dependence of the value appraiser in a transaction with a controlling shareholder to <u>additional</u> situations of business connections or professional connections or personal ties between the value appraiser and the company. However, he does not specify what the additional situations are, and he proposes demanding a clear manifestation of the terms of the fees, while enforcing a system for determining fees at a level agreed in advance. In addition, the respondent proposes the prevention of giving indemnity altogether. According to the respondent, also in transactions with a controlling shareholder, a lower level should be set for the test of revenue in the supposition (7). The respondent also suggests that the authority should consider taking more comprehensive steps, such as the establishment of a pool of value appraisers, fit to give opinions in transactions with controlling shareholders.</p> <p>4. <u>The interface between the legal position and auditing standard 96 issued by The Institute of Certified Public Accountants in Israel concerning “Employing an Expert” (“The Standard”, “The Auditing Standard”)</u> – A certain respondent stressed that often the reporting corporation, or the auditing accountant choose to employ an expert to conduct (or to check) a value appraisal connected to the financial reports of the reporting corporation (inter alia, experts in actuary, an assessor or a value appraiser). In a situation where the auditing accountant employs an expert, the auditing standard determines that the auditor must assess the <u>objectivity</u> of the expert (and in addition, of course, his <u>professional expertise</u>). According to the standard, objectivity is influenced by matters and connections which are liable to create a threat to the expert’s objectivity. The standard determines, inter alia, that the results of the auditing accountant’s examination of the expert’s expertise, and level of objectivity have Implications on the scope of the audit proof that the auditing accountant must obtain. The auditing standard determines that the appraisal of the expert’s objectivity relates to a wide range of considerations, which include, amongst other things, an examination of the “threats” to damage the</p>	<p>regulation 3a9 of the securities regulations (a transaction between a company and its controlling shareholder (5751 – 2001 which refers to regulation 8b of the securities regulations (periodic and immediate reports) 5630 – 1970, create any distinction in the rules for the manifestation of dependence between value appraisals for the purpose of financial reports, and an opinion for the purpose of a transaction with a controlling shareholder, and so the authority’s staff decided not to create any differentiation in the aforementioned rules for manifestations.</p> <p>4. The comment was not accepted. The auditing standard obliges the auditing accountant to assess the expert’s level of objectivity and level of expertise. According to the auditing standard, objectivity relates to possible implications of bias, conflict of interest, or outside influence on the expert’s professional or commercial discretion. Despite the similarity between the term “objectivity” as defined in the auditing standard, and the term “dependence” for which a manifestation is required in the regulations for periodic and immediate reports, it appears that the term “objectivity” is wider than the term “dependence”, and could include the consideration of factors such as circumstances in which a certain value appraiser is also the commercial competitor of the reporting corporation, or, alternatively, consideration of impressions formed from direct discussions between the auditor and the expert, regarding the superiority of the expert’s objectivity and the control and defence systems in place to reduce the threats. In view of the differences, we decided not to attempt to create a “unification” of the terms.</p> <p>5. The comment was not accepted. Although the declaration in question could serve as a partial replacement for the examinations specified in the legal position, it is important to stress that for most of the value appraisers in Israel, adoption of the rules of practice and ethics of international associations is only voluntary, and also there is no desire on the part of the staff to anchor the status in Israel of the various standard bodies and associations mentioned above by means of this legal position. Perusal of the various publications from the aforementioned bodies on the topics of objectivity, independence and ethics, shows that those publications are not detailed to a level that the staff position would want, in relation to the examination that must be conducted in connection with damaging independence (and also not always consistent among themselves).</p> <p>6. The comment was partially accepted. It is important to point out that the legal position serves as an interpretation for the requirement that <u>exists</u></p>
--	---	--

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>objectivity, such as the expert's personal or financial matters (financial dependence, investment in the corporation); a threat resulting from the expert's self-review; a threat because of close relations between the expert and the corporation (commercial relations; provision of other services, personal connections, and employer – employee relations), and on the other hand the existence of "defence mechanisms" which can reduce the threats. The respondent claims that, as the auditing accountants are required to examine the expert's level of objectivity (and as part thereof, his level of dependence) under the auditing standard, there is <u>a concern</u> of the use of a double set of rules: the test of the expert's objectivity will be conducted according to the auditing standard, and on the other hand the test of the value appraiser's dependence for the purpose of the manifestation and reporting will be carried out according to the legal position.</p> <p>5. General Declaration by virtue of the rules of the voluntary associations of value appraisers – some of the respondents drew our attention to the fact that the profession of value appraisal is sometimes organized in professional associations, and standard bodies, some of whom are voluntary, and some regulatory, in the field of value appraisal abroad. Some of the societies and bodies have even issued publications which have been determined as obligatory, abroad, in certain judicial fields. As part of this, there are accepted professional standards, concerning professional ethics for value appraisers who are members of that association. Among such bodies, the following can be mentioned: The Appraisal Standards Board of the Appraisal Foundation, The CFA Institute, and the American Society of Appraisers (henceforth – "ASA"). As part of the professional standards, there are various publications which relate to objectivity, to independence, or to the manifestations required of value appraisers. The respondents state that even today some of the value appraisers are required (sometimes even by law) to include in their value appraisal, a declaration by members of the team (and only them) that the value appraisals have been prepared in accordance with the aforementioned directives for professional ethics. The respondents further claim that the inclusion of such a declaration as per the rules of ethics and independence accepted abroad</p>	<p>in regulation 8b of the regulations for periodic and immediate reporting. This regulation requires the issuing of a manifestation for – <i>"the existence of dependence between the corporation and the value appraiser"</i>. Therefore, the change of the term is liable to necessitate a change in legislation, and could even bring about a change in the significance of the requirement, as stated in response no. 4 above. In some of the places in the position, the wording has been adapted in order to reflect the fact that a manifestation is required where <u>dependence</u> exists, and not where <u>independence</u> exists. It should also be pointed out that some of the sources which relate to the employment of experts, do use the term "objectivity", however some of the international publications also use the term "independence".</p> <p>7. The comment was not accepted – First of all, we wish to state that the implementation of regulation 8b of the regulations for periodic and immediate reports, has a broad scope, which potentially includes every value appraiser who has conducted a value appraisal for a reporting corporation. This not only includes Real Estate Actuaries in Israel, but also other appraisers in the rest of the world. Actuaries who are members in various organizations, and also other value appraisers who are subject, voluntarily or mandatorily, to certain rules. However, it is to be expected that some of the value appraisers in this broad implementation will be subject, inter alia, to additional professional or ethical rules. We have decided not to create an exclusion for a specific group such as the Real Estate Actuaries in Israel, for precisely the same reason that there is no exclusion for all the regulations for manifestation in the third addendum to the regulations for periodic and immediate reports, despite the existence of appraisal standard no. 17 which also deals with the rules for manifestations. Moreover, it should be specifically pointed out that perusal of the regulations for Real Estate Actuaries (Professional Ethics) 5726 – 1966 shows that they almost totally fail to give any details concerning the rules for non-implementation. Finally -the Actuary Standard no. 12 has not yet been published in its final form, and, as far as we understand, it has been in the process of formulation for a significant period of time.</p> <p>8. The comment was not accepted – Even though there is a certain logic to the proposal, the position of the authority's staff is that distinction between various "strengths" of dependence is liable to create difficulties and unwieldiness in choosing weak "criteria" as opposed to "strong" criteria. In addition, A distinction, as stated, is not acceptable in the</p>
--	---	--

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>could be a solution, instead of the examinations proposed in the legal position which are more detailed than the accepted standard in the rest of the world.</p> <p>6. Use of the term “Independence” – A certain respondent stated that in his opinion the use of the term “independence” should be reserved for accountants, and should not be used in a legal position dealing with value appraisers, in whose case it is preferable to use the term “objectivity”. To that end, the respondent even referred the authority’s staff to a number of international publications.</p> <p>7. Exclusion of Real Estate Actuary in Israel from the implementation of the Legal Position – A certain respondent stated that, as opposed to other value appraisers, Real Estate Actuaries in Israel are subject, in their qualification, to the Real Estate Actuaries Law 5726 – 1962, to the regulations for Real Estate Actuaries (Professional Ethics) 5726 – 1966, and also standards for actuaries issued by the standards committee of the Council of Real Estate Actuaries. The respondent also states that at the time of his comment, the Actuary Standard no. 12, which deals with conflicts of interest, and with harm to independence, is in the process of being formulated. He goes on to say that in view of the aforementioned publications, there is reason to exclude Real Estate Actuaries in Israel from the implementation of the legal position, in order not to create two sets of directives for them.</p> <p>8. Definition of “Levels” of presumptions – A certain respondent suggested creating levels of presumptions. Some of the presumptions will be considered as creating dependence, even if they stand on their own, whereas for other presumptions or certain “softer” circumstances, dependence will be considered as being in existence only if two options together are in place. Regarding presumptions which, in the opinion of the respondent, are especially weak, only a manifestation will be given, without positively determining the existence of dependence.</p>	<p>examination of independence of accountants. Therefore, we have decided not to accept this recommendation. <u>Moreover, according to the position of the staff, each of the instances included in the legal position damaged independence on its own accord.</u></p>
<p>Definition of “Value Appraiser”</p>	<p>9. Definition of “Value Appraiser” – A value appraiser is defined in the draft as “some-one who conducted a value appraisal, including a company under his control or some-one who controls them. In this respect, in a company or partnership of value appraisers, all the partners or interested parties in the</p>	<p>.9. The comment was partially accepted. After examining the comments, the authority’s staff decided to change the legal position, and to include a narrower definition of “value appraiser”. The main reason for this is the nature of association in the value appraisal branch. In this field, the association is often random, and not long-term, and an approach to a value appraiser is sometimes made at short notice</p>

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>company will be considered value appraisers, and also any other employee who was directly involved in preparing the value appraisal.”</p> <p>Certain respondents pointed out that this definition is liable to be too broad, and so likely to create difficulties, especially in situations in which the value appraiser is a firm, or a company with partners, or many interested parties. Therefore, the respondents propose to narrow the definition. In this context, the following comments were received:</p> <p>A. <u>Difficulties in tracing and identification</u> - certain respondents stated that giving a value appraisal is sometimes a <u>localised</u> service given during a short association in relation to other services, such as auditing financial reports. The cost of the time and the unwieldiness, involved in a detailed examination of all the criteria, specified in the draft (and in particular – tracing the work of the family members of all the partners, tracing the securities held by the family members of all the partners, etc.) in relation to each one of the partners or interested parties with a value appraiser, is expected to be significant. On the other hand, the advantage of these examinations would be comparatively small. Therefore, implementation of the proposed draft in its present format might have been liable to place at a comparative disadvantage, value appraisers characterised by a large number of partners or interested parties.</p> <p>B. <u>Lack of Substantial Dependence</u> – it was the opinion of some of the respondents that, in a firm of accountants or company of value appraisers characterised by a large number of partners or interested parties, often there will be no substantial dependence which would influence the process between the value appraiser and the reporting corporation, in a situation in which, for example, a certain partner is responsible for the conducting of a value appraisal, and at the same time another partner in a distant branch, which deals, for example, with auditing has some indirect contact with the reporting corporation. Therefore, the respondents claim that implementation of the draft in its original format would be liable to place at a</p>	<p>which does not enable a comprehensive examination, as is required in the draft of the position. On the other hand, we do not accept the claim that the value appraiser would not be dependent, if he knew that a partner who is not actively involved in value appraisal is holding for him, for example, securities in a client on a substantial scale.</p> <p>Consequently, in the legal position, the definition of “value appraiser” has been amended to- <i>“some-one who was directly involved in value appraisal, including working in a value appraisal team, some-one who is managerially responsible, or has the ability to exert a significant influence on a value appraisal process, and a company under the control of any one of them.”</i></p> <p>Concerning some of the presumptions, the dependence has been defined as being harmed if they exist at the level of value appraiser, at the level of family member, or at the level of partner.</p> <p>In addition, clause C of the position has been amended so that it has been made clear that the test whether there any holdings is conducted, <u>to best of the knowledge of the value appraiser and the reporting company.</u></p>
--	---	---

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>disadvantage value appraisers characterised by a large number of partners or interested parties, without sufficient reason.</p> <p>C. <u>Narrowing of Definitions</u> – some of the respondents referred the staff to the fact that in relation to the independence of accountants, the accountants’ regulations (conflict of interests and damage to independence as a result of other dealings), 5758 – 2008, differentiate between the attendant accountant, the auditing accountant, and the auditing firm of accountants, in a way that each one of the aforementioned definitions has its own, individual, implementation. Some of the presumptions are examined in relation to a specific definition, whereas others are examined at a narrower or wider level. The respondents propose the creation of gradual or narrower definitions also in the legal position.</p>	
<p>Presumption of Dependence – Presumption C1 – Value Appraiser, a family member or partner, were or are controlling shareholders in the reporting corporation</p>	<p>10. <u>Superfluous Presumption</u> – A certain respondent claims that the aforementioned presumption is superfluous as it is completely obvious. Moreover, the respondent points out that the presumption does not include situations in which the appraiser is a substantial shareholder, but not a controlling shareholder. The respondent even proposes to forbid situations of holdings by a value appraiser</p>	<p>.10. The comment was not accepted. The staff of the authority agree that the permanent presumption that dependence is created in a situation in which the appraiser controls a company, is required logically, but the staff decided to include the presumption for the sake of clarity, especially in light of the fact that it relates also to control by family members or partners of the value appraiser. Regarding a holding which does not grant control – we should like to stress that there exists a <u>separate presumption</u> for a share holding that is not control (cf. presumption 6c); as regards including prohibitions on an appraiser holding shares in a reporting corporation – see the staff’s response to comment 1 above.</p>
<p>Presumption of Dependence – Presumption C2 – Value Appraiser, a family member or partner, were or are officials in the reporting corporation</p>	<p>11. <u>Superfluous Presumption</u> – A certain respondent claims that presumption on question is superfluous as it is completely obvious.</p> <p>12. <u>Creating a Test for the Future</u> – A number of respondents pointed out that within the presumption there was no “vision” for the future in the test – i.e. it does not relate to a situation in which the appraiser may serve as an employee or an official after the appraisal, but that the test looks to the past only.</p>	<p>.11. The comment was not accepted. The authority’s staff agrees that the presumption is logically self-evident, but decided to include it for the sake of clarity, exactly in the way that it is has been included in the announcements and publications concerning independence of accountants.</p> <p>.12. The comment was accepted. As part of the legal position it has been made clear regarding this presumption (and by analogy regarding a number of additional presumptions) that the presumption will be considered to have been violated in a situation in which the value appraiser <u>expects</u> to be an official in the reporting corporation after carrying out his work. It should be pointed out that tests which examine the expectations of value appraisers regarding future participation in the rights due from a property, exist in international sources, such as the ASA’s Principle of Appraisal practice and Code of Ethics.</p>
<p>Presumption of</p>	<p>13. Routine Transactions that are not Substantial – a certain</p>	<p>.13. The comments were not accepted – Regarding a routine transaction – it should</p>

The following translation is intended solely for the convenience of the reader.

For the original Hebrew text – [click here](#).

<p>Dependence – Presumption C3 – Existence of substantial commercial ties between a value appraiser, a member of his family, his partner, and the reporting corporation.</p>	<p>respondent claims that dependence can be created in any situation in which there is a routine transaction which is not substantial. In addition, in the opinion of a number of respondents, an exemption should not be determined, in which, even a substantial transaction should not be thought to be creating dependence if it is a single transaction, at market conditions, and even if for this solitary transaction a manifestation has been given.</p> <p>14. Additional Services – A certain respondent claimed that there is a lack of clarity in the question whether the presumption defines as dependence a situation in which various services are provided such as commercial consultancy, or planning internal auditing by the value appraiser or a body connected to the value appraiser.</p>	<p>be pointed out that certain exemptions also exist for auditing accountants in a decision concerning clause 9b of the securities law, 5728 -1968, which was published by the Israel Securities Authority in August 1992 (cf. clause 1.4.1c of the above-mentioned decision), and also in the accountancy regulations (conflict of interests and damage to dependence resulting from outside business), 5758 – 2008 (cf. regulation 6b2 of the above-mentioned regulation). In the opinion of the staff, there is no logic in more severe dependence requirements for value appraisers than for accountants, in part, because of the nature of the service provided. <u>Regarding a substantial transaction</u> – The staff recognizes that there might arise a claim that in any circumstances in which a substantial transaction is conducted between the reporting corporation and the value appraiser, a certain dependence is created between the value appraiser and the reporting corporation. However, the staff believes that in a situation in which the transaction is conducted at market conditions and in accordance with normal procedure, as long as a manifestation will be given about the substantial transaction, and the nature of its substance – the option of manifestation about the transaction provides a proper balance despite the claim that there exists dependence between the value appraiser and the reporting corporation as a result of the transaction, which is itself substantial.</p> <p>.14. The comment was accepted. The text of the presumption has been clarified and adapted, and an explicit statement has been added according to which the provision or receipt of <u>additional services</u>, that are not value appraisal, constitute commercial ties. Regarding the provision of services by companies connected to the value appraiser – the presumption is examined concerning the value appraiser, however, it will be considered to have been violated even in a situation in which the value appraiser knew of the connections between his family members or his partners.</p>
<p>Presumption of Dependence – Presumption C4 – making fees conditional upon the performance of the reporting corporation or upon the success of a commercial transaction connected to the value appraisal</p>	<p>15. Cancellation of the exception in share issue – A certain respondent claims that an exception should not be permitted whereby, the level of the fees are subject to the success of the initial share issue to the public without creating dependence, because the initial public share issue is the corporation's first "baptism of fire" in the securities market. Furthermore, the respondent points out that in certain instances, such conditioning upon results is prohibited; for example, lawyers' fees in criminal proceedings; witnesses', including expert witnesses, testimony in legal proceedings; and also - assessors' fees in legal proceedings.</p>	<p>.15. The comment was partially accepted. We should like to stress that the rationale for the exception is that as a result of the initial public share issue, there is a significant increase in the value appraiser's level of exposure and the level of responsibility. Therefore, there is logic in the possibility of determining a raise in the fees as a result of the success of a share issue. And, to the best of our knowledge, this practice exists in at least some of the instances. We should also like to stress that the directives in the legal position seek to achieve the desired balance between independence and the other elements, such as competition, entrance barriers, quality and professionalism – thus in certain, specific circumstances, the obligation of manifestation, which was determined as a condition for the exception is sufficient. In the position it is stressed that this is the only conditioning for the level of fees that can be determined without creating dependence. Moreover, a clause has been added in the legal position, according to which the exception is valid only</p>

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

		for an increase of an insignificant rate in relation to the total fee agreed in advance, and even that is subject to a manifestation of the rate of increase. Regarding the determining of a general prohibition of including conditioning – see our general response on the question of prohibitions to comment no.1 above.
Presumption of Dependence – Presumption C5 – making fees conditional upon the results of value appraisal	16. Prohibition of conditioning – A certain respondent claimed that it is not sufficient to determine that the above situation creates dependence, but it should be completely prohibited.	.16. The comment was not accepted. Even though the above-mentioned conditioning might be wrong, see our general response on the question of prohibitions to comment no.1 above.
Presumption of Dependence – Presumption C6 – holding a substantial quantity of securities	17. Holdings in connected companies – A certain respondent claimed that the clause does not include any reference to a value appraiser’s holdings in companies connected to the reporting corporation. Furthermore, the respondent has pointed out a lack of clarity in the exception in the clause	.17. The comment was partially accepted. We wish to stress that the clause includes a reference to any corporation whose value <u>derives</u> from, or is liable to be <u>substantially influenced</u> by the value appraisal. The exception in the clause has been amended so that any holding of five per cent or above, of the assets, with be considered substantial.
Presumption of Dependence – Presumption C7 – examination of revenue	18. Entrance barriers – Certain respondents claimed that the examination of revenue in the draft was liable to create an advantage for existing value appraisers with a substantial volume of revenue, in particular in the branches such as actuary. According to the respondents, out of consideration of increasing competition, and reducing entry barriers to the trade for quality appraisers, a relaxation should be considered in the quantitative thresholds that were fixed in the clause, concerning the value appraiser’s first years in practice, in order to encourage the introduction of additional quality players into the market. Also, a certain respondent proposed raising the examination of revenue to twenty-five per cent (25%) of the total revenue, and in the first five years of his practice as an appraiser – a rate of thirty-three per cent (33%). Another respondent proposed that the examination of revenue be conducted in the value appraisal department only, and not in the company as a whole, as the test gives an advantage to value appraisers who are part of a company or relatively large partnership.	.18. The comment was partially accepted. The revenue test in the position that was published in July 2015 required an examination during one year only, that ended on the date of the value appraisal. The examination was tested in the following manner: the “denominator” will include all the value appraiser’s revenue (including from outside sources) in the year that ended on the date of the value appraisal, and the “meter” will include all the income from the corporation in the same year. In August 2015, in the period in which we were preparing to implement the position for the first time, the authority’s staff decided to relax the revenue test so that the test would be conducted on a three yearly basis. This was because the quantity and scope of associations between value appraisers is likely to be characterized by a high rate of fluctuation which would justify the examination of revenue over a period longer than that which is usual for auditing accountants. Regarding the advantage to value appraisers, who are part of a large firm – it is important to stress that the narrowing of the definition of a “value appraiser” in the legal position, in comparison to the draft, decreases the aforementioned advantage.
Presumption of Dependence –	19. Expectation of employment – a certain respondent pointed out that the clause does not relate to the value appraiser’s	.19. The comment was accepted. Similarly to the presumption which deals with the term of office of an official, it was made clear concerning this presumption (and by

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

<p>Presumption C8 – employment as a worker</p>	<p><u>expectation</u> to become an employee of, the controlling shareholder in, the reporting corporation, or in a corporation controlled by any of them.</p> <p>20. “Cooling -off Period” – In the opinion of a certain respondent the “Cooling -off Period” should be lengthened to three years instead of one. On the other hand, another respondent claims that the “Cooling -off Period” should be abolished altogether, on the grounds that it concerns regular workers, and not officials for whom there is a separate presumption.</p> <p>21. <u>A value appraiser who became an employee of the reporting corporation’s reporting accountant</u> – a certain respondent proposed including into the legal position a specific reference to a situation in which the value appraiser was, in the past, employed by the reporting corporation’s auditing accountant. The respondent explains his opinion by saying, amongst other things, that when a value appraiser worked for an auditing accountant, there is a chance that his work will be audited by whoever recommended him, or by previous colleagues of his.</p>	<p>analogy, concerning other, additional presumptions) that dependence is created in a situation in which, after the work, the value appraiser expects to be employed by the reporting corporation. It should be pointed out that tests which examine the expectations, exist in international sources, such as the ASA’s Principle of Appraisal practice and Code of Ethics.</p> <p>.20. The first comment was not accepted, but the second comment was accepted. Regarding the first comment, it must be clarified that a cooling-off period of three years for this presumption will make the case of the value appraisers even more severe than auditing accountants, a situation which the authority’s staff do not want to create, under the circumstances. On the other hand, under the circumstances we have decided to accept the second comment.</p> <p>21. The comment was not accepted. It must be remembered that first and foremost the auditing accountant must be independent, including all members of the auditing team. Therefore, there is no suspicion of dependence in the circumstances where a member of the auditing team will move from a position of auditing to a position of value appraiser. However, we recognize that there is liable to be a sense of wrong-doing in a situation where the <u>quality of the examination</u> of the value appraisal by the auditing accountant might be harmed and influenced by previous ties between the accountant and the value appraiser. In spite of that, it seems that previous ties between accountant and appraiser do not create dependence between the reporting corporation and the appraiser, but rather are liable to be connected, on the face of things, to the quality of the examination of the auditing accountant only, and as such they are not connected to the implementation of the legal position.</p>
<p>Presumption of Dependence – Presumption C9 – value appraisal of an asset which the value appraiser had previously assessed it for the purpose of its purchase</p>	<p>22. <u>The necessity for the presumption and the difference between value appraisal for the purpose of a transaction and value appraisal for the purpose of reporting</u> – certain respondents pointed out that a repeat value appraisal for the purpose of reporting, after an earlier value appraisal for the purpose of purchase does not necessarily create dependence. Some also pointed out that they do not understand the differentiation in the draft between a repeat appraisal of a property for the purpose of reporting only (for example, allocating the cost of the purchase, and thereafter periodically measuring the property) and a repeat appraisal for the purpose of reporting, after the same appraiser had previously conducted a value appraisal for the purpose of purchasing. The respondents pointed out that the risk of “self-criticism” exists in <u>both instances</u>, but on the other hand there are advantages in a</p>	<p>.22. The comment was not accepted. The principal point of the aforementioned presumption in the draft, is to prevent situations where the value appraiser is forced in practical terms to check himself. On a principle level, this apprehension is relevant, also, in a situation where there is a repeat value appraisal for the purposes of reporting only, and not for the purposes of a transaction. However, it seems that the fear <u>increases</u> in the event of consultancy for the sake of a transaction, because in such an instance we are talking about “money out of pocket”, and in that situation the value appraiser “becomes involved” in substantial damage to his reputation vis-à-vis the corporation and other parties, in the event that the value of the property decreases. In the overall consideration, which points, on one hand, to certain advantages in repeat valuations, and the risk of self-criticism, the authority’s staff believe that the desired balance is in delineating the presumption for the “money out of pocket” situation only.</p> <p>.23. The comment has been accepted. A two year cooling off period for the purposes of this presumption was fixed in the “cooling-off period” clause, above.</p>

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>repeat appraisal by the same appraiser, including: acquaintance of the property, availability of the appraiser, speed of conducting the appraisal, and cost to the corporation. Therefore, some of the respondents proposed that, instead of “automatically labelling” as dependence in the existence of the circumstances described in those presumptions, the reporting corporation can include a manifestation of only the circumstances, without the aforementioned obligation. Others Pointed out that, because the nature of value appraisals is information directed towards the future, which naturally changes from time to time, changes in the value of a property are not an obstacle for a value appraiser, do not influence on his work, and do not create dependence. Therefore, these respondents propose to cancel in its entirety this presumption and not to determine that dependence has been created, even in a situation where the value appraiser had previously assessed the property for the purpose of a transaction.</p> <p>23. “Cooling -off Period” – Some of the respondents stated that it would be right to fix a “cooling -off period” after the value appraisal for the purposes of purchase, after which the appraiser will no longer be considered as dependent.</p> <p>24. Services by way of a transaction for the purchase of a property – certain respondents drew our attention to other services which a value appraiser can provide by way of a transaction, and which could bring about a situation of dependence, and self-testing, such as brokerage transactions within a transaction for the purchase of a property.</p> <p>25. Valuation for the purpose of sale – a certain respondent claims that this presumption must be broadened so that it applies also to the opposite situation where the value appraiser has valued the property for the purpose of sale.</p> <p>26. Previous audit of a property for the purpose of financial reports – A certain respondent claims that this presumption must be broadened so that it applies also to the situation where the value appraiser was previously the auditing accountant who audited the value appraisal of a property for the purpose of financial reports.</p>	<p>.24. The comment has been accepted. The presumption has been broadened so that also situations of brokerage or consultancy in a transaction are considered harmful to independence. Thus, for example, both according to the rules of the ASA, and also according to the draft of the standard for valuation no. 12 (proposed), dealing in brokerage in relation to a property is liable to place the value appraiser in a position of conflict of interests.</p> <p>.25. The comment was not accepted. A situation in which a value appraiser conducted a value appraisal for the <u>seller of the property</u>, and not the reporting corporation, generally characterizes a lower risk than conditioning the discretion of the value appraiser, and this is o because his services are being provided to parties with conflicting interests, before and after the transaction. As stated above, we have decided to include in the transaction situations in which the value appraiser served also as a broker or consultant to the transaction.</p> <p>.26. The comment was not accepted. As stated in the response no. 22 above, the authority’s staff decided to determine a presumption which relates to the state of money out of pocket only. A situation in which a value appraiser had previously been an auditing accountant of the reporting corporation is similar, in substance, to a situation of conducting repeat value appraisal for reporting only – a situation which, in the opinion of the staff, does not create dependence.</p>
<p>Presumption of Dependence –</p>	<p>27. Undefined cooling-off period – a certain respondent claimed that the two year “cooling-off period” might not be sufficient,</p>	<p>.27. The comment was not accepted. Firstly, we should point out that also for accountants, in the publications concerning independence, a “cooling-off period”</p>

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

<p>Presumption C11 - participation in managerial decisions</p>	<p>but that “definition by substance” might be preferable.</p> <p>28. Definition of “Managerial Decisions” – a certain respondent claims that participation in decisions that are not managerial should be included in the examination, including consultancy in decisions such as these, and in particular where such decisions are related to the item to be valued.</p>	<p>was defined, both in relation to the term of office as an official, and also for taking part in managerial decisions. In general, the authority’s staff did not decide to make the situation of value appraisers stricter than that of accountants. A further reason for the definition of the period, is that there is a disadvantage in creating a vague system of rules, as it is liable to create uncertainty. We shall point out that it is possible that there is a certain professional advantage for value appraisers who are well acquainted with the activities of the corporation, or with the item to be values, and so it is desirable to create a balance between the rules of dependence, and other considerations.</p> <p>.28. The comment was partially accepted – In the clause it was made clear that the significance of managerial decisions includes giving advice that could significantly affect, directly or indirectly, the value of the item to be valued.</p>
<p>Presumption of Dependence – Presumption C12 – legal conflict between the value appraiser and the reporting corporation</p>	<p>29. Legal Conflict – a certain respondent claimed that all contractual associations any legal conflict whatsoever, even if they are not significant, harm the objectivity of the relationships.</p>	<p>.29. The comment was partially accepted. The authority staff does not accept the determining that any contractual association between the value appraiser and the corporation creates dependence, and in any event, there is another presumption that deals with commercial ties between the parties. Regarding legal conflicts – the wording of the presumption has been amended so that any legal conflict that is long-term, or in which a claim has been served to the courts, is defined as creating dependence, as long as the presumption is not concealed.</p>
<p>Presumption of Dependence – Presumption C13 – acceptance of indemnity which does not leave the value appraiser exposure three times the value of his fee.</p>	<p>30. Prohibition of Giving an Indemnity – Certain respondents have claimed that giving any sort of indemnity to a value appraiser is liable to create a representative problem, and a problem of moral hazard, because of the absence of sufficient exposure to risk on the part of the value appraiser, a risk which is any case lower in view of the chances of the total legal process. In the view of a certain respondent, we are dealing with an illegal system, in view of the decision of the economic court, which gave, by way of a process concerning the reduction of capital, according to article 303 of the companies’ act, in a certain corporation, a decision which, according to the respondent, is valid also in other eventualities. Therefore, the respondents suggest making the test stricter, and to prohibit completely the giving of any indemnity whatsoever, or at least to determine that every indemnity creates dependence.</p> <p>31. Cancellation of a presumption because of accepted practice – Other respondents stated that, in practice the vast majority of value appraisers receive indemnity as a condition for posting the value appraisal, and this practice is widespread, particularly</p>	<p>.30. The comment was not accepted. To the bet of the knowledge of the staff, and as commented by some of the respondents, the system of indemnity is accepted in Israel and in the whole world. As claimed in comment no. 31 value appraisers, who are part of large networks in the world, sometimes request full indemnity for their opinions. The system of indemnity complements the system of insurance, and is intended to restrict the exposure of a value appraiser to claims from the corporation and other parties, for sums which are far in excess of his fee. Therefore, the clause that deals with indemnity must be balanced, and on the one hand to reduce the moral hazard of the appraiser, while, on the other hand, not pushing out of the market professional parties who are not interested in exposure far higher than their fee. To the best of the staff’s understanding, the court did not decide that the system of indemnity is “illegal”, but merely limited its use for opinions for the courts, according to article 303 of the companies’ act. As proof – it seems that the use of this system is widespread even today, after the aforementioned decision, and it seems that the securities’ law, and its regulations acknowledge the system, as a result of a requirement to give a manifestation to its existence in an essential value appraisal (cf. regulation 8b(i)5 of the securities regulations {periodic and immediate reports}, 5730 – 1970).The authority’s staff acknowledges that it is difficult to define points for the proper rule, and that there is a need to create a</p>

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>amongst international value appraisers, who make the provision of their services conditional upon the receipt of an unreserved indemnity. In the opinion of the aforementioned respondents, the presumption in its proposed format is too strict, and is likely to encourage the entry of lower quality value appraisers, who have no fear of damage to their reputation. Therefore, it has been proposed by some of the respondents to be satisfied with a manifestation alone, concerning the indemnity, without marking it as having created dependence, or, alternatively, to determine that there is no dependence as a result of indemnity, if, in addition to the indemnity, the value appraiser has proper insurance.</p> <p>32. <u>Indemnity in relation to the information that has been received from the corporation only</u> – a certain respondent stated that, in his opinion, the receipt of indemnity should be permitted, for pretexts connected to information received only from the corporation.</p>	<p>certain certainty. The “three times” rule in the position was formulated by the authority’s staff in an attempt to create a reasonable balance between the moral hazard and the accepted market practice, and some of the corporations regularly determine indemnity agreements with conditions similar, even today. It should be stated that, as things were before the publication of the legal position, some of the reporting corporations gave full indemnity, and in spite of that, stated that there was no dependence on the part of the value appraiser; from the point of view of those corporations, the content inserted into the legal position is expected to make the situation harder, rather than easier, in relation to the current situation.</p> <p>31. The comment was not accepted. With regard to the various considerations that the staff took into account, see our response to comment no. 30 above. However, it is important to point out that even if full indemnity has been given, according to the legal position, every value appraiser and reporting corporation can conceal the presumptions, subject to the inclusion of a manifestation of the circumstances, and the reasons for the decision of the value appraiser and the reporting corporation that there is no dependence.</p> <p>32. The comment was accepted. In the clause, it has been made clear that the granting of an indemnity in regard to information received from the corporation only, and concerning which the value appraiser stated in his value appraisal that it had been received from the corporation, and that he relied upon it, will be considered an indemnity which does not create dependence.</p>
<p>Concealment of Presumptions</p>	<p>33. <u>Concealment of Presumptions</u> – In the draft of the position, it is written that <i>“In order to remove all doubt, the presumptions specified above, can be concealed, and a corporation which believes that in spite of their existence, there is no dependence, will detail, in addition to the aforementioned manifestation, his reasons for this opinion.”</i> A certain respondent claimed that the start of the clause is obsolete because the authority cannot establish an empty presumption. On the other hand, he claimed that the end of the clause nullifies the “prohibitions” that were set in the position.</p>	<p>.33. The comment was not accepted. Even though the start of the clause is not essential to the content of the sentence, it seems that it can contribute to the clarity of the legal position. Regarding the end: there is nothing in the position to determine any prohibitions, and it deals with manifestations only. The authority’s staff does not believe that there is anything in the end to empty the position of its content, as the concealing of presumptions determined therein, necessitate a manifestation on their own account. A similar rule about concealment of presumptions exists also for accountants (cf. regulation 12 of the accountants’ regulations {conflict of interests and damage to independence, as a result of other business}, 5758 – 2008).</p>
<p>Manifestation regarding Value Appraiser</p>	<p>34. <u>Identifying essential value appraiser</u> – In the opinion of a certain respondent, the requirement of twenty-five per cent of the assets is “too liberal”. He claims that there are additional instances in which a value appraiser conducts value appraisal on assets that, together, do not amount to twenty-five per cent of the balance sheet, and that these value appraisals are very important. Another respondent explicitly stated the importance</p>	<p>34. The comment was not accepted. We would like to stress that the basic rule concerning the joining and manifestation about value appraisals exists in standard 8b of the regulations for periodic and immediate reports, and in additional regulations which refer to the regulation, which were mentioned in article 2 above. The directives concerning the identification of an essential value appraiser, as a result of a number of value appraisals, in the position are intended to deal with a very specific, defined state of affairs. It must be stressed that in transactions with</p>

The following translation is intended solely for the convenience of the reader.
 For the original Hebrew text – [click here](#).

	<p>of transactions involving interested parties, in which even value appraisal of assets at a lower rate can bring the appraiser to be essential to the corporation.</p> <p>35. <u>Scope of assets assessed does not prove dependence</u> – A certain respondent commented that, in his opinion, value appraisal of a major part of the assets or obligations of the reporting corporation, does not necessarily create dependence of the value appraiser on the reporting corporation.</p>	<p>controlling shareholders, the standard regulations 9a3 of securities standards (transactions between a company and its controlling shareholder) 5751 – 2001, apply in any case.</p> <p>35. The comment is irrelevant. We agree with the opinion of the respondent; however, we have decided to emphasise that the section that deals with the substantiality that emanates from the number of value appraisals is not connected to the section that deals with the independence of the value appraiser. The explanation at the start of the position was clarified in order to emphasise this.</p>
<p>Suggestions for further requirements</p>	<p>36. <u>Conditions for association with an expert</u> – a certain respondent proposed imposing an obligatory manifestation concerning the terms of association with the value appraiser, including the manifestation of the fee in the agreement, and the ratio between the aforementioned fee and the average market fee.</p> <p>37. <u>Negotiations with additional value appraisers</u> – a certain respondent proposed imposing an obligatory manifestation in situations in which the company enters into negotiations with additional appraisers, which did not result in the hiring of their services, and the reasons therefor.</p>	<p>36. The comment was not accepted. The authority's staff agrees that in a few instances, exceptionally high or exceptionally low fees are liable to pour additional light on the nature of the ties. However, in many other instances, the benefit from the manifestation of the sum would not be high, as there are good reasons for significant changes in the height of the fees, such as: the need for additional tests, relying on existing model for value appraisal, or on existing knowledge of the company. On the other hand, the manifestation of the fee has the potential to harm both the value appraiser and the company. Therefore, in the overall consideration, the authority's staff believe that the stated manifestation is not necessary, and that is without mentioning the difficulty in knowing what is the average market fee relevant to a specific job.</p> <p>37. The comment was partially accepted. The authority's staff agrees that in certain cases, and in certain circumstances an obligatory manifestation, similar to the obligation proposed by the respondent, is liable to shed light on details that are important to a reasonable investor, and so a manifestation as above must be given by the requirements of the existing law, such as regulation 3a of the securities regulation (transaction between a company and its controlling shareholder), 5751 – 2001. However, such a manifestation would go beyond the bounds of the legal position.</p>

The following translation is intended solely for the convenience of the reader.
For the original Hebrew text – [click here](#).