



**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

**ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA**

# **Anti-Corruption Reforms in**

# **MONGOLIA**

**Joint First and Second Rounds of Monitoring of the  
Istanbul Anti-Corruption Action Plan**

The report was adopted at the ACN meeting on 9 October 2015 at the OECD in Paris.

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## **About the Istanbul Anti-Corruption Action Plan**

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice. Find out more at [www.oecd.org/corruption/acn/istanbulactionplan/](http://www.oecd.org/corruption/acn/istanbulactionplan/).

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## **Executive Summary**

Mongolia is a fledgling democracy that undergoes rapid transformation. Exploration of significant mineral resources exacerbated governance and corruption challenges. Mongolia has started a number of important reforms, including in the anti-corruption area, but they are far from producing sustainable results. The joint first and second monitoring rounds report on Mongolia takes stock of the anti-corruption developments in the country, tracks progress or lack of it and recommends further actions.

### **Anti-corruption policy**

The previous anti-corruption strategy of Mongolia expired in 2010 and Mongolia failed to adopt a new policy document since then. The Anti-Corruption Agency developed a draft new strategy and the Government sent it to the parliament in the spring 2015. The parliament, however, rejected the draft based reportedly not on the substance of the text but its fear of any additional reinforcement of the Anti-Corruption Agency. The report regrets this and encourages urgent adoption of the new strategy and an action plan for its implementation. Furthermore, no high level mechanism for anti-corruption policy co-ordination exists in Mongolia and none is foreseen by the draft strategy.

Mongolia conducts a great number of high-quality corruption surveys on regular basis. Many of the surveys are commissioned and conducted by the government. This is a commendable practice. However, findings of the surveys do not affect the anti-corruption policy and do not clearly result in further anti-corruption measures. Rather than being seen as a goal in themselves, anti-corruption surveys should be treated as an important tool to develop and pursue anti-corruption policies that respond to the corruption situation in Mongolia.

Independent Authority Against Corruption (IAAC) remains the country's one-stop-shop for anti-corruption. It deals with corruption prevention, corruption studies, public awareness-raising and education, investigation of corruption offences, reviewing assets and income declarations of public officials. The monitoring report concludes that this mandate may be too broad for the IAAC to handle at present. The powers of the IAAC could be focused on investigations of high-level corruption crimes or its resources should be beefed up significantly. The monitoring report concludes that such a broad mandate is too big for one agency to cope. Therefore the report regrets that no actions were taken to improve the capacity or independence of the IAAC, e.g. its regional offices were not established. Due to insufficient resources, the IAAC should prioritise its work because it cannot cope with all the diverging tasks it has been assigned. It should also look for more allies in the government at the national and local level, involving them more actively in the anti-corruption field. There should be no political interference in the appointment of the IAAC leadership, whatever form it takes.

### **Criminalisation of corruption**

Criminal law of Mongolia remains incompliant with international standards on criminalisation of corruption. The current Criminal Code of Mongolia misses a number of key provisions and must be revised, in particular by: criminalising the offer and promise of a bribe, the acceptance of such offer or promise, and the request for a bribe; defining "bribe" and ensuring that it covers intangible and non-pecuniary benefits; properly and explicitly criminalising private sector corruption and trafficking in influence, and introducing an effective liability of legal persons.

Mongolia is now considering a draft new Criminal Code. This is an excellent opportunity to address the deficiencies identified and to strengthen Mongolia's criminal law provisions on corruption offences. However, the current draft document that the monitoring team reviewed needs to be significantly amended before adoption to correct the deficiencies identified in the current law. Similarly the new code should take

into account recommendations concerning proportionate and dissuasive sanctions for corruption offences, provide for robust confiscation measures.

The monitoring report finds that the scope of immunities against prosecution of corruption offences in Mongolia is excessive – both in terms of the officials enjoying such immunities and the reach of relevant privileges associated with the position. For most of the officials enjoying immunities there are no effective procedures to lift them; bodies responsible for lifting immunities have almost unfettered discretion when deciding on relevant requests. Immunities are not functional. Immunities, therefore, constitute a significant barrier for effective investigation and prosecution of corruption in Mongolia. They may be one of the reasons why there are so few investigations into high-level corruption. Such broad immunities cultivate the climate of impunity and undermine and discourage the law enforcement agencies. They should be urgently revised and brought in line with the international standards and best practice.

Statute of limitations for corruption crimes is another obstacle for effective prosecution of corruption in Mongolia. Relevant periods are too short and do not allow sufficient time to build and try a case, especially complex ones (which most of the corruption cases are). Statute of limitations is also not interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.

The monitoring report expressed special concern with the recent amnesty law passed in Mongolia. If adopted, it would result in termination of most of the corruption cases under investigation by the IAAC. This appears to be an attempt to exempt from liability those accused of corruption crimes, but also to undermine the IAAC, which already proved to be a trend in Mongolia and requires close attention of all stakeholders. The report strongly recommends rejecting any amnesty law that would grant immunity from prosecution for corruption or lead to termination of pending cases.

## **Prevention of corruption**

The monitoring report finds that the **civil service** in Mongolia remains politicised and the delineation of political and professional servants is not followed in practice. Merit-based approach is not implemented in the promotion of civil servants. The composition of the Civil Service Council raises concern. Clear and transparent guidelines on payment of bonuses should be approved. Mongolia has developed comprehensive legislation on anti-corruption restrictions and prohibitions, conflicts of interests and asset disclosure. The legislation, however, is not coherent and too cumbersome and would benefit from streamlining. It is recommended to revise two main anti-corruption laws (Law on Anti-Corruption and COI Law) and possibly to merge them into one law with a clear system of restrictions, obligations, procedures and sanctions.

It is also recommended to simplify the **system of declarations** and to centralise control of submission and verification of the declarations under the IAAC. Mandatory on-line publication of all or most of the declarations should be implemented. **Conflicts of interests** definition should be extended in line with international standards.

The monitoring report welcomes that **anti-corruption assessment** is included in the legal drafting process under current and upcoming laws. At the same time mentioned provisions do not appear to provide for a full-fledged anti-corruption screening of draft and active legal acts. The report commends the intention to separate regulation of substantive law on the public administration procedures and judicial procedure for considering administrative complaints. This should bring clarity and efficiency in the **public administration procedures** and relevant complaint mechanism.

In the area of the **public financial control and audit** the report notes that Mongolia achieved significant progress in establishing an effective system of public financial management and control. The Mongolian National Audit Office is an independent and well-functioning institution, although additional guarantees of independence are recommended. An internal audit function had been established in all ministries along with an internal audit committee. The Ministry of Finance is responsible for providing methodology and guidelines for the public internal auditors. The Government approved necessary by-laws, including the

Internal Audit Charter. Despite these achievements, internal auditing in Mongolia's public sector is still relatively in its infancy and much remains to be done to ensure that the function continues to develop. The report recommends adopting a Law on Internal Audit.

Legal framework for **public procurement** requires further adjustments to eliminate corruption possibilities. The general Public Procurement Law or special legislative provisions should cover all public contracting providing for competitive procurement procedures. This includes the procurement funded by the Development Bank of Mongolia and other extra budgetary funds, as well as the procurement in the road sector. Corruption in the public procurement in Mongolia remains wide spread, especially when related to large infrastructure projects. This concerns also public-private partnerships and concession arrangements. The Government Procurement Agency should be strengthened both in powers and staff capacity. The report welcomes the e-procurement drive in the country and encourages it to be continued with all stages of the procurement cycle moved to the electronic and transparent system. The oversight mechanism should be strengthened, in particular by minimising the number of bodies reviewing complaints and making them independent from the Government.

Mongolia mostly failed to implement the IAP recommendations on **access to information**. This concerns, in particular, revision of the Mongolian right to information law to bring in line with international standards and best practices. Mongolia did not introduce dissuasive administrative sanctions for violation of the access to information provisions by public officials, nor did it establish an independent supervisory mechanism for enforcement of the access to information right as recommended. Mongolian criminal law still criminalises defamation and insult with relevant provisions being applied in practice. Adoption of the Glass Accounts Law is a welcome development and can serve as an example to other countries. It needs to be properly and fully implemented. The report points to a new issue - transparency of media ownership in Mongolia, where it recommends to urgently adopt amendments to introduce extensive ownership transparency requirements. Such provisions should establish a robust mechanism of making public and verifying ownership structure of the media, including their beneficial owners and major shareholders (direct or indirect).

Mongolia's regulations on **political party financing** are very weak and remain almost not enforced. This situation should be urgently addressed. Lack of effective supervision over political finances promotes political corruption and vested interests controlling government institutions. Existing basic provisions on party finances are not enforced and are easily circumvented in practice. There is no public institution in charge of monitoring and supervising party finances. Transparency requirements are not complied with and party finances remain in the shadow. Election campaign financing requirements are also ineffective; the General Election Commission lack capacity to effectively control their enforcement. Overall relevant legislation requires comprehensive overhaul. Therefore the report welcomes the development of the law on transparency of the party financing. The drafting of the law, however, should be conducted in a transparent manner with close involvement of the civil society.

The **judiciary** in Mongolia remains corrupt and susceptible to political influence and nepotism. The reform implemented in 2013 was important but not sufficient. Only constitutional changes can bring about necessary institutional changes, in particular removing or limiting to the minimum role of political entities in the judicial career and establishing a genuinely independent judiciary. The composition of the General Judicial Council should be brought in line with international standards. The President and the Parliament should be removed from the process of appointment and dismissal of judges. Merit-based recruitment of judges is in its initial stage of implementation and should be supported – there is a need to streamline relevant procedures and ensure transparency and fairness of each stage.

As for other countries in the region, **integrity in the private sector** remains a relatively new issue for Mongolia. The draft new anti-corruption programme does not provide for any directions or actions to be taken with respect to major corruption risk areas for the private sector or in the private sector itself. The report welcomes evaluation of the state-owned enterprises commissioned by the IAAC and resulting

recommendations on corporate transparent accounts and procurement. These recommendations should be implemented. No action was taken to introduce disclosure of beneficiary owners of legal entities.



## Monitoring of Mongolia

The Istanbul Anti-Corruption Action Plan (Istanbul Action Plan, or IAP) was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; the other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes systematic and regular peer review of the legal and institutional framework for fighting corruption in the covered countries.

Mongolia joined the Istanbul Action Plan in September 2012. The initial review of Mongolia was conducted in 2013-2014. It was based on Mongolia's self-assessment report provided in 2013. The review team conducted a desk-based assessment and drafted the Review Report. This report was adopted at the IAP plenary meeting on 18 April 2014.

Since Mongolia joined the IAP later than the other participating countries, the initial Review Report was followed by the joint first and second rounds of monitoring. Mongolian authorities submitted replies to the country-specific monitoring questionnaire in April 2015 along with other requested materials. An on-site visit to Ulaanbaatar took place on 2-5 June 2015. After the on-site visit, Mongolian authorities provided additional information.

The monitoring team was led by **Mr Dmytro Kotlyar** (consultant, OECD/ACN Secretariat) and included:

- **Mrs Elena Konceviciute**, International Relations Officer, Special Investigation Service, Lithuania;
- **Mrs Lilit Petrosyan**, Commissioner, Commission on Ethics of High-Ranking Officials, Armenia;
- **Mr Samir Mahmudov**, Prosecutor, Anti-Corruption Department, Prosecutor's General Office, Azerbaijan;
- **Mr Evgeny Smirnov**, Senior Advisor, Procurement Policy Department, European Bank of Reconstruction and Development;
- **Ms Badamchimeg Dondog**, Financial Management Analyst, Governance Global Practice, Public Resources Mobilisation and Management, World Bank Mongolia Country Office;
- **Mr Brooks Hickman**, OECD/ACN Secretariat;
- **Mrs Olga Savran**, ACN Manager, OECD/ACN Secretariat.

Mongolia's national coordinator for the monitoring was the Independent Authority Against Corruption. **Mrs Bat-Otgon Budjav** and **Mr Galbadrakh Sonom** from the Independent Authority Against Corruption provided co-ordination on behalf of Mongolia.

The OECD Secretariat arranged for separate meetings with representative of civil society, business and international organisations. The meetings with representatives of NGO and business communities were hosted and co-organised by The Asia Foundation in Mongolia, and the meeting with internationals was hosted and co-organised by the UK Embassy in Mongolia and UN/UNDP Mongolia.

The monitoring team would like to express their gratitude to the Government of Mongolia for its effective co-operation during the monitoring and, in particular, to officials of the Independent Authority Against Corruption. The monitoring team is also grateful to Mongolian authorities and non-government organisations for the open and constructive discussions that took place during the country visit; to the UK Embassy in Mongolia, UN/UNDP Mongolia, The Asia Foundation, TI Mongolia, Asian Development Bank, US Embassy in Mongolia, Business Council of Mongolia for their assistance in organisation of the on-site visit.

The monitoring team would like to thank the World Bank Mongolia Country Office for assistance in organisation of the on-site visit and, especially, **Mrs Badamchimeg Dondog** (chapter on Public Financial Control and Audit) and **Mrs Gerelgua Tserendagva** (chapter on Public Procurement) for their assistance during the on-site visit and in preparation of the monitoring report.

This report was prepared on the basis of the government of Mongolia's answers to the questionnaire, the monitoring team's findings from the on-site visit, additional information provided by the government of Mongolia and NGOs, and research by the monitoring team, as well as relevant information received during the plenary meeting.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 9 October 2015. It contains the following compliance ratings with regard to recommendations of the initial Review Report for Mongolia: **out of 19 previous recommendations the report finds Mongolia to be not compliant with four recommendations, partially compliant with 12 recommendations, largely compliant with three recommendations. None of the recommendations have been fully complied with. The joint first and second rounds of monitoring report made four new recommendations and recognised 15 previous recommendations to be still valid.**

The report will be made public after the meeting, including at [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn). Authorities of Mongolia are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the joint first and second round of monitoring of Mongolia the ACN Secretariat will organize a return mission to Mongolia, which will include a meeting with representatives of the public authorities, civil society, business and international communities. The Government of Mongolia will be invited to provide regular updates on measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

Monitoring of Mongolia under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out with the financial support of the United States, Switzerland and the United Kingdom.

## Country background information

### Economic and social situation

Mongolia is a country in Central Asia with a population of around 3 million people (2015 estimate) and an area of 1,564,116 square kilometres. It is a landlocked country bordered by Russia and China.

In recent years, Mongolia underwent an economic transformation driven by the exploitation of its vast mineral resources (extensive mineral deposits of copper, coal, molybdenum, tin, tungsten and gold). The mining sector accounts for nearly 90% of the country's exports and the foreign direct investment that it attracts amounted to nearly 50% of government revenues in 2011. The mining sector in 2014 represented 18.5% of Mongolia's GDP, 58.7% of its industrial output and 17.5% of its budget revenue.<sup>1</sup> The Oyu Tolgoi copper and gold project is expected to account for one third of GDP by 2020.<sup>2</sup> As a result of large FDI in the mining sector, Mongolia has been one of the world's fastest-growing economies.<sup>3</sup>

The economic growth rate in 2014 was estimated at 7.8 per cent. While this is larger than Mongolia's 6.4 per cent GDP growth in 2010, it is lower than Mongolia's peak growth rate of 17.5 per cent in 2011 and even the estimated 11.6 per cent growth that Mongolia experienced in 2013.<sup>4</sup> GDP per capita (PPP) in 2014 was USD 12,063. This represents a continued increase from USD 11,191 in 2013 and USD 7,552 in 2010.<sup>5</sup> China receives more than 90% of Mongolia's exports and is Mongolia's largest supplier. Mongolia has relied on Russia for energy supplies; in 2013 Mongolia purchased about 75% of its gasoline and diesel fuel and a substantial amount of electric power from Russia.

Poverty has been on a downward trend over the past decade. Most recently, it decreased from 38.7 per cent in 2010 to 27.4 per cent in 2012.<sup>6</sup>

### Political system

Mongolia is a parliamentary republic with a directly elected president and the unicameral national assembly, the State Great Hural, consisting of 76 members. The parliament appoints the Prime Minister and ministers nominated by the Prime Minister in consultation with the President. Mongolia has a number of political parties, the biggest are the Mongolian People's Party and the Democratic Party.

Mr Tsakhiagiin Elbegdorj (a two-time former prime minister and member of the Democratic Party) was re-elected as President of Mongolia on 26 June 2013 for his second term as president. The most recent elections to the State Great Hural were held in June 2012 with the following results: Democratic Party obtained 34 seats; Mongolian People's Party – 26 seats; Justice Coalition – 11 seats; Civil Will – Green Party – 2 seats; independents – 3 seats. In 2012 parliament was elected for the first time through a mixed – proportional and majoritarian – electoral system. A new Government was formed in November 2014.

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<sup>1</sup> Source: <https://eiti.org/Mongolia>, [www.eitimongolia.mn/sites/default/files/uploads/EITIMWorkReport2014en.pdf](http://www.eitimongolia.mn/sites/default/files/uploads/EITIMWorkReport2014en.pdf).

<sup>2</sup> Source: [www.worldbank.org/en/news/feature/2012/03/16/mongolia-strikes-balance-between-development-environmental-protection](http://www.worldbank.org/en/news/feature/2012/03/16/mongolia-strikes-balance-between-development-environmental-protection).

<sup>3</sup> Source: IMF Country Report No. 15/109, April 2015, [www.imf.org/external/pubs/ft/scr/2015/cr15109.pdf](http://www.imf.org/external/pubs/ft/scr/2015/cr15109.pdf).

<sup>4</sup> Source: World Bank, 2014, [www.worldbank.org/en/country/mongolia/overview](http://www.worldbank.org/en/country/mongolia/overview).

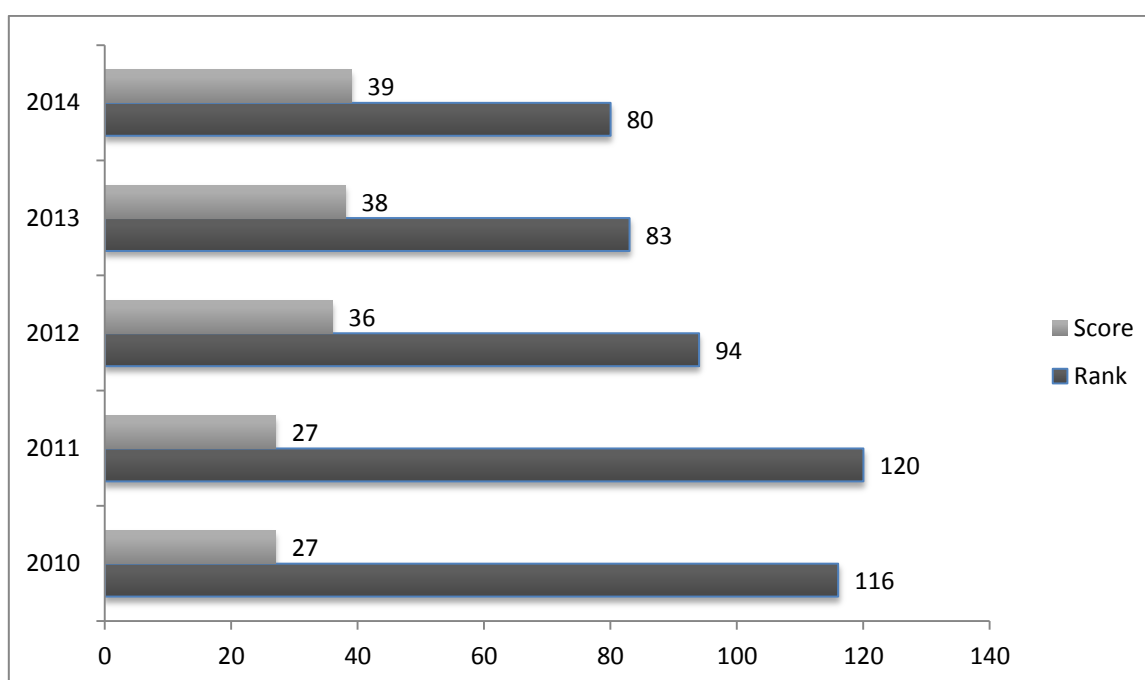
<sup>5</sup> Source: World Bank, <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD/countries/1W-MN?display=graph>.

<sup>6</sup> Source: World Bank, 2014, [www.worldbank.org/en/country/mongolia/overview](http://www.worldbank.org/en/country/mongolia/overview).

## Trends in corruption

Corruption is considered to be wide spread in Mongolia. The rapid transformation of Mongolia led by the exploration of minerals brought with it significant governance and corruption challenges. Some ratings and polling results reflecting perceptions and experiences of corruption and good governance in Mongolia are shown below:

**Figure 1. Rating of Mongolia in Transparency International's Corruption Perception Index**



Score: 0 = highly corrupt, 100 = very clean

**Source:** Transparency International, Corruption Perception Index, 2010-2014, [www.transparency.org/research/cpi/](http://www.transparency.org/research/cpi/)

**Table 1. Mongolia in Transparency International's 2013 Global Corruption Barometer**

Over the past two years how has the level of corruption in this country changed?			To what extent do you believe corruption is a problem in the public sector of your country?	In your dealings with the public sector, how important are personal contacts and/or relationships to get things done?	To what extent is this country's government run by a few big entities acting in their own best interests?	How effective do you think your government's actions are in the fight against corruption?		
Decreased	Stayed the same	Increased	On a scale of 1 to 5 (5 = a very serious problem)	Important or very important (% respondents)	To large extent or entirely (% respondents)	Effective	Ineffective	Neither effective nor ineffective
19%	32%	48%	4.8	73%	12%	25%	39%	36%

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013)

**Table 2. Perception of the change in the level of corruption in Mongolia in the past three years**

In the past three years, how has the level of corruption in Mongolia changed? (Percentage of respondents)	November 2012	March 2013	September 2013	March 2014	April 2015
Decreased (a lot/a little)	13.8	17.6	27.5	26.3	14.0
Remained the same	25.8	34.1	31.5	33.8	26.9
Increased (a little/a lot)	60.4	48.3	41.0	39.9	59.0

**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), "Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project", Figure 4.1, page 20 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

**Table 3. Perception of expected changes in the level of corruption in the next three years**

How do you expect the level of corruption in the next three years to change? Will it: (Percentage of respondents)	November 2012	March 2013	September 2013	March 2014	April 2015
Decrease (a lot/a little)	44.6	48.8	52.5	45.8	27.4
Remain the same	28.9	31.1	27.1	30.8	37.5
Increase (a little/a lot)	26.5	20.1	20.3	23.4	35.2

**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), "Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project", Figure 4.2, page 20 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

**Table 4. Corruption perceptions in Mongolia by institution, 2013 Global Corruption Barometer**

Percentage of respondents who felt these institutions were corrupt/extremely corrupt in the country											
Political parties	Parliament	Military	NGOs	Mass media	Religious organisations	Business	Educations system	Judiciary	Medical and health care services	Police	Public officials/civil servants
65	63	27	16	39	11	45	63	73	71	66	77

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013).

**Table 5. Top five corrupt institutions in Mongolia**

Date	Rank 1 (highest)	Rank 2	Rank 3	Rank 4	Rank 5 (lowest)
April 2011	Land Utilization	Mining	Judges	Customs	Political Parties
November 2012	Land Utilization	Mining	Local Procurement Tenders	Professional Inspection Agency	Political Parties
March 2013	Land Utilization	State Administration of Mining	Local Procurement Tenders	Political Parties	Customs
September 2013	Land Utilization	State Administration of Mining	Local Procurement Tenders	Political Parties	Private Companies in Mining Sector
March 2014	Land Utilization	State Administration of Mining	Local Procurement Tenders	Judges	Customs
April 2015	Land Utilization	Political Parties	Mining	National Government	Parliament / Legislature

**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), "Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project", Table 3.1 (extract), page 17 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

**Table 6. Corruption experience by public sector, 2013 Global Corruption Barometer**

Have you or anyone in your household paid a bribe to one of these eight services in the last 12 months? (results shown for those who came into contact with a service), %							
Education	Judiciary	Medical and health services	Police	Registry and permit services	Utilities	Taxes and/or customs	Land services
34	35	35	39	19	8	22	21

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013).

**Table 7. Reasons for corruption, 2013 Global Corruption Barometer**

What was the most common reason for paying the bribe? (% responses)			
As a gift or to express gratitude	To get a cheaper service	To speed things up	It was the only way to obtain the service
23	10	38	28

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013).

**Table 8. Reasons for corruption, SPEAK, 2015**

Reason for paying bribe*	November 2012	March 2013	September 2013	March 2014	April 2015
To receive service I was entitled to	55.6	63.0	58.7	65.0	67.4
To avoid a problem with the authorities	24.9	19.3	16.3	16.5	16.3
Bribe was directly requested	16.6	8.4	20.2	13.6	15.2
None of the above	3.0	9.2	4.8	4.9	1.1

\* Which of the following applies to the bribes you paid in the past three months? (Percentage of respondents)

**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), "Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project", Figure 9.4, page 37 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

**Table 9. Civic activism in fighting corruption, 2013 Global Corruption Barometer**

"Would you be willing to do one of the following?" (percentage of those willing to do the following)				
Sign a petition asking the government to do more to fight corruption	Take part in a peaceful protest or demonstration against corruption	Join an organization that works to reduce corruption, as an active member	Pay more to buy good from a company that is clean/corruption-free	Spread the word about the problem of corruption through social media
80	55	47	57	70

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013)

**Table 10. Corruption experience, 2013 Global Corruption Barometer**

Refusing to pay a bribe			
Have you ever been asked to pay a bribe?		Have been asked, have you refused to pay a bribe?	
Yes	No	Yes	No
41	59	31	69

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013)

**Table 11. Corruption reporting, 2013 Global Corruption Barometer**

Would you report an incident of corruption? (%)		If yes, will report to ... (%)					If no, will not report because... (%)			
Yes	No	Directly to the institution	General government hot line	Independent NGO	News media	Other	Don't know where to report	Fear of reprisals	It wouldn't make any difference	Other
78	22	23	50	5	20	2	15	29	55	1

**Source:** Transparency International, Global Corruption Barometer, 2013, [www.transparency.org/gcb2013](http://www.transparency.org/gcb2013)

**Table 12. Corruption reporting, SPEAK, 2015**

Would report to:*	Nov. 2012	Mar. 2013	Sept. 2013	Mar. 2014	Apr. 2015
Management	29.5	27.5	18.2	29.5	22.0
IAAC	53.7	52.6	62.9	52.3	50.0
Police	7.5	4.7	6.9	9.1	9.0
Media	7.9	14.7	11.3	8.5	5.0
Government Hotline ("11-11")	Not option at time	Not option at time	Not option at time	Not option at time	14.0

\* Where would you report corruption, if anywhere? (Results reflect percentage of respondents indicating "Yes" for each entity)

**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), "Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project", Figures 9.2(a) & 9.2(b), page 36 (data through April 2015).

**Table 13. Mongolia in international governance and doing business ratings**

Index and organisation	Mongolia's ranking	Countries in the index
Doing business, 2015, World Bank	135 (139 in 2014)	189
Economic Freedom Index 2015, Heritage Foundation	96 (98 in 2014)	178
Global Competitiveness Index 2014-2015, World Economic Forum	98 (107 in 2013-2014)	144
- Burden of government regulation	114 (119)	
- Property rights	100 (110)	
- Transparency of government policy making	87 (105)	
- Illicit payments and bribes	82 (94)	
- Independence of the judiciary	108 (111)	
- Favouritism in decisions of government officials	125 (132)	
- Burden of customs procedures	115 (135)	
Worldwide Governance Indicators, Control of Corruption, 2013, World Bank	40 <sup>7</sup> (30 in 2008)	215

**Source:** Doing business, 2015, World Bank ([www.doingbusiness.org/reports/global-reports/doing-business-2015](http://www.doingbusiness.org/reports/global-reports/doing-business-2015)); Economic Freedom Index 2015, Heritage Foundation ([www.heritage.org/index/](http://www.heritage.org/index/)); Global Competitiveness Index 2014-2015, World Economic Forum ([www.weforum.org/reports/global-competitiveness-report-2014-2015](http://www.weforum.org/reports/global-competitiveness-report-2014-2015)); Worldwide Governance Indicators, 2013, World Bank (<http://info.worldbank.org/governance/wgi/index.aspx>)

<sup>7</sup> Percentile ranks indicate the percentage of countries worldwide that rank lower than the indicated country, so that higher values indicate better governance scores. Source: <http://info.worldbank.org/governance/wgi/index.aspx>.



## Acronyms

<b>ACN</b>	Anti-Corruption Network for Eastern Europe and Central Asia
<b>AML</b>	Anti-Money Laundering
<b>CC</b>	Criminal Code of Mongolia
<b>COI Law</b>	Law of Mongolia on Regulation of Public and Private Interests and Prevention of Conflict of Interest in Public Service
<b>CPC</b>	Criminal Procedure Code of Mongolia
<b>CPI</b>	Corruption Perception Index
<b>CRC</b>	Communications Regulatory Commission
<b>CSL</b>	Civil Service Law of Mongolia
<b>DBM</b>	Development Bank of Mongolia
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>FIU</b>	financial intelligence unit
<b>GEC</b>	General Election Commission
<b>GPA</b>	Government Procurement Agency
<b>GPO</b>	General Prosecutor's Office
<b>GRECO</b>	Council of Europe's Group of States against Corruption
<b>IAAC</b>	Independent Authority Against Corruption of Mongolia
<b>IAP</b>	Istanbul Anti-Corruption Action Plan
<b>IBL</b>	Integrated Budget Law of Mongolia
<b>INTOSAI</b>	International Organization of Supreme Audit Institutions
<b>LSA</b>	Law on State Audit of Mongolia
<b>MLA</b>	mutual legal assistance
<b>MNAO</b>	Mongolian National Audit Office
<b>MNT</b>	Mongolian currency, Tugrik
<b>MoF</b>	Ministry of Finance of Mongolia
<b>MoJ</b>	Ministry of Justice of Mongolia
<b>MoU</b>	memorandum of understanding
<b>MP</b>	member of parliament
<b>MWLA</b>	Mongolian Women Lawyers Association
<b>NGO</b>	non-governmental organisation
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OGP</b>	Open Government Partnership
<b>OECD</b>	Organisation for Economic Co-operation and Development

<b>OSCE</b>	Organisation for Security and Co-operation in Europe
<b>PEP</b>	politically exposed person
<b>PPL</b>	Public Procurement Law of Mongolia
<b>PSMFL</b>	Public Sector Management and Finance Law
<b>SAI</b>	Supreme Audit Institution
<b>SGH</b>	State Great (Ikh) Hural (Parliament of Mongolia)
<b>TI</b>	Transparency International
<b>UN</b>	United Nations
<b>UNCAC</b>	UN Convention against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>WGB</b>	OECD Working Group on Bribery

# 1. Anti-corruption policy

## 1.1.-1.2. Political will to fight corruption, anti-corruption policy documents

### *Recommendation 1.1.-1.2.*

- 1) Adopt as soon as possible a new national anti-corruption strategy (programme) and an action plan with clearly defined goals, tasks, specific activities, measurable implementation indicators, responsible persons or institutions, timeframes, mechanism for coordinating and monitoring implementation, allocation of necessary funds. The new policy documents should be based on evidence of sound analysis of the corruption situation and trends, assessment of the previous anti-corruption efforts and set main priorities. Civil society and business sector organisations should be involved in the process of development and monitoring of implementation of anti-corruption policy documents.*
- 2) Establish an effective high-level mechanism (e.g. a national council) for anti-corruption policy co-ordination and implementation that is sufficiently independent from the government, represents different authorities and includes a meaningful representation of the civil society, is supported with adequate resources including dedicated staff; reports on anti-corruption strategy and action plan implementation should be regularly prepared and made public.*
- 3) Consider developing sectoral anti-corruption strategies or action plans for areas particularly vulnerable to corruption.*

*1) Adopt as soon as possible a new national anti-corruption strategy (programme) and an action plan with clearly defined goals, tasks, specific activities, measurable implementation indicators, responsible persons or institutions, timeframes, mechanism for coordinating and monitoring implementation, allocation of necessary funds. The new policy documents should be based on evidence of sound analysis of the corruption situation and trends, assessment of the previous anti-corruption efforts and set main priorities. Civil society and business sector organisations should be involved in the process of development and monitoring of implementation of anti-corruption policy documents.*

As noted in the initial Review Report of Mongolia in 2014, there was a significant time gap in developing a new anti-corruption strategy following the expiration of the 2002-2010 National Anti-Corruption Programme. During the on-site visit, the authorities explained that the delay was caused by instability in the Parliament, the growing awareness among different political parties and government bodies that they could become a target of anti-corruption efforts and their fear that the new anti-corruption programme could possibly give more powers to the Independent Authority Against Corruption (IAAC).

The Mongolian authorities reported that a working group had been set up by the President's Office to develop a new anti-corruption programme. Among other stakeholders, it consisted of representatives from the IAAC, civil society and the business community. The draft of the National Programme to Combat Corruption and Strengthening Accountability and Justice was developed on the basis of Article 43.1 of the Law on Parliament and new Article 2<sup>1</sup> of the Law against Corruption (which came into effect in January 2014). The latter provides that the "Parliament shall approve the national programme against corruption, and the implementation plan for the same shall be approved for a period specified in the approved programme". It also contains general clauses that require the state organisations and civil servants to comply with the national programme in accordance with the law. In addition, the draft programme envisions that a Parliamentary Standing Commission on Law, the Government of Mongolia and the IAAC

will be tasked to prepare an annual plan of activities that should be submitted to the Parliament for approval.

The Mongolian authorities explained to the evaluation team that the draft anti-corruption programme was developed and delivered to the Mongolian Women Lawyers Association (MWLA) to disseminate it nationwide. The MWLA organised extensive debates around the country to obtain more input from government agencies, local authorities, NGOs, private sector and the media in as many regions as possible. Over 4,000 comments were received and put into a concise version. For more specialised parts of the programme (e.g. procurement, financial accounts, construction or mining sector), specialists in these areas were engaged to develop a more focused approach to corruption risks in relevant sectors.

After the Government approved the new programme, it was submitted to the Parliament for adoption during the 2015 spring session. According to the Mongolian authorities, the new programme was turned down and sent back to the President's office for further review. During the on-site visit, the evaluators asked whether Parliament had identified specific problems with the proposed programme. In the view of some interlocutors, Parliament did not truly debate the merits of the new programme. They believed that Parliament was unwilling to approve the new programme because, among other reasons, a few of its members were still investigated by IAAC and were reluctant to discuss anything that could have strengthened the position of IAAC.

The IAAC had also asked to have more regional offices in the western and eastern parts of the country so that it could respond more easily to corruption issues in distant areas. However, this request was never approved. Given Mongolia's push to decentralise budgetary appropriations to local authorities, there were fears that the IAAC and its branches could become more powerful if the request had been approved.

Concerning the draft anti-corruption programme, it provides a general overview of the implementation of the previous strategy, gives many references to numerous surveys and studies that indicate positive changes in the level of corruption in different areas and a section on corruption risk assessment, which provides an evidentiary basis for policy planning.

The evaluators were surprised to read that the primary purpose of the programme is to ensure Mongolia's duties before the international community in respect of corruption and raise Mongolia's reputation among the international community, whereas strengthening democratic and lawful governance, increasing social and economic development and improving public trust in the government are listed later. The evaluators hope that the motivation for the programme is not only external pressure, but the genuine willingness of the country to fight against corruption and to take ownership over the process. Overall, the section on goals and objectives is rather general and focus on activities rather than on desired outcomes, e.g. develop electronic services, improve regulations, develop international cooperation, etc.

The section on main directions includes the following objectives: to strengthen fair, accountable and transparent public services, transparency and accessibility of public service, transparency of budget, finance and audit, monitoring and accountability of procurement process, strengthening fairness and transparency of the judiciary, fairness in politics, encouraging civil society initiatives, improving professional ethics of the press, improving anti-corruption education and legislation. A number of actions for each of the directions are proposed, and they resemble an action plan. However, the proposed actions are poorly structured (e.g. some measures under the civil service reform deal with the private sector), some of them are not precise, some are too general (e.g. to provide for the equal distribution of wealth, to increase the social responsibility of private enterprises), and – more importantly – they often do not have deadlines, responsible institutions and criteria for measuring performance.

While the evaluators were pleased to see that NGOs, academia and the business community were covered by the programme, they were not sure how the government would ensure that these different groups would perform the specified actions provided in the programme (e.g. to have private enterprises prepare, approve and comply with business code of conduct, to increase the social responsibility of the private enterprises, to

have non-governmental organisations to approve and implement their members' code of conduct; to have free press developed and professional ethics and accountability improved).

Concerning the monitoring and implementation of the anti-corruption programme, it is positive that the draft provides that funding will be provided from the state and local budget as well as other sources. The evaluation team wishes to stress that any programme, even if adopted by the Parliament, that does not contain a clear mechanism for its implementation and does not provide for the required funding, runs the risk of remaining a collection of empty statements and declarations without anyone willing or able to take any further steps to make it work.

As for the action/implementation plan, it has not been drafted pending the adoption of the national anti-corruption programme. The draft anti-corruption programme specifies that for that purpose a temporary committee, consisting of 9 to 11 representatives of corruption-prone sectors, is to be set up. The committee members will be appointed by the President.

It should be noted that some interlocutors, mostly from the NGO sector, were more content with an anti-corruption strategy and action plan developed and implemented by the Ulaanbaatar municipality. Regrettably, the evaluation team did not have a chance to study the document or speak about its implementation with the Ulaanbaatar authorities during the on-site visit. Therefore, no conclusions could be made by the evaluation team whether the Ulaanbaatar strategy and its action plan is bringing tangible results in the anti-corruption field and whether or not it could serve as a good basis for other municipalities to follow. However the Government is recommended to look closely at the Ulaanbaatar anti-corruption documents and their implementation with a view to possible use its achievements on the national level.

***2) Establish an effective high-level mechanism (e.g. a national council) for anti-corruption policy co-ordination and implementation that is sufficiently independent from the government, represents different authorities and includes a meaningful representation of the civil society, is supported with adequate resources including dedicated staff; reports on anti-corruption strategy and action plan implementation should be regularly prepared and made public.***

The draft strategy provides for a monitoring mechanism that does not appear very clear or effective. The relevant committee of the parliament is supposed to review the reports on the implementation of the strategy. The President and his administration should organize the implementation of the strategy, and for this reason will establish a temporary committee from various sectors appointed by the President. The Office of the National Security Council (which is a three-member council, consisting of the President, the Prime Minister and the Speaker of the Parliament) is expected to provide support to this committee. The government should provide unified management for all parts of the executive. Various state institutions are expected to report about the implementation of the strategy to their hierarchical supervisors (President, government, and parliament) of the working group/temporary committee. The working group/temporary committee should compile all these reports and present them to the parliament with its assessment and recommendations.

As to the National Council or a similar high-level mechanism required by the recommendation, the Mongolian authorities noted that the National Council had been in place to monitor the previous 2002-2010 national anti-corruption programme. The decision was taken to dissolve it after the establishment of the IAAC as a specialised agency was seen as ideally placed to take care of the issue of corruption in the country.

The evaluation team regrets that no clear vision of how the national anti-corruption programme will be implemented and monitored has been put in place. It reiterates its position that a high-level mechanism to co-ordinate Mongolia's anti-corruption efforts under the national programme must be created and it should be sufficiently independent from the government to be able to monitor its actions independently and effectively. It should be empowered to criticise and speed up processes when undue delays occur or when the necessary funding required to implement agreed anti-corruption measures is not allocated. In addition, it should comprise members of civil society that could voice their opinion with regard to public

expectations and concerns. It is also important that this body has the necessary funding and dedicated staff to perform the work: namely, to look into concrete measures, timelines, problems with implementation, to identify problems with implementation, and to recommend or take corrective follow-up actions. As an oversight body, it should also demonstrate clear ownership and responsibility for the attainment of clear and concrete results, which should be communicated to the public in a user-friendly as well as timely manner. On a number of occasions the evaluation team heard from a number of interlocutors that even if information was made publicly available by various government agencies, it was often very confusing, difficult to understand, with no analysis or context provided to explain the findings. In the opinion of the evaluation team, it is very important that information provided to the public is clear, transparent, relevant and easy to understand.

### ***3) Consider developing sectoral anti-corruption strategies or action plans for areas particularly vulnerable to corruption.***

It appears that no sectoral plans have been developed to date. Moreover, the draft programme does not indicate any intention to develop such plans. At the same time, the risk assessment mentions some risk areas — e.g. health, education, tax, inspection, customs, local administration, land allocation and licenses — that could benefit from specific action plans.

While no sectoral action plans were developed as recommended, the IAAC reports specific actions taken based on the sectoral surveys. For example, based on the findings of the “Corruption in Health Sector” survey conducted by “The Independent Research Institute” NGO with assistance from the Asia Foundation, the IAAC organized inspection, anti-corruption trainings and prevention activities in 9 hospitals of provinces, 8 hospitals of the capital city and the districts and 4 hospitals of national level; it issued recommendations and notification to hospital administrations, annulled 5 contracts and 6 procedures were annulled, held liable 4 officials.

It is also noteworthy that many remarkable surveys have been conducted in Mongolia, including some that have been conducted regularly since 2006, which therefore could provide a comparative analysis of corruption developments in the country. In particular, a Survey on Perceptions and Knowledge of Corruption (SPEAK), sponsored by The Asia Foundation and others, clearly specifies the areas which are regarded as the most corrupt. According to the Mongolian population, the institutions that are the most prone to corruption are the following: authorities responsible for land utilisation, authorities responsible for customs and mining, judges, the national government and parliament. It is not clear why no concrete actions have been envisaged to address these issues that have been pinpointed as the most alarming for the last decade by the population.

The evaluation team hopes that proper attention will be paid to this part of the recommendation as it is important for each country to prioritise its work and develop concrete, measurable and effective measures in the areas most prone to corruption. Without setting priorities, Mongolia runs a high risk of “losing” sight of what needs to be done and where Mongolia must concentrate its resources to fight corruption.. The Mongolian authorities may wish to consider involving local authorities and other stakeholders in taking concrete steps in dedicated areas.

### ***Conclusions***

Mongolia did not adopt a new anti-corruption programme, the draft strategy is weak, and there is no action plan for its implementation yet. Furthermore, no high level mechanism for policy coordination exists and none is foreseen by the draft strategy. While public consultations about the strategy took place in the past, the process has come to an end without any clear indication that a new strategy will be developed or submitted to Parliament.

Mongolia is therefore **not compliant** with recommendation 1.1.-1.2., which remains valid.

### 1.3. Corruption surveys

#### *Recommendation from the Review Report 1.3.*

- 1) Continue conducting regular corruption surveys, including on specific sectors, with focus on public trust, corruption perception and experience. At least part of surveys should be commissioned to independent organisations on competitive basis.*
- 2) Ensure that findings of the surveys be used for drafting, amending and monitoring implementation of the anti-corruption policies. Results of surveys should be made public.*

The Mongolian authorities reported that in 2014 the IAAC conducted surveys on corruption perception in political and law enforcement agencies, on integrity level of government organizations (including 10 sectors such as education, health, registration, police, customs, tax, social welfare, insurance, inspections, and land office) and the youth integrity. Moreover, the IAAC plans to conduct a Mongolian Corruption Index survey and survey on Corruption Perception in Political and Law Enforcement Organizations and Youth integrity in 2015. They will be conducted in co-operation with the National Statistics Commission.

The Mongolian Corruption Index is publicized on 9<sup>th</sup> of December of each year through the media and other channels right after its completion. The reports are also published in hardcover version, posted on the IAAC's website, and distributed in CD format.

As an example of a specific-sector survey, the IAAC's Prevention and Public Awareness Department noted in its activity report for 2014 that the IAAC and an independent research institute IRIM jointly conducted a survey on the situation of corruption in the health sector and that the IAAC, in cooperation with Health Department of Ulaanbaatar is planning to develop an action plan to clear the violations revealed by the survey.

The IAAC's activity reports for 2013 and 2014 also mentioned that memoranda of understanding were concluded between the IAAC and a number of NGOs, including Transparency International, Globe International, IRIM, Press Institute, the Mongolian Women Lawyers Association, Women for Social Progress Movement and others. Joint activities are performed in developing handbooks, training and public surveys.

According to the Mongolian authorities, some of the NGOs with the relevant expertise are commissioned to conduct surveys, for instance, on youth integrity, as they are said to be "much more creative" and "have better ideas".

Other examples of surveys provided by the Mongolian authorities: The survey on "Election Campaign Finance: Challenges and avenues" was conducted by "Center for Elector's Education" NGO and financed by IAAC. The task of the survey was to come up with recommendations for improving regulations on election campaign finance. Following the survey, relevant parliament's committee, IAAC and "Center for Elector's Education" NGO organised in May 2015 a public discussion on the topic. As reported by the IAAC, the findings of the survey reflected in the draft new Law on Election and draft new Law on Political Parties.

The IAAC also commissioned a survey on "National Security and the Grand Corruption". In November 2014 the parliament's Standing Committee on Security and Foreign Policy, IAAC and the Asia Foundation organised a discussion on the topic "Corruption as a threat to national Security" that resulted in issuing of recommendations by the discussion's participants.

It is noteworthy that conducting surveys and studies is also included in the IAAC's action plans with separate budget lines. In accordance with Article 15.2 of Anti-Corruption Law of Mongolia, the IAAC

established a separate Research and Analysis Unit within the IAAC’s Prevention and Public Awareness Department. The whole Department has 15 employees, covering prevention, education and research.

Overall, Mongolia benefits from a massive number of comprehensive, targeted and comparative surveys sponsored by The Asia Foundation in co-operation with USAID, MercyCorp and other international donors. Some of these surveys are conducted biannually and hence give a very clear picture of how perceptions and experiences of corruption change over years in a number of sectors.

The evaluators were pleased to see so many surveys conducted on regular basis. It is a commendable practice that should become an example for other countries. However, the findings of the surveys do not appear to translate into governmental action. During the on-site visit, the Mongolian authorities explained that some survey findings (for instance, Transparency International’s Corruption Perception Index and its Global Corruption Barometer) were reflected in the draft national strategy or in the strategies of local authorities, yet the direct link was not easy to find. The authorities also said that sector-specific studies are conducted by relevant government agencies. In addition, the findings of surveys are also used by the Mongolian authorities to increase their performance standards in pursuing Millennium Development Goals.

On the other hand, the evaluators were puzzled to see that the immediate response to a corruption problem raised by a whistleblower, for instance in the customs agency, was to commission a survey with a view to “increasing transparency and improving methodology”. The evaluators wondered if any other more effective means than a new survey or methodology existed (or at least was considered) to fight corruption in a given area or situation. Besides that, other interlocutors complained that the authorities are paying a “lip service” to the fight against corruption by such means because nothing actually changes in reality. In any event, an approach that focuses on merely assessing the situation — but not changing it — runs the risk of contributing to public distrust.

### ***Conclusions***

Mongolia continues conducting corruption surveys on regular basis. Many of the surveys are commissioned and conducted by the government, yet a number of NGOs are also quite involved in conducting surveys. The survey results are published and mentioned in the draft anti-corruption strategy. But the key findings of the surveys, i.e. on high-risk sectors, are not addressed by the strategy and do not clearly result in further policy measures.

Thus, it appears that a great number of high quality surveys are not followed by concrete and effective steps that can eliminate the identified problems. Rather than being seen as a goal in themselves, anti-corruption surveys should be treated as an important tool to develop and pursue anti-corruption policies that respond to the corruption situation in Mongolia.

Overall, Mongolia is **partially compliant** with recommendation 1.3., which remains valid.

### **1.4.-1.5. Public participation in anti-corruption policy work, raising awareness and public education**

#### ***Recommendation from the Review Report 1.4.-1.5.***

- 1) Ensure that awareness raising and public education campaigns are carefully planned and correlate with the anti-corruption programme objectives and tasks; clearly define the target groups, main issues and expected outcome of these activities.***
- 2) Regularly assess the results of awareness-raising and educational activities, in particular by seeking external independent assessment.***
- 3) Ensure that civil society organisations and other non-governmental actors are involved in a***



*meaningful way in the development and implementation of anti-corruption policy measures, including designing, implementing and evaluating awareness-raising and public education campaigns.*

***1) Ensure that awareness raising and public education campaigns are carefully planned and correlate with the anti-corruption programme objectives and tasks; clearly define the target groups, main issues and expected outcome of these activities.***

In the answers to the monitoring questionnaire, the government reported two main campaigns since April 2014: (i) the “Together” campaign organized for public employees in Ulaanbaatar, and the “Together for Fair Society” campaign in the city Erdenet in 2014. Another “Together for Fair Society” campaign is planned for September-December 2015 in Ulaanbaatar. These campaigns were planned by the IAAC under its work programme, had clear target groups and activities. The Mongolian authorities reported that the IAAC annually dedicated 62 million MNT (approximately 28,650 EUR) to anti-corruption campaigns and awareness raising. In addition, support from international donors provided through NGOs helps the IAAC conduct campaigns, prepare various handbooks and manuals, TV programmes and other audiovisual materials.

***2) Regularly assess the results of awareness-raising and educational activities, in particular by seeking external independent assessment.***

In July 2014, the NGO “Press Institute” prepared an assessment report on the IAAC’s prevention, public awareness and communication activities . This report was financed by The Asia Foundation.

The evaluation findings included the following:

- Only Six out of the 15 staff members of the IAAC’s Prevention and Public Awareness Department perform extensive anti-corruption awareness raising activities. This small number of people cannot cope with the workload on their own given the volume of work and the necessity of reaching all Mongolia’s remote areas in what is an extensive country;
- Both the IAAC’s long-term and short-term plans lack a systemised approach to prevention and public awareness among the general public, and the results of actions are not clear;
- The purpose of reports should be to eliminate shortcomings rather than solely provide the information to management about what has been done; and
- Training conducted and publications developed by the Department should be more user-friendly and target the general public rather than civil servants; at present, trainings usually take the form of lecturing to as many people as can attend them (from approximately 50 to 100 persons); ways should be sought to make them more interactive.

During the on-site visit the evaluation team learned that since 2012 the IAAC commissions assessment of anti-corruption work of more than 120 government agencies (with regard to transparent decision-making, implementation of conflict of interest law, right to information law, law on transparent accounts). The assessment is usually conducted by legal firms based on the Methodology developed by the IAAC. In cooperation with the IAAC’s Prevention and Public Awareness Department they make a regular checklist following a methodology for evaluating anti-corruption actions borrowed from South Korea. The purpose of such verification methodology is to ensure access to information and transparency, encourage public engagement, provision of an opportunity to monitor and improve fairness, require public authorities to take responsibility for their actions. The assessment results are published and the IAAC issues recommendations to the relevant public organisations based on them.

Such assessments are very welcome. The Mongolian authorities should be commended for introducing a methodology for assessing transparency and openness of government bodies and for commissioning an external assessment of the IAAC’s awareness raising and prevention activities. Likewise, it is important to

take all weaknesses and vulnerabilities into consideration and make sure that actions are taken to rectify the situation.

***3) Ensure that civil society organisations and other non-governmental actors are involved in a meaningful way in the development and implementation of anti-corruption policy measures, including designing, implementing and evaluating awareness-raising and public education campaigns.***

As noted above, the Mongolian authorities informed the evaluators that they have a long list of memoranda of understanding with NGOs, associations of local authorities, Chamber of Commerce, Employers' Union and international stakeholders. The evaluators were told that around 20 NGOs operating in Mongolia are active and deal with anti-corruption issues in one way or another. Some NGOs have a political mandate, they are politically motivated and therefore IAAC is careful to avoid them to stay away from additional political pressure.

The evaluators have learned that many campaigns are developed on a local level and that non-governmental organisations are more active in helping reach the remote areas. The Mongolian authorities also informed that according to the methodology on a regular evaluation of anti-corruption activities, government agencies get a minus from the IAAC's Prevention and Public Awareness Department if they do not actively co-operate with NGOs. This practice is positive.

At the same time non-governmental interlocutors were critical of the government cooperation with the civil society in the anti-corruption area and overall. Some believed that there was no genuine citizen involvement and that since 2012 there was even some regression in this regard, which resulted in significant dissatisfaction. NGOs try to fill the void of the absent opposition but unsuccessfully. This can be illustrated by the development of the new national anti-corruption strategy: it was not conducted in a participatory manner, and only final drafts presented to the public for discussion. In a positive step, the national discussion campaign was outsourced to an NGO (see above), but the resulting draft was rejected by the President's office. Later the legislature rejected the one that the President put forward as well. Another barrier for effective cooperation are restrictions on access to information.

### ***Conclusions***

Within a relatively short time, IAAC has implemented two campaigns and is planning another one, which is a good achievement. The focus so far was on young people and state officials in main cities, which accounts for a large share of population. Co-operation with NGOs is good and should be further developed.

Mongolia is **largely compliant** with recommendation 1.4.-1.5. which remains valid.

## **1.6. Specialised anti-corruption policy and co-ordination institution**

### ***Recommendation from the Review Report 1.6.***

- 1) Strengthen capacity of the specialised anti-corruption agency by guaranteeing its institutional, functional and financial independence; put in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions; strengthen regional focus of the agency's work, in particular by considering establishing regional (local) offices of the agency.***
- 2) Introduce competitive and transparent merit-based selection of the Head and Deputy Heads of the specialised anti-corruption agency; establish clear criteria and procedure for merit-based and competitive recruitment of the agency's staff.***
- 3) Improve annual planning of the Independent Authority Against Corruption by emphasizing in its action plans the priorities, clearly defining the content and expected outcomes and outputs of***

*activities, timeframe, setting measurable indicators of implementation and controlling their fulfilment.*

***1) Strengthen capacity of the specialised anti-corruption agency by guaranteeing its institutional, functional and financial independence; put in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions; strengthen regional focus of the agency's work, in particular by considering establishing regional (local) offices of the agency.***

Independent Authority Against Corruption<sup>8</sup> remains the country's one-stop-shop for anti-corruption. As mentioned in the review report, pursuant to Article 15 of the Law on Anti-Corruption, the IAAC carries out the functions of corruption prevention, performance of studies examining the extent, types and causes of corruption, public awareness-raising and education, intelligence operations and investigation of corruption and money laundering offences, reviewing and inspecting assets and income declarations of public officials.

According to Articles 26 and 27 of the Criminal Procedure Code, the IAAC investigates cases under CC Articles 263 (Abuse of power or of office by a state official), 264 (Excess of authority by a state official), 265 (Abuse of authority by an official of an NGO or a business entity), 266 (Excess of authority by an official of an NGO or a business entity), 268 (Receiving of a bribe), 269 (Giving of a bribe), 270 (Intermediation in bribery), 270<sup>1</sup> (Illicit enrichment), 166<sup>1</sup> (Money laundering).

During the on-site visit, the Mongolian authorities told the evaluators that the IAAC conducts investigations of all corruption cases, irrespective of their type, extent or magnitude. Likewise, if the police detects corruption, it must transfer the case to IAAC.

To cope with its broad mandate, IAAC has 162 employees in total (decreased from 192 in 2014), including 30 investigators. According to the amendment of the Criminal Procedure Code, introduced in January 2014 and which came into force on 20 May 2014, the Investigation Unit of the General Prosecutor's Office, which was previously responsible for investigating corruption cases related to law enforcement officials, judges and prosecutors, was also transferred to the IAAC. The role of the Prosecutor General's Office remains to supervise of the IAAC's investigations.

According to the Law on Anti-Corruption, the IAAC has wide powers in conducting undercover operations. In that respect, as mentioned below in this report, it encountered criticism that some of its investigations breached human rights. Although no corroboration of these allegations was provided to the evaluators on-site they were alarmed to see that apart from the powers enjoyed by many law enforcement agencies in many other countries conducting undercover operations, the IAAC has the right to enter the premises of business entities and organizations (Article 24.1.3 of the Law on Anti-Corruption) and inspect and temporarily freeze, without having to obtain any special permit, bank accounts and transactions of citizens, business entities or organizations (Article 24.1.4 of the same law). No explanation was found on-site why such actions are primarily directed at business entities and organisations and why courts are not involved in granting a special permission, as should be the case.

As for the IAAC's financial independence, the Mongolian authorities informed the evaluators during the on-site visit that the annual budget of the agency was approximately 4.1 million EUR and that the IAAC was content with the legislative guarantee of its budget, laid down in the Law on Anti-Corruption (Article 29.3 of the Law of Anti-Corruption), according to which the IAAC's budget cannot be smaller than it was in a previous year. However, Article 29.6 of the same law provides that the amount of salaries, allowances and bonuses of the IAAC's staff is determined by the State Great Hural. As a result, IAAC's staff did

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<sup>8</sup> This name of the agency is used by the Mongolian authorities in English-language documents, although it is not the actual name in Mongolian. "Mongolian State Anti-Corruption Agency" is apparently a better English translation of the Mongolian name (МОНГОЛ УЛСЫН АВЛИГАТАЙ ТЭМЦЭХ ГАЗАР).

experience salary cuts like the ones that were also imposed on other civil servants, prosecutors and judges due to the financial crisis. The Mongolian authorities are recommended to keep the matter under consideration, making sure that any salary cuts for the IAAC's staff, if they are enacted, are carried out with respect for the principles of fairness and proportionality with other budgetary staff, including civil servants, prosecutors, judges, members of the Government, Parliament, etc.

The Mongolian authorities informed the evaluators that the salaries of the IAAC's staff are competitive, as they are 25-30 per cent higher than the salaries of civil servants. (For comparison, they are 50 per cent lower than those of judges). The average monthly work pay of an IAAC official is 900.000 MNT (approximately 450 EUR). The minimum monthly salary in Mongolia is 350.000 MNT (175 EUR).

As regards the turnover of the IAAC's staff, it is also quite stable as compared to the whole public service, which undergoes drastic top-down changes whenever the head of the government agency or minister changes. The evaluators were told on-site that drastic wholesale replacements of public service employees take place, irrespective of whether the former and the new head of the agency or ministry are from the same or different political parties. The Mongolian authorities informed the evaluators that this prevailing practice does not apply to the IAAC. However, other interlocutors attested to the opposite.

With regard to the IAAC's institutional independence, no changes have been put in place since the previous review report. The evaluators regretted that no attempts were made to amend Article 17 of the Law on Anti-Corruption, whereby the State Great Hural approves the organizational structure and staff of the Anti-Corruption Agency. With such provision in place as well as the power given to the State Great Hural to dissolve the agency (Article 15.3 of the Law on Anti-Corruption) there is a huge risk that the IAAC will not be able to act independently of political influence on its staff.

Interlocutors also referred to the highly hierarchical nature of the agency where the head appoints all the staff and merit-based principle is not always followed. Many staff members come from other existing law enforcement agencies (police, security service), which also affects their independence.

While the establishment of a specialised agency with such a broad mandate might seem as a very progressive step to fight against corruption, yet like in some other countries, the challenge is too big for the IAAC alone as it cannot cope with every corruption related problem in the country. Moreover, such an approach runs the risk of being more aggravated as there are too many tasks for IAAC to deal with, leaving all the other stakeholders indifferent with regard to the issue.

With that respect, the evaluators were pleased to see that in accordance with Article 27 of the Law on Anti-Corruption, a Public Council was set up by President's decree on May 2014. The role of the Public Council is to ensure public involvement in the fight against corruption, voicing its opinion and advising on the conditions and implementation of the Law on Anti-Corruption. The Public Council consists of 15 members, appointed for a four-year term of office, from the academia, civil society, mass media, chamber of commerce and environmental association.

The Mongolian authorities informed the evaluators on site that the Public Council could play a key role in promoting important anti-corruption initiatives, for example, adoption of a new anti-corruption strategy as it is not seen as a threat by policy-makers.

It should be noted that when the IAAC was originally established according to Hong Kong's model, there were too high expectations of what it can achieve. With time, the belief in its ability to cope with corruption has diminished. Interesting findings were revealed by a public survey released in April 2015, which was conducted by The Asia Foundation in partnership with the Sant Maral Foundation and includes comparative data from previous years. According to the survey, the institution that respondents would prefer to lead the fight against corruption remains substantially unchanged since 2012. The top choice by a large margin is the IAAC, selected by more than a third of respondents (37.8 percent) in April 2015. The "National government" fell by a few points from March 2014, and stands in second place with 14.2 percent. "Civil society" is third. This is despite the decrease of confidence in the IAAC from 46.5 percent

in March 2013 to 39.2 percent in April 2015 and despite their disbelief in the IAAC’s impartiality (from 34.7 per cent in 2014 to 21.7 in 2015).

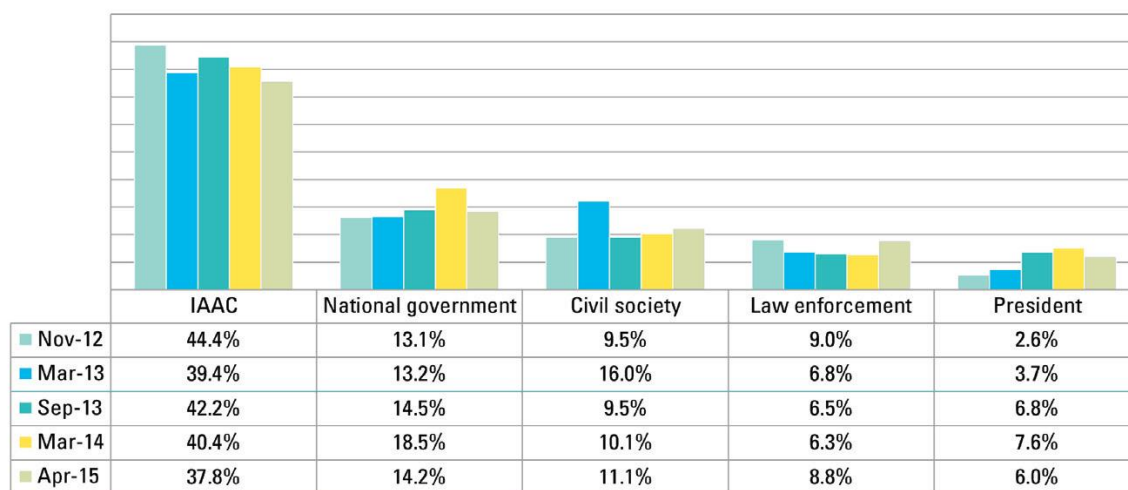
With this in mind, it is even more important to make sure that the IAAC remains financially, institutionally and politically independent. It should take more actions to increase its reputation to build public trust. Moreover, ownership for anti-corruption activities should not be taken by the IAAC alone. More actors should play an important role at the level of national government and local authorities. It is also of paramount importance that in a country of such big size regional offices of the IAAC should be set up to respond more quickly to corruption challenges at stake.

With regard to the latter issue of setting up regional offices of the IAAC, the Mongolian authorities informed that such proposal was submitted to the parliament but, unfortunately, was rejected. This however is in line with the recommendation to consider the issue, albeit the result of the consideration is negative, in the opinion of the monitoring team. (Please also see new recommendation 2.9. with regard to the IAAC’s investigative capacity in the regions).

The monitoring team several times during the on-site visit heard that there was a perception that the IAAC might be acting for personal/political reasons, that its investigations involved some “human rights violations”. No corroboration of these allegations was provided to the evaluators on-site. The IAAC’s Internal Monitoring Unit, which had been in operation since 2007, said that no violations of human rights had been reported to it in the context of criminal proceedings since its establishment. Such allegations may also be fuelled by current and former politicians who are discontent with the IAAC’s investigative activities. For instance, in June 2015 the former Prime Minister of Mongolia actually suggested disbanding the IAAC.

Even though public confidence in the IAAC has fallen recently, it remains by far the institution that the public trusts the most to lead the fight against corruption generally.

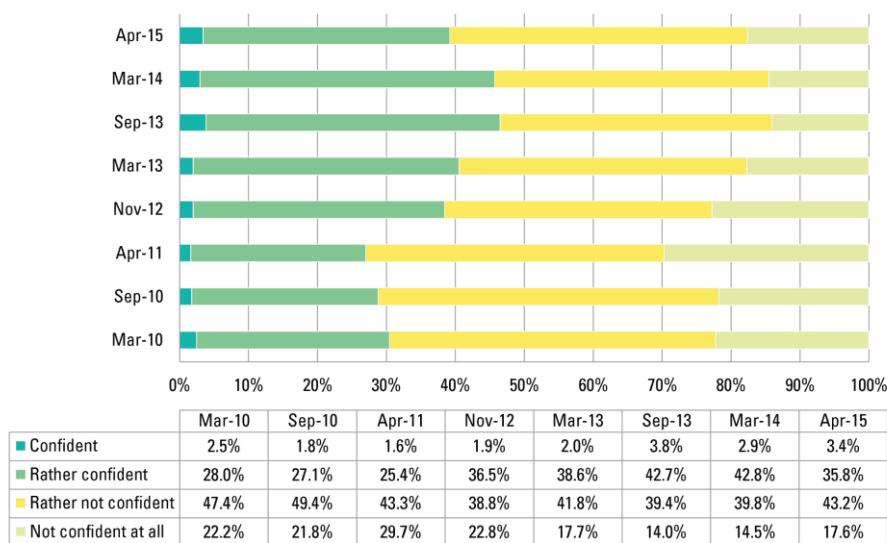
**Figure 2. Public trust in institutions in Mongolia**



**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), “Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project”, Figure 5.3, page 23 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

However, a more specific graph about public confidence in the IAAC shows a mixed picture on confidence:

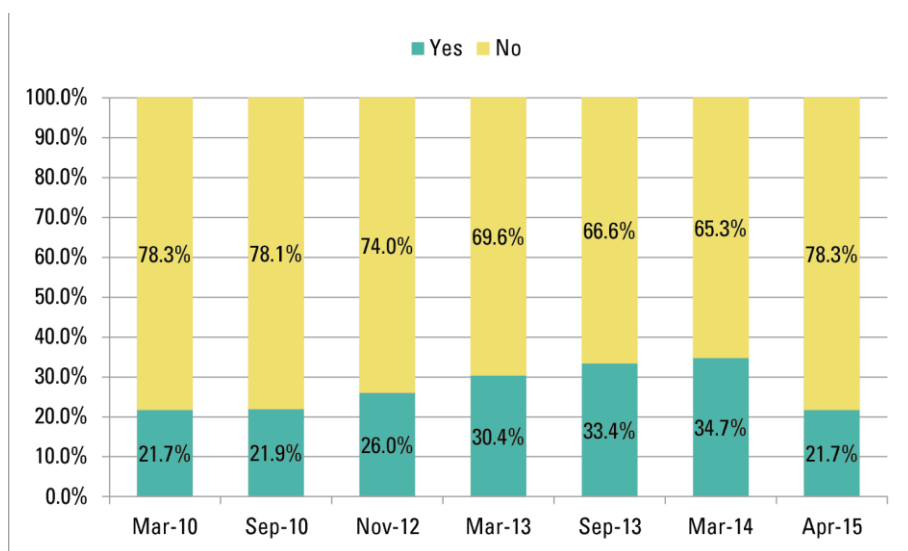
**Figure 3. Confidence in the IAAC**



**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), “Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project”, Figure 5.6, page 24 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

Finally, public opinion does not consider the IAAC to be an impartial law enforcement body:

**Figure 4. Survey: “Are you confident that IAAC is an impartial law enforcement body?”**



**Source:** The Asia Foundation/Sant-Maral Foundation (June 2015), “Survey on Perceptions and Knowledge of Corruption: Strengthening Transparency in Mongolia Project”, Figure 5.7, page 25 ([www.asiafoundation.org/publications/pdf/1513](http://www.asiafoundation.org/publications/pdf/1513)).

**2) Introduce competitive and transparent merit-based selection of the Head and Deputy Heads of the specialised anti-corruption agency; establish clear criteria and procedure for merit-based and competitive recruitment of the agency’s staff.**

No measures were taken with regard to this part of the recommendation. The evaluators were told on site that there is no practical problem with regard to the appointment of the head and deputy head of IAAC as they are appointed for a six-year term of office by the State Great Hural based on the nomination of the President and the term of office of the President and the State Great Hural does not coincide with their appointment. With regard to the recruitment of the IAAC's staff, the challenges remain, as described above. At the same time other interlocutors informed that after the change of the Government the previous head of the IAAC stepped down and a new head, close to the governing political party, was appointed. While the evaluators were not provided with hard proof, the interlocutors were confident that this was the result of a political interference. If confirmed, this would be a very disappointing development.

***3) Improve annual planning of the Independent Authority Against Corruption by emphasizing in its action plans the priorities, clearly defining the content and expected outcomes and outputs of activities, timeframe, setting measurable indicators of implementation and controlling their fulfilment.***

The answers to the questionnaire indicate that the Law on State Budget requires public organisations to correlate their action plans with the budgets. As a result, the IAAC is becoming more realistic in its planning to ensure that all planned activities are supported by the available budget. While the IAAC's 2015 plan is clear and concise, it does not have strong focus on some of the corruption risk sectors identified in the risk assessment of the draft strategy, e.g. political corruption, land, mining licenses, other sectors; the target groups of the awareness raising campaigns are not clearly defined.

### ***Conclusion***

No actions were taken to improve the capacity or independence of the IAAC. Its annual planning was improved, but only in terms of financial realism. No regional offices were established, although was indeed considered. More should be done to make sure that allegations of human rights violations are refuted. The use of special investigative techniques and performance of searches and seizures should be done with a court warrant. The IAAC should prioritise its work because it cannot cope with all the diverging tasks it has been assigned. It should also look for more allies in the government at the national and local level, involving them more actively in the anti-corruption field. There should be no political interference in the appointment of the IAAC leadership, whatever form it takes.

Mongolia is **partially compliant** with recommendation 1.6., which remains valid.

## 2. Criminalisation of corruption

### 2.1-2.2 Offences and elements of offence

*Recommendation from the Review Report 2.1.-2.2.*

- 1) *Align offences of active and passive bribery with international standards, in particular by criminalising offer or promise, acceptance of offer/promise of a bribe, request of a bribe as complete offences, bribery through a third person or for the benefit of a third person.*
- 2) *Enact a statutory definition of “bribe” which should include non-pecuniary and intangible undue advantages.*
- 3) *Introduce liability for bribery in the private sector and trafficking in influence in line with international standards; consider providing release from liability for active bribery in cases of extortion/request of a bribe when the bribe-giver reported such extortion/request to law enforcement authorities in line with the best international practice.*
- 4) *Clarify the terms used in offences of abuse of powers and money laundering to ensure legal certainty; through legislative amendments and/or changes in practice, explicitly provide that conviction for predicate offence is not required for prosecution and conviction for money laundering.*
- 5) *Review the offence of “Improvement in the financial state by illegal means” to bring it in line with Article 20 of the UNCAC.*
- 6) *Establish effective liability of legal persons for corruption criminal offences with proportionate and dissuasive sanctions, including liability for lack of proper supervision by the management which made possible commission of the offence; corporate liability should be autonomous and not depend on detection, prosecution or conviction of the actual perpetrator.*

The Government of Mongolia reported that no changes were introduced in the Criminal Code (CC) since adoption of the initial Review Report in April 2014 (see provisions of the Criminal Code in the Annex). At the same time the Ministry of Justice of Mongolia confirmed that they recently completed and submitted a draft new Criminal Code to the Parliament. Overall the drafting process lasted for about three years and this is the fifth version of the document. According to the Mongolian Ministry of Justice, the draft Code was cleared by the relevant parliament’s Standing Committee and is scheduled for consideration during fall session of the parliament in 2015.

*1) Align offences of active and passive bribery with international standards, in particular by criminalising offer or promise, acceptance of offer/promise of a bribe, request of a bribe as complete offences, bribery through a third person or for the benefit of a third person*

#### **Offer/promise, acceptance of offer/promise of a bribe, request**

The offer/promise of a bribe, the acceptance of offer/promise of a bribe, and the request (without elements of extortion) of a bribe are still not criminalised in Mongolia as complete offences. The Mongolian Criminal Code includes liability for inchoate offences (preparation and attempt of crime), but such offences are not recognised as functionally equivalent by international standards and by the IAP monitoring.



It is usual for the IAP countries to claim that incomplete offences cover described acts (offer, promise, etc.) and that separate criminalisation is therefore not required. IAP monitoring, as well as other monitoring mechanisms (GRECO, OECD WGB), has consistently rejected this argument for several reasons.

Firstly, attempted bribery takes place when the offence was not completed due to reasons beyond person's control. In addition Criminal Code of Mongolia also provides for exclusion of liability in case of voluntary abandonment of the crime, *i.e.* ceasing by perpetrator's own will of preparation or attempt at the bribery. This means that, for instance, if a person requests a bribe but then withdraws the request the person is exempted from liability. Equally a person will avoid criminal liability if the offer or promise of a bribe is withdrawn before receiving an unambiguous refusal from a potential bribe-taker.

Secondly, incomplete crimes draw lower sanctions under the Mongolian CC; the sanction cannot exceed half (for preparation) or two-thirds (for attempted crime) of the most severe sanction envisaged for the offence. As noted in one of the IAP second monitoring round reports, such a 'discount' is disproportionate to the gravity of the offence in the form of promise or offer of a bribe (since it concerns an intentional attempt to bribe an official, which was not completed due to circumstances beyond the control of the offender).<sup>9</sup>

Thirdly, liability for promising or offering a bribe is much more effective than trying to cover the same acts through attempt. It is sufficient to prove the intentional promise or offer of a bribe, rather than trying to prove intention to give a bribe which was not realised due to circumstances beyond the person's control. The same concerns are applicable to requests or acceptance of an offer or promise of a bribe.

Finally, prosecution of a promise or offer of a bribe as an incomplete crime does not cover all practical situations. For example, an oral promise or offer, which will be considered as demonstration of intent to give a bribe and without performance of minimal actions, which will constitute preparation for bribery or attempted bribery, will go unpunished.

During the on-site visit the monitoring group did not observe any practical developments with regard to implementation of this part of the recommendations, no respective amendments were introduced in the current Criminal Code. At the same time, the evaluating team's analysis of the draft new Criminal Code revealed significant efforts of the Mongolian authorities to implement this part of the recommendation. Firstly, both a promise and an offer of a bribe were included in the offence of giving a bribe (Article 22.5, draft new CC). Secondly, the draft CC qualifies a request (demand) of a bribe as an objective element of the offence of receiving of a bribe (Article 22.4).

Although it is not clear whether acceptance of an offer/promise of a bribe is covered by the draft provisions, Article 22.4 of the draft CC criminalises actions of the official who "demands, receives or accepts bribes". But as this is not sufficiently clear, acceptance of the promise or offer should be explicitly covered.

### **Directly or indirectly**

Active bribery under the Mongolian CC explicitly covers indirect commission ("in person or through an intermediary"); however, no such provision is available for passive bribery. The separate offence of intermediation in bribery (Art. 270 CC) concerned liability of the intermediary, but was repealed in 2012.

Under the draft new Criminal Code of Mongolia, the general provision of "Receiving of a bribe" in the Paragraph 1 of Article 22.4 does not cover indirect commission. This provision concerns passive bribery of "a person, who has duties under law, administrative legal acts and agreements". However, the second paragraph that covers "government officials" includes element of "directly or indirectly". Such inconsistency should be removed from the text.

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<sup>9</sup> IAP Second Round report on Kazakhstan, p. 29, available at [www.oecd.org/dataoecd/17/28/48908325.pdf](http://www.oecd.org/dataoecd/17/28/48908325.pdf).

Concerning active bribery, the drafters of the Code used quite vague wording: “Any acts done for the purpose of acquiring privileges or otherwise favourable position through transferring...”. It is not clear whether indirect commission is implied by the expression of “any acts.” In any case, such wording lacks legal certainty and cannot be considered as compliant with international standards.

### **Third party beneficiary**

According to the Criminal Code of Mongolia, the crimes of active and passive bribery do not include a third party beneficiary as an element. Thus, there is no offence if a bribe is intended for any other person or entity besides the official. The draft new Criminal Code also does not include this element.

### **2) Enact a statutory definition of “bribe” which should include non-pecuniary and intangible undue advantages**

As was mentioned in the initial 2014 Review Report, the term “bribe”, as used in the relevant incriminations, is not defined in the Criminal Code of Mongolia. It is, however, defined in Resolution No. 23 of the Supreme Court of Mongolia “On interpretation of some articles and provisions of Chapter 28 of the Criminal Code” (24 June 2009). It states that the term “bribe” mentioned in Article 268 means “any material or non-material assets, the right of their ownership, any job or service rendered on non-charged or preferential basis in order to realise illegitimate purposes”. While this definition includes “non-material” benefits, it defines them through “assets”, which may mean tangible objects to which monetary value can be attributed. During the on-site visit, some interlocutors stated that resolutions of Supreme Court of Mongolia are only advisory and do not bind practitioners (judges, prosecutors, investigators and etc.) to follow them; although Ministry of Justice of Mongolia disagreed referring to the Constitution of Mongolia that authorised the Supreme Court to provide official interpretation of correct application of laws and stating that in practice Supreme Court’s resolutions are closely followed.

It was therefore recommended that the term “bribe” be defined directly in the Criminal Code and that the definition explicitly include benefits that are intangible (*i.e.* a benefit not constituting or represented by a physical object and of a value not precisely measurable) and/or non-pecuniary (*i.e.* not relating to or consisting of money). See the initial Review Report (p. 26).

The Mongolian authorities claim that the definition of “benefits” contained in the Law on Anti-Corruption covers intangible and non-pecuniary advantages. They also referred to the judicial interpretation, by which bribery is defined as “to complete illegal needs by giving pecuniary, non-pecuniary resources, their property rights and services provided free or fixed rate”.

Article 3 of the Law on Anti-Corruption defines “benefit” as “material or non-material benefits, gained personally or by others, [in exchange] for preferences accorded to others by abusing the official power by a person, specified in Article 4.1 of this Law”. There is a separate definition of “preferences” in the same article but it is not relevant as it refers to actions of the official committed in response to benefit (bribe) obtained from the bribe-giver. According to the Supreme Court Resolution No. 23 of 24 June 2009, the definition of “benefit” is found in Article 3 of the Law on Anti-Corruption; however, this observation was made with regard to Article 265 (Abuse of authority by an official of an NGO or a business entity). In contrast, Articles 268 and 269 CC (passive and active bribery) do not even mention the term “benefit”.

While the definition of “bribe” in the Law on Anti-Corruption is broader than the interpretation by the Supreme Court, it is not explicit enough. Also no case law was provided to prove that term “bribe” indeed covers non-pecuniary and intangible undue advantages.

The draft new Criminal Code also uses the term “bribe” but again does not define it explicitly. The offence of active bribery in Article 22.5 concerns the “giving, promising or offering to give tangible and intangible assets and ownership rights thereof, or through providing service on a discount or free of charge”. This provision covers only “intangible assets”, and thus it does not include non-pecuniary advantages or

advantages that do not qualify as “assets”. “Assets” can be understood as something having value that can be measured, while the definition should be broader and include any benefits (advantages), including those that have no market value or cannot be valued at all (e.g. media coverage, promotion, non-paid internship, honours, etc.) Therefore it still falls short of the established international standards.

One can assume that the same definition might apply to the term “bribe” in the passive bribery offence in the draft CC (Article 22.4). But the problem is that in Article 22.5 (Giving a bribe) drafters do not use the term “bribe” and instead only specify its elements. Furthermore, even if the term “bribe” were included in the text of Article 22.5, there is no indication or explanation that the notion of a “bribe” shall be interpreted in the same manner in all cases. Without such a caveat, applying one definition to all the offences would contradict the fundamental principle of legal certainty, which bans the application of criminal law provisions based on unforeseeable interpretations or assumptions about the meaning of the text of the criminal offence. It also contradicts the prohibition on applying criminal law by analogy contained in Article 3.2 CC.

### ***3) Introduce liability for bribery in the private sector and trafficking in influence in line with international standards***

#### **Private sector bribery**

Mongolian authorities referred to general bribery offences that cover “officials”. According to them, Article 268 specifies an official as “a state, non-state organization, entities employee”. The Criminal Code does not classify bribery in the public and private sectors separately.

However, no such definition is to be found in the text of Article 268 of the Criminal Code, which the authorities provided. In contrast, the notes to Articles 263 and 265 define two terms that are relevant for these articles:

“The state official referred to in this article include officials holding the administrative or executive posts in state organizations”

“The official of NGO or business entity referred to in this Article includes officials holding administrative or executive posts in NGOs or business entities”

The criminalisation of private sector bribery through general provisions on bribery that do not discern between officials of private and public sector does not formally contradict international standards. However, it raises issue of clarity and visibility. Stand-alone criminal offences of private sector bribery appear to better address non-public corruption.

It is worth noting that the Council of Europe’s Group of State against Corruption (GRECO) recommended to Azerbaijan in its Third evaluation round report to consider including specific provisions on bribery in the private sector in the Penal Code. The GRECO evaluation had the view that the system would doubtless benefit from the introduction of separate and clearly identifiable provisions designed specifically to cover private sector bribery, along the lines of Articles 7 and 8 of the Council of Europe Criminal Law Convention on Corruption.<sup>10</sup> However, in an earlier report on Lithuania GRECO noted a strength of the approach that covers with the same provisions the public, private and non profit sector, as well as independent professionals, as there are no loopholes or practical difficulties possibly connected with the

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<sup>10</sup> See GRECO Third Round Evaluation Report, October 2010, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)2\\_Azerbaijan\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)2_Azerbaijan_One_EN.pdf). However, GRECO was satisfied with the Azerbaijan authorities’ decision not to introduce separate offences despite its recommendation. The Azerbaijan authorities also provided statistics on a number of cases of private sector corruption prosecution; see Compliance Report, October 2012, page 6, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)12\\_Azerbaijan\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)12_Azerbaijan_EN.pdf).

determination of the provisions applicable to private sector entities in charge of a public service or public-private partnerships for instance.<sup>11</sup>

It appears that this situation was not addressed in the draft new Criminal Code. The later (Article 22.4 and 22.5) uses the term “a person, who has duties under law, administrative legal acts and agreements<sup>12</sup>” in the bribery offences and does not contain separate offences for bribery in the private sector. No definition of this term is included in the text of the draft Code provided to the monitoring team. At the same time, the draft Code also uses “management personnel or executive officer of legal entities” (Article 22.11).

### **Trafficking in influence**

The offence of trafficking in influence has not been introduced in Mongolia since the initial Review Report.

Under Article 18 of the UN Convention against Corruption (UNCAC) establishing trading in influence as a criminal offence is optional. However, the Istanbul Action Plan monitoring is not limited to provisions of the UNCAC or only its mandatory provisions. The IAP monitoring is based on a broad range of standards, of which the UNCAC is only one. In other international instruments, abuse of influence (trading in influence) is a mandatory offence, for instance under Article 12 of the Council of Europe Criminal Law Convention on Corruption (Article 12). As the Istanbul Action Plan monitoring mechanism is formally not limited to any particular conventions and covers broad international anti-corruption standards, trading in influence has been accepted as a standard to be implemented by all Istanbul Action Plan countries, as was noted in the IAP Summary Report for 2009-2013 (p. 77).

During the on-site visit, the Mongolian authorities noted that the draft new Criminal Code envisages the criminal liability for trading in influence. The draft new CC (Article 22.2) covers the acts of soliciting and receiving a bribe in exchange for the abuse of an official’s influence. It is, however, not clear, why the drafters “criminalised” the act of solicitation only in relation to a management staff member, having omitted the solicitation in the general provision (paragraph 1, Art. 22.2). Similarly, indirect solicitation and the receipt of undue advantages in trading in influence, is also effective only with respect to members of management staff. The draft CC also fails to “criminalise” the promise and the offer of a bribe in relation to trading in influence. Overall, the proposed wording of Article 22.2 appears to be confusing and does not clearly cover all elements required by the international instruments with regard to trafficking in influence. It is recommended that Mongolia should adopt the wording from pertinent international instruments instead (e.g. Council of Europe Criminal Law Convention on Corruption).

***consider providing release from liability for active bribery in cases of extortion/request of a bribe when the bribe-giver reported such extortion/request to law enforcement authorities in line with the best international practice***

Mongolian authorities asserted that a release from liability is provided when a person voluntarily reports to the competent authority that he or she has given, received, or been an intermediary for a bribe. They referred to Article 70 of the Criminal Code, which concerns the remission of the culprits who surrender themselves: “A culprit who has committed for the first time a minor or a less serious crime, compensated for or redressed the damage caused may be renounced”.

However, this provision does not address the recommendation, which aims to stimulate corruption reporting by those giving bribes in response to solicitation or extortion. A similar, but not equivalent, provision could be found in Article 270 CC, which addressed intermediation in bribery: “A person who

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<sup>11</sup> GRECO Third Evaluation Round Report on Lithuania, July 2009, page 21, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)10\\_Lithuania\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)10_Lithuania_One_EN.pdf).

<sup>12</sup> During the on-site visit, Mongolian authorities stated that the term “official” covers “everyone who has a labour contract with duties”, including all civil servants, private sector officials, foreign officials and secondary (supporting) staff.

engaged in intermediation and voluntarily reported to the competent authority about intermediation in bribery is released from criminal liability”. However, Article 270 was revoked in 2012.

The concept of effective regret has been included in the draft new Criminal Code in the note to Article 22.5:

- “ - If briber voluntarily confesses to the competent authority that he/she gave the bribe to receive public service as a result of impediments created by the public official, the briber will be released from criminal sanctions and the received public service will not be undone/confiscated.
- If briber gave the bribe in order to have public official commit an unlawful act, such briber shall not be released from sanctions/liability. If briber voluntarily confesses his/her crime to the competent authority, such confession will be the basis for mitigating relevant sanctions/liability.”

It should be noted that while the effective regret exemption encourages the reporting of bribery and allows for the prosecution of public officials who receive bribes (a crime considered in some countries as being more dangerous than active bribery), it creates potential for abuse. As was noted in the IAP Summary Report for 2009-2013, this is especially the case when the defence is automatic, that is, when it leaves no discretion for the prosecutor or judge to assess the specific circumstances of the case. A briber may misuse this defence by blackmailing or exerting pressure on the bribe-taker to obtain further advantages or by reporting the crime long after it was committed when he found out that law enforcement authorities may uncover the offence on their own.<sup>13</sup>

The IAP Summary Report for 2009-2013 summarised the international standards regarding this defence as follows:

- it should not be applied automatically – the court should have the possibility to take into account different circumstances, *e.g.* the motives of the offender;
- it should be valid only during a short period of time after the commission of a crime and in any case, before the allegation was brought to the attention of the law enforcement authorities through other sources;
- the briber who denounces the crime should be obliged to co-operate with the authorities and assist the prosecution of the bribe-taker;
- it should not be applicable in cases when bribery was initiated by the briber;
- the bribe should not be returned to the perpetrator and should be subject to mandatory confiscation.<sup>14</sup>

Only part of these elements are reflected in the draft new Code. This oversight should be corrected in the final wording.

The OECD WGB has also objected to applying effective regret to foreign bribery offences as such. While in cases of domestic bribery, the effective regret defence may allow a country to uncover acts of bribery and prosecute public officials, in case of bribery of a foreign public official there is no guarantee that the official who took the bribe will be prosecuted. In the words of the OECD WGB, “[i]f this occurs the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and

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<sup>13</sup> ACN/IAP Summary report for 2009-2013, Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, p. 76-77, available at [www.keepeek.com/Digital-Asset-Management/occd/governance/anti-corruption-reforms-in-eastern-europe-and-central-asia\\_9789264201903-en](http://www.keepeek.com/Digital-Asset-Management/occd/governance/anti-corruption-reforms-in-eastern-europe-and-central-asia_9789264201903-en).

<sup>14</sup> Idem.

the ends of justice remain unserved”.<sup>15</sup> It is therefore welcome that the draft Criminal Code of Mongolia does not include this defence for Article 22.6 “Giving bribe to officials of foreign countries or international organisations”.

***4) Clarify the terms used in offences of abuse of powers and money laundering to ensure legal certainty; through legislative amendments and/or changes in practice, explicitly provide that conviction for predicate offence is not required for prosecution and conviction for money laundering***

#### **Abuse of powers**

Mongolian authorities stated that the crime “abuse of power of a state official” contained in the Criminal Code meets the requirements of the UNCAC. Article 19 of UNCAC defines this offence as the abuse of functions or position as the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity. Article 263 of the Mongolian CC criminalises abuse of power or of office by a state official, if it has been committed for lucrative or other personal interests and has caused a substantial damage to rights and interests of the citizens.

Mongolia Supreme Court Resolution No. 23 contains further explanation of some terms used in the article. According to this resolution, the term “power” shall be understood as the entirety of the power and principal duties afforded to elected or appointed official by law; the term “office” shall mean the authority and influence related to the position; the term “abuse” of power or of office shall be understood and applied as stated in Article 3.1.3. of the Law on Anti-Corruption. The latter provides that “abuse of official power” means taking undue action or not taking due action to use the delegated official power against official interests or in own personal interests.

The initial Review Report noted, in particular, that the statute should also define “lucrative” and “other personal interests,” since these are essential elements of the offence. The statute should also provide some objective metric for measuring “substantial damage to rights and interests of the citizens” (Article 263.1 CC).

As regards the latter issue, the calculation of damage is determined in Article 29 CC as follows: an amount equal to 1 to 50 times the monthly minimum salary at the time of the offence is “considerable”, an amount equal to 50 to 125 times the minimum salary is “substantial”, an amount equal to 125 to 200 times the minimum salary is “large”, and an amount more than 200 times the minimum salary is “extremely large”.<sup>16</sup>

In its replies to the questionnaire, Mongolia also explained that the crime of abuse of office is committed with motivation of greed and lucrative impulse. Motivation of “greed” is specified as the abuse of office by a state official, which results in the acquisition of assets, or funds from a state organization, for the purpose of appropriating them to oneself or transferring them to others. Other “lucrative impulses” are specified as non-pecuniary profits. Finally, “power” is defined as a combination of rights and obligations of an elected or appointed official.

This clarifies most of the ambiguous terms in the provisions (“abuse of office”, “substantial damage”).

During the on-site visit, however, Mongolian authorities provided confusing answers to the question about the meaning of the term “lucrative and other personal interests.” It was even stated that there is no term “lucrative” in the text of Article 263.1 CC

#### **Money laundering**

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<sup>15</sup> OECD WGB Phase 2 report on Slovakia, §160, available at [www.oecd.org/daf/anti-bribery/anti-briberyconvention/35778308.pdf](http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/35778308.pdf).

<sup>16</sup> Using [the 2013 minimum salary, which amounted to about USD 110], these levels of damage are approximately: USD 110 to 5,500 (“considerable” damage); USD 5,500 to 13,750 (“substantial” damage); USD 13,750 to 22,000 (“large” damage); and more than USD 22,000 (“extremely large” damage).

The initial Review Report stated that Mongolia's statute criminalising money laundering (Article 166<sup>1</sup> CC) should provide a clear definition of "illegal actions" and "evasion of justice" to ensure predictability and legal certainty in its application and enforcement.

Mongolian authorities provided several differing translations of the money laundering offence (Article 166<sup>1</sup> CC as amended in January 2014). The one that seemed the most accurate and was confirmed by the Mongolian FIU is provided below:

“166<sup>1</sup>.1. Conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property or of helping any person to evade the legal consequences of his or her action, or the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, or acquisition, possession or use of property knowing that such property is the proceeds of crime shall be punishable by fine of togrogs equal to 50 to 100 times of amount of minimum salary, or incarceration up to 6 months, or imprisonment of up to 5 years.

166<sup>1</sup>.2. The same crime committed by an organized criminal group, or using official position, or if it has caused damage in a large amount shall be punishable by fine of 300 to 500 times of amount of minimum salary or imprisonment for a term of 5 to 12 years.

166<sup>1</sup>.3. The same crime committed by a legal person shall be punishable by restriction of certain types of its business activity and fine of togrogs equal to 300 to 500 times of amount of minimum salary.”

According to Article 3.1.1. of Mongolia's Law on Combating Money Laundering and Terrorism Financing of May 2013, "money laundering" means the acquisition, conversion or transfer of an asset knowing that the asset is the proceeds of crime or the concealment or disguise of the illicit origin of the asset, transfer of rights of ownership of the asset, conversion of the true nature, location of that asset for the purposes of making the assets' appearance as legal.

Mongolia is a party to the Vienna and Palermo Conventions, as well as UNCAC, which set the primary anti-money laundering standards at the international level.<sup>17</sup>

During the on-site visit, the Mongolian Government reported that "conversion and transfer of assets" are covered in the Article 166<sup>1</sup> CC.

The Criminal Code also includes Article 155 (Acquisition or sale of property knowingly obtained by way of crime). Mongolian authorities clarified that Article 155 is a general law, that is broader than the specific law contained in with Article 166<sup>1</sup>. Thus, Article 155 is applied in cases when the acts committed cannot be qualified in terms of Article 166<sup>1</sup>, e.g. the sale of assets obtained from the commission of a minor crime.

No steps were taken, either through legislative amendments or changes in practice, to explicitly provide that a conviction for the predicate offence is not required for prosecution and conviction for money laundering.

It was further confirmed that a conviction for predicate offence is necessary pre-condition for the application of Article 166<sup>1</sup>. The draft new Criminal Code does not contain any changes with respect to predicate conviction requirement.

##### ***5) Review the offence of "Improvement in the financial state by illegal means" to bring it in line with Article 20 of the UNCAC***

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<sup>17</sup> Mongolia ratified UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Vienna Convention), UN Convention Against Transnational Organized Crime (2001 Palermo Convention) in 2008 and the UN Convention against Corruption in 2006.

The initial Review Report commended Mongolia for introducing the offence of “Improvement in the financial state by illegal means” (Article 270<sup>1</sup> CC, see text in the Annex). However, Article 270<sup>1</sup> CC as it is worded may not be effective in prosecuting illicit enrichment. The main element of the illicit enrichment offence, which can be found for example in Article 20 of the UNCAC<sup>18</sup>, is the discrepancy between actual assets of the official and his lawful income. Requiring proof that the official “received” income by illegal means assimilates this offence to the bribery offence in a way that undermines the entire approach for criminalising illicit enrichment.

No changes have been made in that provision since the Review Report.

This deficiency, however, is addressed in the draft new Criminal Code of Mongolia that provides (Article 22.9):

“If a government official cannot justify major increase of his/her income and assets as lawful, such income and assets shall be confiscated and the relevant official's right to be appointed in public office shall be suspended for up to two years and [the official can] be fined an amount equal to USD 400 to USD 14,000 in togrogs, be placed under home detention for a period of one month to three years, or be imprisoned for a period of one month to three years.”

The wording appears to be generally in line with international standards.

***6) Establish effective liability of legal persons for corruption criminal offences with proportionate and dissuasive sanctions, including liability for lack of proper supervision by the management which made possible commission of the offence; corporate liability should be autonomous and not depend on detection, prosecution or conviction of the actual perpetrator***

Articles 8 and 20 of Mongolia’s Criminal Code provide that a legal person shall be subject to criminal penalties if the Special Part of the Code so provides. Only one article in the Special Part mentions legal persons as possible offenders – Article 166<sup>1.3</sup> on money laundering (sanctioned with suspension of the right to carry out certain activities or a fine of 300 to 500 amounts of minimum salary, i.e. about USD 33,000 – 55,000).

Mongolia is therefore not compliant with the recommendation. It is also not clear how the liability of legal persons can be applied, even for money laundering, as no regulation whatsoever is included in the code. The amount of fine for money laundering is not dissuasive according to international standards.<sup>19</sup>

During the on-site visit, Mongolian authorities confirmed Article 166<sup>1.3</sup> CC has not been applied in practice.

At the same time, the draft new Criminal Code includes a new chapter on the “Imposition of criminal sanctions on legal entities”. It provides that criminal sanctions can be imposed on a legal entity, if a sole or joint decision by one or more authorised representatives of a legal entity, or the action or inaction of such persons in the interest of the legal entity constitutes a crime. Sanctions against a legal person do not release the natural persons involved from liability.

The following sanctions may be applied to legal persons: a fine in the amount of USD 10,000 to 6,666,000; permanent revocation or suspension of rights for a period of one to eight years; liquidation.

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<sup>18</sup> Specifically, UNCAC Article 20 refers to “a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income”.

<sup>19</sup> Overview of practice with regard to corporate liability in the regions and recommendations for implementation of international standards in the national laws can be found in the OECD/ACN publication “Liability of legal persons for corruption in Eastern Europe and Central Asia”, 2015, available at: [www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf](http://www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf) (in English), [www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015-RUS.pdf](http://www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015-RUS.pdf) (in Russian).



From the draft new CC provisions provided to the monitoring team, it appears that the liability of legal persons will only be applied to offences that are specifically envisaged in the new Criminal Code. For example, under Article 18.9 of the draft new CC, legal entities that commit money laundering can be punished by the revocation of their licences and/or their rights to carry out certain activities. They can also be fined in the amount of USD 666,666 to USD 6,666,000. Regrettably, however, the liability of legal persons is not extended to bribery offences in the draft new CC.

Based on the portion of draft provisions provided to the monitoring team, it can be concluded that proposed regime of corporate liability in Mongolia is not in line with international anti-corruption standards. First, it does not cover bribery offences as such. Second, it does not provide for the liability of the legal entity when the legal entity's management made the commission of the offence possible by its failure to supervise lower-level employees or agents. Third, the autonomous nature of the legal entities' liability is not ensured. This follows in particular from Article 19.1 of the draft new CPC ("Legal proceedings of legal entities shall be carried out simultaneously with proceedings of persons who are authorised to represent or acted in the interest of such legal entities"). As a result, even if the legal person's liability may be substantively independent of the liability of the natural persons involved in the offence, the legal person's liability in practice will be procedurally linked to proceedings against natural persons. This requirement could hinder efforts to hold legal persons liable when circumstances prevent the authorities from prosecuting the natural person (e.g., if the natural person has died or fled the jurisdiction before proceedings could commence or cannot be prosecuted for other reason). To avoid the risk of creating unnecessary obstacles that may prevent countries from successfully holding legal persons liable for foreign bribery, the OECD WGB has made clear that signatories to the OECD Anti-Bribery Convention should ensure that they do not "restrict the liability [of legal persons] to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted".<sup>20</sup> In addition, it is not clear from the draft new Criminal Code what the term "authorised representative" means, which legal entities are covered, how the amount of fine should be calculated, and whether there are any defences that a legal person can raise to avoid liability.

In its comments to draft monitoring report Mongolia's Ministry of Justice argued that the bribery is an active action and is executed by the natural person, when a legal person decides to disburse money for bribery the decision is always taken by someone. The ministry sees in this a risk of double punishment and indicated this as a reason why it was decided to establish liability of legal persons in very few cases. The ministry also referred to opinion that corporate liability may affect the financial situation of legal persons.

The monitoring team cannot accept these arguments which contradict the rationale and substance of the corporate liability. It has been proven that liability of natural offenders is ineffective, as it shields the main beneficiary of most bribery deals – the company that directs, endorses or allows bribery by actions or inaction of its management or controllers. A legal person is a separate entity that has legal rights and duties separate from those of its founders, shareholders or employees and as such it should be liable for its "actions or inaction". Liability of legal persons for corruption and money laundering is an established international standard that is mandatory under different instruments (including UNCAC to which Mongolia is a party). At the same time these instruments leave it to the national law to decide on the nature (criminal, administrative or civil) and the form of the corporate liability, as long as it is effective. The countries are also supposed to establish not only dissuasive, but also proportionate sanctions, i.e. sanctions that deter new offences while not crippling the legal person financially.

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<sup>20</sup> See Section B of Annex I to the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

The monitoring team welcomes the Mongolian authorities' initial effort to introduce corporate liability, but recommends that they revise the relevant provisions of the draft new Criminal Code to align them with the IAP recommendation and international standards.<sup>21</sup>

## Conclusions

The provisions of the Mongolian law on corruption offences have not been aligned with international standards and the IAP recommendations. The current Criminal Code of Mongolia misses a number of key provisions and must be revised as discussed above, in particular: (i) criminalising the offer and promise of a bribe, the acceptance of such offer or promise, and the request for a bribe; (ii) defining “bribe” and ensuring that it covers intangible and non-pecuniary benefits; (iii) properly and explicitly criminalising private sector corruption and trafficking in influence, and (iv) introducing the effective liability of legal persons. Mongolia is now considering a draft new Criminal Code. This is an excellent opportunity to address the deficiencies identified and to strengthen Mongolia's criminal law provisions on corruption offences. However, the current draft document that the monitoring team reviewed needs to be significantly amended before adoption to correct the deficiencies identified in the current law.

Mongolia is **partially compliant** with recommendation 2.1.-2.2., which remains valid.

## 2.3. Definition of public officials

### *Recommendation from the Review Report 2.3.*

- 1) *Introduce in the Criminal Code definition of national public officials subject to corruption offences which would cover all state and local self-government employees, as well as other persons who perform public functions and candidates for elected offices.*
- 2) *Establish bribery offences involving foreign public officials in line with international standards and clearly define such officials in the Criminal Code.*

### *1) Introduce in the Criminal Code definition of national public officials subject to corruption offences which would cover all state and local self-government employees, as well as other persons who perform public functions and candidates for elected offices*

The Review Report stated that neither the Criminal Code of Mongolia nor any explanatory materials provided (including Supreme Court Resolution No. 23) defined the term “official” as used in the bribery offences. Some definitions, however, are included in the Notes to Articles 263 CC and 265 CC. The Note to Article 263 “Abuse of power or office by a state official” provides that the state official referenced in this article includes officials holding the administrative or executive posts in state organizations, and the Note to Article 265 defines “official of NGO or business entity” as used in that article as officials holding administrative or executive posts in NGOs or business entities.

In addition, it is not clear what the difference is between the terms “state official” and “official” used in the Mongolia's Criminal Code.

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<sup>21</sup> For the relevant international standards, see the Policy Recommendations in the OECD/ACN Study on Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, 2015, available at [www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf](http://www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf).

Even if the definition used in Article 263 CC also applies to other offences, it falls short of international standards because it is limited to employees with managerial or administrative functions, thus excluding auxiliary employees (*e.g.* clerks, secretaries, typists, couriers, drivers, archivists).

Therefore, the previous recommendation appears to be valid and not implemented: the definition of the officials subject to bribery offences should be included in the Criminal Code and cover a wide range of public sector employees, as well as employees of public entities or private entities performing public functions.<sup>22</sup>

The Mongolian authorities reported that when it is difficult to identify a “state official” in a particular case, practitioners also refer to the classification in the Law on Civil Service. Article 5 of the Law on Civil Service classifies civil service posts as following: 1) political posts; 2) administrative posts; 3) special posts (*e.g.*, judges, prosecutors, diplomats and etc.); and 4) supporting personnel. The definition of a civil servant is given in the Article 11: “A civil servant shall be a person who is paid salary and ensured working conditions and guarantees by the state for holding a civil service post and exercising his/her mandate.” But again, as was noted above, this is not a satisfactory situation - application of criminal law by analogy with any other area of law is prohibited even by Article 3.2 CC of Mongolia. Legal certainty principle requires that all terms used by the criminal law be clearly defined or there is an explicit reference to provisions of another legal act.

Mongolian authorities claimed that in the draft new Criminal Code the term “official” is defined broadly to cover “everyone who has [a] labour contract with duties”, including all civil servants, private sector officials, foreign officials and secondary (supporting) staff. However, this was not supported by the text of the draft version provided to the monitoring team, which includes two distinctive categories of individuals subject to bribery offences: “a person, who has duties under law, administrative legal acts and agreements” and “a government official”.

Overall the draft new CC fails to introduce a detailed definition of the term “official” clarify the persons who are subject to bribery offences. The drafters use such terms as “a person, who has duties under law, administrative legal acts and agreements”, “governmental official”, “influential political entity/person” and “management personnel or executive officer of legal entities”, but they give no explanation to these terms.

## ***2) Establish bribery offences involving foreign public officials in line with international standards and clearly define such officials in the Criminal Code***

The Review Report noted that Mongolia’s Criminal Code did not criminalise bribery involving a foreign public official. In their replies to the monitoring round questionnaire, the Mongolian authorities referred to Article 5 of the Criminal Code, according to which a culprit whose guilt has been established by court shall be subject to criminal liability irrespective of his/her ethnic origin, language, race, age, sex, social origin and status, property, official position, occupation, religion, opinion, belief and education. This means that there is no special treatment for foreign officials caught in bribery offences.

This explanation is hardly sufficient. First, there is general problem of lack of definition of “official” in the bribery offences (see above). Second, it is not evident that the term official covers foreign public officials as well.

International standards permit countries to criminalise the bribery of foreign public officials either by enacting a separate offence expressly aimed at foreign bribery or by extending the definition of persons subject to criminal liability for existing bribery offences to encompass foreign public officials. All the IAP countries that have already criminalised bribery of foreign public officials have chosen the latter approach and extended the definition of an official to cover foreign public officials.<sup>23</sup> However, foreign public officials should be specifically mentioned in the definition of persons subject to bribery crimes.

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<sup>22</sup> See description in the ACN/IAP Summary report for 2009-2013, cited above, p. 66.

<sup>23</sup> See ACN/IAP Summary report for 2009-2013, cited above, p. 67-68.

During the on-site visit, Mongolian authorities repeatedly stated that the current CC does not provide special treatment to foreign officials. According to Article 13.1., all crimes committed on the territory of Mongolia shall be prosecuted in Mongolia. Referring to Articles 14.4. and 14.5., the authorities further clarified that bribery offences committed by foreign nationals (including foreign officials) as well as stateless persons beyond the Mongolian territory can be prosecuted in Mongolia, but only if there is a relevant international agreement with the country where the offence occurred. Otherwise criminal case will be suspended. As described above such approach is not satisfactory.

The draft new Criminal Code introduces two separate articles regarding the liability of foreign officials: Article 22.3 (Abuse of power by officials of foreign countries or international organisations) and 22.6 (Giving bribe to officials of foreign countries or international organisations).

The Note to Article 22.3 clarifies that “Officials of international organisations shall include officers working in international organisations, government to government organisations and their representative offices/branches, and any representative who is authorised to represent such organisations.” However, this Note does not clearly apply to officials of international non-governmental organisations . Nor does it cover or define “officials of foreign countries”.

Article 22.6. of the draft new CC, despite its title (see above), in fact covers both passive and active bribery involving “an official of a foreign country or an international organisation”. However it also fails to define these subjects of the offence. It also shares the other deficiencies of the bribery offences described above (e.g., the absence of provisions addressing the definition of “bribe”, indirect commission of bribery, and acceptance of an offer or promise to pay a bribe, etc.).

Mongolia is **not compliant** with recommendation 2.3., which remains valid.

## **2.4.-2.5. Sanctions and confiscation**

### *Recommendations from the Review Report 2.4.-2.5.*

- 1) Review criminal sanctions for corruption offences to ensure that they are effective, proportionate and dissuasive.*
- 2) Compile and analyse statistics on application of sanctions for corruption offences to see how effective they are in practice (e.g. how often conditional release is applied, whether imprisonment is the main sanction for serious offences).*
- 3) Revise provisions on confiscation to enable mandatory application of the confiscation of instrumentalities and proceeds to all corruption and corruption-related offences, including converted or mixed proceeds, benefits derived from proceeds and value-based confiscation; consider reversing burden of proof in confiscation proceedings (criminal or civil) and introduce extended confiscation.*

### *1) Review criminal sanctions for corruption offences to ensure that they are effective, proportionate and dissuasive*

As was established in the Review Report, sanctions for corruption offences in the Mongolian Criminal Code (see the table below) do not appear to be proportionate and dissuasive, in particular because:

- 1) Although a fine is a *possibility* (as an alternative sanction) for many offences, including for aggravated offences of bribery, the amount of fine is clearly not sufficiently dissuasive;

- 2) mandatory confiscation is only provided for a very limited number of offences – aggravated passive bribery, aggravated money laundering and embezzlement(also, see below section on confiscation);
- 3) the range of sanctions does not allow imposing proportionate sanctions (e.g. the same sanction is provided for bribery for both large and especially large amounts; likewise, there is only one provision for all aggravated offences of passive and active bribery, etc.);
- 4) some sanctions are very low (e.g. a maximum fine of USD 5,500 or arrest for up to 3 months for acting as an intermediary in bribery).

**Table 14. Sanctions corruption or corruption related offences in the Mongolian CC**

	<b>Fine*</b>	<b>Forced labour</b>	<b>Deprivation of right (main / additional sanction)</b>	<b>Confiscation</b>	<b>Short-term incarceration</b>	<b>Deprivation of liberty</b>
<b>Receiving a bribe</b> (Art. 268.1)	USD 5,610 - 27,500	No	Yes (add.)	No	No	Up to 5 years
Receiving a bribe (Art. 268.2: extortion; by organised group or criminal organisation; large or extremely large amount <sup>24</sup> ; repeatedly)	No	No	No	Yes (of illicit proceeds)	No	5-10 years
<b>Giving a bribe</b> (Art. 269.1)	USD 5,610 - 27,500	No	No	No	No	Up to 3 years
Giving a bribe (Art. 268.2: by organised group or criminal organisation; repeatedly)	No	No	No	No	No	5-8 years
<b>Intermediation in bribery</b> (Art. 270.1)	USD 550 – 5,500	No	No	No	1-3 months	No
Intermediation in bribery (Art. 270.2: repeatedly; with the use of official position)	USD 5,610 – 27,500	No	Yes (add., optional)	No	No	Up to 5 years
<b>Improvement in the financial state by illegal means</b> (Art. 270 <sup>1</sup> .1)	USD 5,610 – 27,500	No	Yes (add.)	No	No	Up to 3 years
Improvement in the financial state by illegal means (Art. 270 <sup>1</sup> .2: especially large amount)	USD 27,610- 55,000	No	Yes (add.)	No	No	3-8 years
<b>Abuse of official powers</b> (Art. 263.1)	USD 550 – 5,500	No	Yes (add.)	No	1-3 months	No
Abuse of official powers (Art. 263.2)	USD 5,610 –	No	Yes (add.)	No	No	Up to 5 years

<sup>24</sup> Large bribe equals 125-200 minimum salaries or about USD 13,500-21,500; extremely large amount of bribe stands for 200 or more minimum salaries or about USD 21,500 or more.

	Fine*	Forced labour	Deprivation of right (main / additional sanction)	Confiscation	Short-term incarceration	Deprivation of liberty
	11,000					
<b>Excess of authority by a state official</b> (Art. 264.1)	USD 550 – 5,500	No	Yes (add.)	No	1-3 months	No
Excess of authority by a state official (Art. 264.2)	USD 5,610 – 11,000	No	Yes (add.)	No	3-6 months	Up to 5 years
<b>Money laundering</b> (Art. 166 <sup>1</sup> .1)	USD 5,610 – 27,500	No	No	No	No	Up to 5 years
Money laundering (Art. 166 <sup>1</sup> .2)	No	No	No	Yes	No	5-10 years
Money laundering (Art. 166 <sup>1</sup> .3)	No	No	No	Yes	No	10-15 years
<b>Misappropriation or embezzlement of property</b> (Art. 150.1)	USD 550 – 5,500	No	Yes (add.)	No	1-3 months	No
Misappropriation or embezzlement of property (Art. 150.3)	No	No	No	Yes	No	5-10 years
<b>Appropriation of property by fraud</b> (Art. 148.1)	USD 550 – 5,500	Yes	No	No	1-3 months	No

\*Calculated in minimum salaries; equivalent in USD provided.

No changes were made since the previous evaluation, although Mongolian authorities mention development of the new Criminal Code that may address the issue of sanctions as well.

Having examined the draft new CC the monitoring team is of the opinion that in some cases drafters made sanctions for bribery offences even less dissuasive, reducing the amounts of fine and duration of imprisonment. For instance, if the maximum amount of the fine for receiving a bribe without aggravating circumstances is currently USD 27,500, the upper threshold of the fine for the same crime in the draft new CC was reduced to USD 14,000.

Besides, the Government did not provide the text of the draft new CC concerning confiscation. It is thus not clear whether the draft legislation, if enacted, would establish an effective confiscation mechanism for all bribery or corruption offences.

***2) Compile and analyse statistics on application of sanctions for corruption offences to see how effective they are in practice (e.g. how often conditional release is applied, whether imprisonment is the main sanction for serious offences)***

Mongolian authorities provided statistics on the application of sanctions for various corruption offences (see Annex 2 to this paper). According to the information provided there were 9 persons who were released conditionally under bribery offences in 2012-2014. Analysis of the statistics, as recommended, was not available.

***3) Revise provisions on confiscation to enable mandatory application of the confiscation of instrumentalities and proceeds to all corruption and corruption-related offences, including converted or mixed proceeds, benefits derived from proceeds and value-based confiscation; consider reversing burden of proof in confiscation proceedings (criminal or civil) and introduce extended confiscation***

Under Article 49 CC, all the property of the culprit can be confiscated when the Criminal Code provision expressly authorises it. Likewise, the proceeds of crime (if they belong to the convicted) can also be confiscated when the Criminal Code so authorises. As can be seen from the table on sanctions above, however, only the aggravated offences of money laundering and embezzlement are punished with confiscation; aggravated offence of passive bribery provides for “confiscation of illicit proceeds”.

The Review Report found that this was not a satisfactory arrangement according to international standards, which require measures to enable confiscation of proceeds of all corruption or related crimes (or of property of equivalent value) and of instrumentalities used in such offences. Relevant provisions should explicitly cover proceeds that were transformed into other assets (*e.g.* residential property bought using proceeds from bribery) or were intermingled with property acquired from legal sources (converted or mixed proceeds), and allow value-based confiscation, which enables to confiscate proceeds that were hidden, destroyed, spent or transferred into possession of a *bona fide* third party. It should also be possible to confiscate benefits that were derived from crime proceeds (*e.g.* profit derived from a business permit obtained through bribery, profit from investment of the bribe).

Finally, Mongolia’s Criminal Code appears to permit confiscation only if the proceeds of bribery are registered in the name of the culprit. This condition for confiscation encourages the fraudulent transfer of property obtained through the proceeds of bribery to a third party, or at least registering such property in the name of a third party, for the purpose of protecting against confiscation.

No changes were introduced in the relevant provisions following the Review Report.

In addition Article 88 of the Criminal Procedure Code of Mongolia provides for the so-called procedural confiscation, including of “revenues generated by criminal actions or other assets to be considered equally”. Such revenues or assets are treated as physical evidence and shall be returned to their lawful owners, but if it is not possible to identify the owner, they shall be confiscated.

During the on-site visit, Mongolian authorities confirmed that “confiscation of illicit proceeds” under Article 268.2 CC is identical to that of under Article 49 CC.

Mongolian authorities could not clearly explain how procedural confiscation envisaged by Article 88 CPC correlates with confiscation under Article 49 CC. It was stated that courts would apply Article 49 CC, if they detect any illicit proceeds. In practice, investigation and prosecution encounters difficulties with identification and further confiscation of illicit proceeds registered in the name of other persons. However, if the investigation could trace the origin of the illicit proceeds, then it is possible to seize illicit proceeds, and consequently ensure their confiscation. The issue in such cases is usually resolved by bringing a civil suit within a criminal proceeding (Chapter 15 CPC), which allows the courts to remove illegally obtained property from the unlawful owner and return it to a lawful owner. It seems that in this case, courts will apply Article 88.1.4.CPC, since it appears to be the only legal basis for returning illegal proceeds to their lawful owners. In any case, if the lawful ownership is not established then illicit proceeds will be confiscated in favour of a state.

In cases when the illicit proceeds were lawfully acquired by innocent third party, who did not know about illegal origin of a property, then such property will not be confiscated. If there is a dispute over the ownership, then interested parties can initiate separate civil proceeding.

Mongolia is **not compliant** with recommendation 2.4.-2.5., which remains valid.

## 2.6. Immunities and statute of limitations

*Recommendations from the Review Report 2.4.-2.5.*

- 1) *Review the system of immunities of public officials by narrowing down their scope and list of relevant officials to the extent necessary in a democratic state; remaining immunities should be functional, cover only period in office, exclude situations in flagrante, allow effective investigative measures into persons with immunity; establish swift and effective procedures for lifting immunity based on clear criteria.***
- 2) *Increase statute of limitations for corruption offences; consider establishing fixed, sufficiently long statute of limitations for all corruption crimes regardless of their gravity; stipulate that statute of limitations be interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.***

**1) *Review the system of immunities of public officials by narrowing down their scope and list of relevant officials to the extent necessary in a democratic state; remaining immunities should be functional, cover only period in office, exclude situations in flagrante, allow effective investigative measures into persons with immunity; establish swift and effective procedures for lifting immunity based on clear criteria.***

As noted in the Review Report, Mongolia's Constitution appears to immunize virtually all high-level government officials (*e.g.*, members of the State Ikh Hural (Article 29), the President (Article 36), and the Prime Minister and members of the Government (Article 42), and fails to provide clear guidance for the procedures to remove immunity. In addition, some officials of state organisations and its staff were granted immunity according to following laws: Law on Courts, Law on Prosecution Office, Law on Anti-Corruption, Law on Intelligence Agency, Law on Constitutional Court, Law on Parliament, Law on Government Cabinet, Law on President, Law on Central Bank, Law on Audit and Law on National Human Rights Commission. The report concluded that immunizing high-level officials from anti-corruption criminal statutes effectively eliminates the force of these statutes. Compounding this weakness is the fact that the procedure for lifting immunities is not clearly defined.

In their replies to this monitoring questionnaire Mongolian authorities indicated that immunity is enjoyed mainly by high-level government officials such as the President (Art. 36 of the Constitution), Members of the Great Hural (Art. 29 of the Constitution), ministers of government (Art. 42 of the Constitution) and diplomatic representatives (Art. 8 of the Law on diplomatic services). According to the official replies, these immunities are functional and serve only if the official is in office. If a person enjoying immunity is caught committing offence, criminal investigation measures will not be taken directly. Investigation may be conducted only after immunity of official is suspended.

It is not clear from the available information what is the exact scope of immunities and how they can be lifted.

In 2012-2014 there were no cases when immunity of MPs, President or Government members were lifted. In the same period, three prosecutors, four judges, one Constitutional Court judge and three parliament members were investigated, from them two prosecutors and one judge were indicted (it is not clear if any of these investigations concerned corruption cases). By the order of the Prosecutor General two prosecutors were suspended. A request was submitted to the General Judicial Council and the Constitutional Court to suspend judge of the Constitutional Court; the request was forwarded to the President of Mongolia who denied the request.

During the on-site visit, Mongolian authorities stated that "functional immunities" expand to all the period in the office, including vacations, holidays, weekends and etc. Immunities cover all activities of the official, and will be still in force if the offence is committed by official during his day-off and without



relation to his official duties. From such an explanation it is clear that the immunity is in fact not functional and is absolute.

The authorities also noted that the immunity mainly creates a problem for a prosecution, and not that much for investigation. The investigation may continue, however, the person possessing immunity cannot be subjected to interrogation, confrontation, search and other investigative measures. At the same time, investigator may collect other evidence and use it as a ground for lifting immunity. Besides, in cases when a suspect being under investigation is elected/appointed to a certain position and receives immunity, the investigation with respect to that person would be suspended. The statute of limitations, however, would not be interrupted.

The representatives of law enforcement agencies noted that, in practice, they do not usually encounter problems with lifting immunities, except in cases involving MPs. The IAAC officials admitted that they have suspended a criminal case against an MP, because of an unapproved request to lift immunity.

There is no general provision that would prescribe a common procedure applicable for all protected officials. The procedure for lifting immunities in all relevant cases usually starts by the investigator filing an appropriate motion to the General Prosecutor's Office. The rest of the procedure is regulated by the respective laws.

Immunities of the President: In materials provided by the Mongolian authorities there are no provisions describing immunities of the President, except for Article 36 of the Constitution: 1. The person, residence and transport of the President shall be inviolable. 2. The dignity and immunity of the President shall be protected by law. It appears that immunity of the President is absolute. He can be removed from office only in case of breach of his oath or violation of the Constitution or the President's authority by an overwhelming majority of members of the State Ikh Hural on the basis of the finding of the Constitutional Court.

#### Immunities of MPs:

Article 29 of the Constitution of Mongolia provides that immunity of members of the State Ikh Hural shall be protected by law. If a question arises that a member of the State Ikh Hural is involved in a crime, it shall be considered by the session of the State Ikh Hural which shall decide whether to suspend his/her mandate. If a court proves the member in question to be guilty of crime, the State Ikh Hural shall terminate his/her membership in the legislature.

Articles 6.9. – 6.16. of the Law on Parliament describe the procedure of lifting immunities of MPs. After receiving a motion from the investigator, the Prosecutor General “shall submit a proposal to the Parliament to suspend the powers of [MP]”. Such a proposal can be issued only “if the MP has been caught whilst committing a crime and has been arrested on-site with evidence.” The respective agency shall notify the chairman of the Parliament within three hours, in case the MP was arrested. Upon receiving the Prosecutor General's proposal, the Parliament within two days decide on its approval or dismissal by a simple majority vote through a secret ballot. If the Parliament votes against the suspension, the arrested MP shall be released within one hour.

At the same time, despite the mentioned procedure, the monitoring team was informed that the Constitutional Court of Mongolia in 2011 recognized as unconstitutional the procedure of lifting MP's immunity. Thus, since 2011, the parliamentarians enjoy full and absolute immunity without any effective procedure of its suspension – an unacceptable situation.

According to other sources, law enforcement officials have frequently requested the State Great Hural to suspend mandates of SGH members for the purpose of investigation, but the suspension has failed to materials, as the Constitution allows the SGH to vote on any request to the suspend the mandate. “As a result, there is a suspicion that in some cases the law is unenforceable against the Members of the SGH. Indeed there may be a risk, as in some other post-socialist countries, that criminals infiltrate politics for the

purposes of acquiring immunity.”<sup>25</sup>

Immunities of Ministers: Article 42 of the Constitution of Mongolia provides that personal immunity of the Prime Minister and members of the Government shall be protected by law. Legal status and powers of the ministers are regulated by the Law on the Government of Mongolia of May 1993. Article 25.2.6. of the Law describes the scope of Prime Minister’s immunity: “He/she cannot be [subjected] to criminal proceedings, arrested, detained or be held liable to any form of administrative penalty without the consent of the State Great Hural, and his/her person[a], residence, office, and transport shall be immune from intrusion, inspection and search.” Such immunities are too broad and cover almost all forms of legal responsibility. The provision also contains basics of procedure for immunity lifting. The respective law enforcement authority shall obtain consent of the Parliament in order to hold the Prime Minister liable. Unfortunately, the Law does not further clarify the procedure, thereby leaving it uncertain.

Article 25.3.5. of the Law defines the scope of immunities of other members of the Government (ministers). It states that a minister can be arrested only “with evidence of his/her criminal offence at the time and in the place of committing a crime.” The Prime Minister shall be notified in that regard within 24 hours. In all other cases, a minister cannot be detained or incur administrative liability, and his/her persona, residence, office and transport shall be immune from inspection and search. Similar to the Prime Minister’s immunity, the Article 25.3.6. does not include any clear procedure for lifting minister’s immunity. The representatives of the IAAC additionally stated that without a permission of the Prime Minister it is impossible to prosecute ministers.

Immunities of judges: The Law of Mongolia on legal status of judges describes the procedure for lifting immunity of judges. Article 17 states that the President, following the relevant proposal by the General Council of the Courts, shall suspend the power of a judge involved in criminal activities. Suspension of judge’s power on this ground incurs, inter alia, the lifting of judge’s immunity. The rest of the procedure, as well as the scope of judges’ immunities remain unclear. The IAAC representatives also noted that they currently investigate a case against a judge, and wait for an approval of their request on lifting the immunity.

Immunities of prosecutors: The scope of the prosecutors’ immunity and procedure for their lifting is specified in the Law on the Prosecutor’s Office of Mongolia. The scope of immunities is the same for all prosecutors. Prosecutors can be neither apprehended, detained or arrested, nor their houses, offices, transports or personas can be searched or violated without the permission of the Prosecutor General; with respect to the Prosecutor General and his deputies - without permission of the President. The only exception from that rule is an arrest of a prosecutor while committing a crime or at the scene of the crime with the evidence. In the latter case the Prosecutor General has to be informed within 48 hours regarding the arrest of prosecutor. With respect to the arrest of the Prosecutor General or his deputies – the President shall be notified within 48 hours. Upon receiving the notification “the President or the Prosecutor-General shall deal with the matter of giving permission within 10 days.” Notably, Article 36.3. of the Law expands prosecutors immunity, prohibiting the inspection of their work without permission of the Prosecutor General.

Immunities of Diplomatic Officials: The Law of Mongolia on Diplomatic Services does neither provide the scope of diplomatic immunities nor the clear lifting procedures. Rather, it states that diplomatic officials shall enjoy privileges and immunities “as specified in international agreements and treaties of Mongolia.” Current Criminal Procedure Code does not properly address diplomatic immunities issue as well, prescribing that persons who enjoy diplomatic immunities can be subjected to criminal proceedings “only

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<sup>25</sup> “The Role of the Constitution of Mongolia in Consolidating Democracy: An Analysis”, report prepared under the project “Support to Participatory Legislative Process” implemented jointly by the Parliament of Mongolia and the UNDP, Ulaanbaatar, May 2015, p.52, available at [www.undp.org/content/mongolia/en/home/library/democratic\\_governance/RoleoftheConstitutionofMongoliaInConsolidatingDemocracy.html](http://www.undp.org/content/mongolia/en/home/library/democratic_governance/RoleoftheConstitutionofMongoliaInConsolidatingDemocracy.html).

upon their request or with their consent.”

**2) Increase statute of limitations for corruption offences; consider establishing fixed, sufficiently long statute of limitations for all corruption crimes regardless of their gravity; stipulate that statute of limitations be interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.**

In Mongolia, as in other IAP countries, statute of limitations is linked to the category of crime based on its gravity, which in its turn is conditioned by the applicable sanction (its type and amount/duration). Below is the table from the Review Report on limitation periods for various corruption or related offences under the Mongolia’s Criminal Code.

**Table 15. Statute of limitations for corruption and related criminal offences**

Crime	Category of crime	Statute of limitations
<b>Receiving a bribe</b> (Art. 268.1)	Less serious	5 years
Receiving a bribe (Art. 268.2: extortion; by organised group or criminal organisation; large or extremely large amount; repeatedly)	Serious	20 years
<b>Giving a bribe</b> (Art. 269.1)	Less serious	5 years
Giving a bribe (Art. 268.2: by organised group or criminal organisation; repeatedly)	Serious	20 years
<b>Intermediation in bribery</b> (Art. 270.1)	Minor	1 year
Intermediation in bribery (Art. 270.2: repeatedly; with the use of official position)	Less serious	5 years
<b>Improvement in the financial state by illegal means</b> (Art. 270 <sup>1</sup> .1)	Less serious	5 years
Improvement in the financial state by illegal means (Art. 270 <sup>1</sup> .2: especially large amount)	Serious	20 years
<b>Abuse of official powers</b> (Art. 263.1)	Minor	1 year
Abuse of official powers (Art. 263.2)	Less serious	5 years
<b>Excess of authority by a state official</b> (Art. 264.1)	Minor	1 year
Excess of authority by a state official (Art. 264.2)	Less serious	5 years
<b>Money laundering</b> (Art. 166 <sup>1</sup> .1)	Less serious	5 years
Money laundering (Art. 166 <sup>1</sup> .2)	Serious	20 years
Money laundering (Art. 166 <sup>1</sup> .3)	Grave	30 years
<b>Misappropriation or embezzlement of property</b> (Art. 150.1)	Minor	1 year
Misappropriation or embezzlement of property (Art. 150.3)	Serious	20 years
<b>Appropriation of property by fraud</b> (Art. 148.1)	Minor	1 year

No changes were made in this regard since the Review Report in 2014.

The monitoring team could not discover any evidences showing a progress regarding statute of limitations issue. Mongolian authorities claimed that in the draft new Criminal Code, they have extended limitation periods and introduced grounds for its interruption. The immunity period, for instance, will be deducted from statute of limitations pursuant to requirements of the new Code. However, having examined the materials provided by the authorities, the monitoring team did not find any justification to these claims. In the draft new CC, Mongolian authorities failed to establish a fixed statute of limitations for all corruption crimes irrespective of their gravity or even consider such option. The duration of limitations was not actually increased and in some cases was even decreased, e.g. the statute of limitations for receiving a bribe with aggravating circumstances was reduced from 20 to 12 years. The information regarding the introduction of grounds for interrupting the limitation periods was not proved.

Mongolian authorities informed that in 2012-2014 one bribery case was dismissed by court and eight bribery cases were terminated by prosecutors due to expiration of the limitations period. This confirms previous conclusions.

**Conclusions:** Overall the scope of immunities against prosecution of corruption offences in Mongolia appears to be excessive – both in terms of the officials enjoying such immunities and the reach of relevant privileges associated with the position. For most of the officials enjoying immunities there are no effective procedures to lift them; bodies responsible for lifting immunities have almost unfettered discretion when deciding on relevant requests. Immunities are not functional. Immunities, therefore, constitute a significant barrier for effective investigation and prosecution of corruption in Mongolia. They may be one of the reasons why there are so few investigations into high-level corruption. Such broad immunities cultivate the climate of impunity and undermine and discourage the law enforcement agencies. They should be urgently revised and brought in line with the international standards and best practice. Most of the immunity-related issues are regulated by the laws, which are easier to amend than the Constitution.<sup>26</sup>

Statute of limitations for corruption crimes is another obstacle for effective prosecution of corruption in Mongolia. Relevant periods are too short and do not allow sufficient time to build and try a case, especially complex ones (which most of the corruption cases are). Statute of limitations is also not interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.

Mongolia is **not compliant** with recommendation 2.6. which remains valid.

## 2.7. International co-operation and mutual legal assistance

### *Recommendations from the Review Report 2.7.*

- 1) *Ensure effective international mutual legal assistance in investigation and prosecution of corruption cases, in particular by implementing recommendations of the UNCAC Review; encourage various forms of direct co-operation, in particular through interagency co-operation agreements; establish clear responsibilities of national authorities with regard to international co-operation in criminal cases, including on asset recovery.*
- 2) *Ensure that the staff of units responsible for international co-operation within the central authorities are well trained, have adequate resources, including translators, necessary means of communication, and are easily accessible to the investigators and prosecutors in the field.*
- 3) *Collect and analyse data about practical application of available international co-operation instruments during investigation and prosecution of corruption cases and relevant challenges.*
- 4) *Provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the*

<sup>26</sup> See also conclusions by Mongolian scholars: “Mongolia’s democratic system would be strengthened if it were to adopt measures towards tightening the scope of the immunity enjoyed by the Members of the SGH, and make it enforceable only in the instances of their official functions. This is consistent with the recent report of international experts examining the implementation of the UN Convention against Corruption. We recommend that immunity of members parliament provided in Article 29 be deconstitutionalized or reduced. The risk of politically motivated prosecution is far less than the risk of corruption and self-dealing at this point in Mongolia’s development. At a minimum, consideration might be given to introducing an exception for cases involving allegations of corruption. Another possible reform is the end the SGH practice of voting on requests for suspending the mandate in Article 29.3. Because the Constitution stipulates that immunity can be regulated by law, there might be significant work that can be done without any constitutional amendment, though this requires further research. We believe that a similar analysis would apply to other government officials, and that reform could be realized by amending relevant laws.” Cited from “The Role of the Constitution of Mongolia in Consolidating Democracy: An Analysis”, cited above, p. 56.

***UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.***

***1) Ensure effective international mutual legal assistance in investigation and prosecution of corruption cases, in particular by implementing recommendations of the UNCAC Review***

During the on-site visit, the Mongolian authorities claimed that almost all the recommendations of the UNCAC Review were incorporated, except the adoption of whistleblowers protection act. However, no evidence supporting this information was provided to the monitoring team.

The UNCAC review conducted in 2010-2011, with regard to the MLA and law enforcement cooperation, recommended Mongolia to take the following measures:

- 1) Ensuring that a request contains the subject matter and nature of the investigation, prosecution or judicial proceedings to which the request relates, and the name and functions of the authority responsible;
- 2) Ensuring that mutual legal assistance can be granted for executing the following: providing information, evidentiary items and expert evaluations; providing relevant documents and records; identifying or tracing proceeds of crime; identifying, freezing and tracing proceeds; and the recovery of assets;
- 3) Ensuring that the executions of mutual legal assistance requests conform to the procedures of investigation, prosecution or judicial proceedings of Mongolia's jurisdiction;
- 4) Providing for mandatory consultation with the requesting State party before refusing a request and before postponing its execution;
- 5) Giving protection to witnesses, experts and other persons who consent to give evidence in a requesting State party so that they are not subject to investigation, prosecution or judicial proceedings in the territory of the requesting State party;
- 6) Addressing the confidential nature of information received, and the conditionality imposed in Mongolia's Banking Law, as a way to ensuring that mutual legal assistance would not be declined on the ground of bank secrecy;
- 7) Complying with the rule of speciality, by introducing a provision for disclosing the purpose for which evidence, information or action is sought and only allowing the evidence to be used for that purpose;
- 8) Notifying the Secretary-General of the United Nations of the language(s) acceptable to Mongolia, according to UNCAC article 46, paragraph 14.
- 9) Enhancing its law enforcement cooperation under article 48 of UNCAC, including the exchange of information concerning specific means and methods used to commit UNCAC offences.

With regard to the optional UNCAC provisions in this area, it was recommended that Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- 1) Using UNCAC as a legal basis for mutual legal assistance and notifying this to the Secretary-General of the United Nations;
- 2) Establishing a comprehensive legal framework allowing for the transfer to and from Mongolia of persons whose presence is requested for identification, testimony or otherwise providing assistance in obtaining evidence, according to article 46, paragraph 10 of UNCAC;
- 3) Permitting a hearing to take place by video conference, if it is not possible or desirable for the individual in question to appear;

- 4) Enabling the inquiry officer, investigator, procurator or court in Mongolia to exercise their discretion of providing to the requesting State party copies of Government records, documents or information that are not available to the general public;
- 5) Producing a practice paper on the handling of mutual legal assistance requests in respect of the timelines.
- 6) Providing for direct cooperation between Mongolian and foreign law enforcement agencies.
- 7) Entering into agreements or arrangements on the use of special investigative techniques, and factor in who is to bear such costs on the international level;
- 8) In the absence of such agreements or arrangements, providing for the use of special investigative techniques on a case-by-case basis.

As appears from analysis of the Criminal Procedure Code provided to the monitoring team, most of the UNCAC review recommendations – both mandatory and optional – remain valid. No changes were introduced in the relevant CPC provisions in the last few years.

***encourage various forms of direct co-operation, in particular through interagency co-operation agreements; establish clear responsibilities of national authorities with regard to international co-operation in criminal cases, including on asset recovery.***

According to information of Mongolian authorities, the Ministry of Justice and the General Prosecutor's Office are two competent agencies in the MLA matters. Relevant laws entitle both organizations to deal with the MLA and international legal cooperation. However, after joining the UNCAC the Ministry of Justice acquired a leading role in this area. The IAAC does not have a specialized unit responsible for international cooperation and the MLA. Mongolia has concluded the MLA Agreements with more than 20 countries, but they need to be updated. The Department for International Co-operation is responsible for international co-operation and MLA in the Office of the Prosecutor General.

In practice, when necessary, an investigator drafts the MLA request and presents it to the management. The latter submits the request under the jurisdiction either to the GPO or Ministry of Justice. While drafting the MLA request, investigators use the MLA manual guideline developed by GPO in accordance with requirements of the UNCAC.

Reportedly, direct channels have been increasingly used between competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences. With this aim, the Office of Prosecutor General obtained contact information, including telephone, email and fax details of other State Parties to the UNCAC (e.g. Russia, South Korea, Poland, Czech, Hong Kong, Uzbekistan, China, USA, Kazakhstan).

In relation to international co-operation the Office of the Prosecutor General has the following powers:

- Co-ordinate mutual legal assistance requests, extradition and transfer of prisoners according to the Criminal Procedure Code;
- Provide training for the staff in charge of international co-operation within the Office of Prosecutor General as well as in other units of the prosecution service;
- Ensure timely and effective co-ordination and monitoring of mutual legal assistance;
- Strengthen co-operation on mutual legal assistance;
- Provide up to date contact information, including telephone, email and fax details, and make such information easy accessible to State Parties, to facilitate prompt contacts between central authorities;
- Collect data about good practices and practical challenges, provide analysis.

***2) Ensure that the staff of units responsible for international co-operation within the central authorities are well trained, have adequate resources, including translators, necessary means of communication, and are easily accessible to the investigators and prosecutors in the field.***

According to the Mongolian authorities, the unit in the Prosecutor's General Office responsible for the international cooperation is provided with sufficient communication tools, facilities and equipment, as well as sufficient financial resources for training of officers. It has four staff members (head of unit, two prosecutors and secretary).

Mongolia reported about several training exercises carried out on MLA issues for prosecutors of the dedicated unit. For instance, in May 2014 47 prosecutors took part in such training organized; 30 law enforcement officials took part in the training on MLA that took place in September 2014.

The GPO's Department for International Co-operation developed "A guidance on preparing and writing of MLA requests" to ensure prompt and effective legal assistance. The guide was disseminated in March 2014 to all units of the Prosecution Office. At the same time authorities also informed that the Ministry of Justice, in co-operation with the General Prosecutor's Office, has been preparing a new handbook on developing, sending and handling mutual legal assistance requests in criminal matters. After the completion of the handbook, the Ministry is planning to conduct trainings on MLA for investigators in association with Training Centre of the General Prosecutor's Office.

In 2012 Mongolia joined the World Bank StAR (Stolen Asset Recovery) initiative, and twice a year representatives of relevant agencies participate in common workshops. Participants learn how to draft MLA requests, how to work with local agencies and etc.

***3) Collect and analyze data about practical application of available international co-operation instruments during investigation and prosecution of corruption cases and relevant challenges.***

Mongolian authorities reported about five MLA requests in corruption related cases sent in 2012, eight MLA requests - in 2013 and 4 MLA requests - in 2014. No MLA requests in corruption related cases have been received during 2012-2014.

Reported problems faced by the GPO in handling of MLA requests are:

- Poor communication and slow response to legal assistance requests in criminal matters sent to some countries.
- Translation of incoming MLA requests into the official language is a major challenge. There are limited financial resources to ensure translation by the authorized bureau or to establish an independent translating body within the structure.
- Lack of inter-agency cooperation between law enforcement bodies. For example: Since the prosecutors supervise the procedures over criminal investigation, whole investigative actions must be reviewed by them. But preparations of legal assistance requests have been delayed for a long time, due to investigators' inadequate work.
- Constant changes of personnel in the central authorities and lack of expertise is another problem.
- Lack of professional capacity of investigators and prosecutors to prepare MLA requests in accordance with international and foreign law is common reason for failed MLA requests.
- Additional training for prosecutors and investigators on matters related to asset recovery and MLA is also needed.

***4) Provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention***

No measures as recommended were taken by Mongolia. Furthermore, Mongolian authorities confirmed in their written information that Mongolia does not have any legislation on asset recovery, there are no procedures for returning and dispose of assets. There were no cases of asset recovery either.

Mongolia is **partially compliant** with recommendation 2.7. which remains valid.

## 2.8. Application, interpretation and procedure

### *Recommendations from the Review Report 2.8.*

- 1) Consider clarifying the Criminal Code and interpretation of corruption offences in practice so that intent can be inferred through circumstantial evidence, thereby eliminating the requirement of direct evidence of intent.***
- 2) Build capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage use of in-house or outsourced specialised expertise.***
- 3) Ensure effective access of law enforcement officials to bank, financial, and commercial records.***
- 4) Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled; improve statistical databases and methodologies for collecting, organising and analysing case-related information.***

***1) Consider clarifying the Criminal Code and interpretation of corruption offences in practice so that intent can be inferred through circumstantial evidence, thereby eliminating the requirement of direct evidence of intent.***

As noted in the Review Report, Mongolia's Criminal Code does not appear to permit intent to be inferred from circumstantial evidence. Direct evidence of intent rarely exists or requires catching perpetrator in the act, which prevents retroactive corruption investigations. Refusing to permit inferences from circumstantial evidence creates an unnecessary obstacle to securing a meritorious conviction.

Mongolian authorities replied that circumstantial evidence is widely used by investigators, but only as a facility for supporting the direct evidence. The accusation cannot be based only on circumstantial evidences, and according to the law they have to be evaluated in aggregate with other evidence. No changes were introduced in this regard in law or practice.

***2) Build capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage use of in-house or outsourced specialised expertise.***

During the on-site visit the representatives of the Financial Intelligence Unit (FIU) stated that their agency mainly deals with the requirements of Anti-Money Laundering Law, through collecting and analysing financial data: cash reports, suspicious transactions, asset declarations, and other relevant information. Since the establishment in 2006, the FIU received over five million reports. The threshold for the reports is USD 10,000. Based on its sole discretion the FIU sends the information on suspicious transactions to the relevant state body. Up to date very few of them were sent to the IAAC. Decision about whether the transaction was suspicious is based on the special analysis carried out by the FIU. While analysing the data, specialists of FIU look for information in relevant databases, check the state registers, contact other financial institutions, conduct a desk-based research and use other appropriate tools. Notably, the FIU



allows law enforcement agencies to use its database, and does not require a court decision for that purpose. Simple request is sufficient for providing financial information. In this regard, the FIU concluded MoUs with relevant agencies to regulate the process.

Regarding the cooperation with FIU, the representatives of law enforcement agencies responded that they cannot use the information provided by FIU as evidence during a criminal investigation. Information provided by the FIU has to be checked, and if confirmed, then together with other findings can be used as a ground for the initiation of a criminal case.

The authorities further explained that there were no trainings for investigators or prosecutors, with respect to financial investigations. However, they had a number of meetings on that matter, organized by Cooperation Council which coordinates state activities in the financial sphere, reviews and discusses the problems within the area, including the law enforcement measures and investigations in that regard. Almost all relevant Ministries and other state bodies are represented in the Cooperation Council. IAAC, however, due to legal formalities is not represented in the Council.

### ***3) Ensure effective access of law enforcement officials to bank, financial, and commercial records.***

According to the Mongolian authorities, the IAAC can get the access to bank information by sending relevant request approved by the prosecutor. In urgent cases, the IAAC can also get a prompt access to the necessary information or simply indicate a particular deadline in the request. In addition, investigators can check the information on-site when necessary. The same procedures are applicable to tax and customs information.

The main obstacle for law enforcement agencies is obtaining information from agencies which official is involved in the case. For instance, they have a problem for obtaining tax records if tax officer was involved in a case.

### ***4) Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled; improve statistical databases and methodologies for collecting, organising and analysing case-related information.***

According to the Mongolian authorities, the press officer of the IAAC provides reports and media events on cases investigated, transferred for prosecution, complaints. The IAAC also reports on statistics of criminal cases. Apparently no analysis is conducted to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled

**Amnesty law.** The civil society representatives pointed to the law recently adopted in Mongolia that raises serious concerns as to effective prosecution of corruption. The law on amnesty was passed on 11 August 2015. According to Transparency International Mongolia, if enacted it would have resulted in termination of 45 out of the 55 cases that the Independent Agency against Corruption in Mongolia has been investigating with amnesty granted to the accused. The alleged crimes involved more than 32 billion Mongolian Tugrik (US\$16.2 million). According to TI, the law was pushed for by those under the IAAC investigation and by the former President N. Enkhbayar, Parliament speaker Z. Enkhbold supported this controversial law as well. Transparency International-Secretariat and Transparency International Mongolia issued a statement condemning the law and calling on the President of Mongolia to veto it.<sup>27</sup>

The President of Mongolia issued a partial veto on the law that was accepted by the parliament on 15 September 2015. Amnesty would not apply to those accused of corruption, abuse of power, illegal

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<sup>27</sup> Source:

[www.transparency.org/news/pressrelease/president\\_should\\_veto\\_new\\_law\\_granting\\_amnesty\\_for\\_corrupti\\_on\\_says\\_ti\\_and\\_t](http://www.transparency.org/news/pressrelease/president_should_veto_new_law_granting_amnesty_for_corrupti_on_says_ti_and_t).

enrichment, embezzlement of budget funds and appropriating other's property. However, it appears that the law was not rejected completely and is still pending in the parliament.<sup>28</sup>

The monitoring team is concerned by the attempt to exempt from liability those accused of corruption crimes and welcomes presidential veto and its acceptance by the parliament. It is also worrisome that the law was passed at a closed session of the parliament. Such a law could also be seen as another attempt to undermine the IAAC, which already proved to be a trend in Mongolia and requires close attention of all stakeholders. The monitoring team strongly recommends rejecting any amnesty law that would grant immunity from prosecution for corruption or lead to termination of pending cases.

Mongolia is **partially compliant** with recommendation 2.8. which remains valid.

## 2.9. Specialised anti-corruption law-enforcement bodies

### *Recommendations from the Review Report 2.9.*

- 1) *Consider establishing independent internal investigative units in government agencies, particularly in law enforcement agencies, to enhance the resources and abilities of corruption-specific law enforcement agencies.*
- 2) *Clearly delineate functions of various law-enforcement bodies and ensure that mechanisms for inter-agency co-operation and co-ordination are in place and well functioning.*
- 3) *Establish that reports in the mass media and other public sources should serve as a ground for launching criminal investigations into possible corruption offences.*

*Consider establishing independent internal investigative units in government agencies, particularly in law enforcement agencies, to enhance the resources and abilities of corruption-specific law enforcement agencies*

No action was taken with regard to this recommendation.

*Clearly delineate functions of various law-enforcement bodies and ensure that mechanisms for inter-agency co-operation and co-ordination are in place and well functioning.*

The Mongolian authorities state that the only agency in Mongolia dealing with corruption related offences is the Independent Authority Against Corruption. According to Articles 26 and 27 of the Criminal Procedure Code, the IAAC investigates cases under CC Articles 263 (Abuse of power or of office by a state official), 264 (Excess of authority by a state official), 265 (Abuse of authority by an official of an NGO or a business entity), 266 (Excess of authority by an official of an NGO or a business entity), 268 (Receiving of a bribe), 269 (Giving of a bribe), 270 (Intermediation in bribery), 270<sup>1</sup> (Illicit enrichment), 166<sup>1</sup> (Money laundering). No information on involvement of other agencies was provided.

It was further clarified that the IAAC has the exclusive jurisdiction in relation to mentioned criminal offences and entitled to investigate cases against any persons (ordinary citizen, prosecutors, judges, MPs, the President and etc.). Some of these powers were introduced only in January 2014. When the criminal offence under IAAC jurisdiction is discovered by other agencies, the criminal case and relevant materials have to be immediately conveyed to the IAAC. If there is a conflict of jurisdictions (different criminal offences are investigated in one case), then the GPO creates a working group from representatives of the respective agencies (IAAC, police, State Intelligence Agency and etc.). The working group is usually led

<sup>28</sup> See statement by the TI, TI Mongolia and UNCAC Coalition, 8 October 2015, available at [www.transparency.org/news/pressrelease/international\\_organisations\\_call\\_on\\_mongolian\\_parliament\\_to\\_withdraw\\_corrup](http://www.transparency.org/news/pressrelease/international_organisations_call_on_mongolian_parliament_to_withdraw_corrup).

by a prosecutor. Since the IAAC has a relatively small number of investigators (30 investigators in 2015, reduced from 54 investigators in 2014) and no regional divisions, it is often compelled to co-operate with other agencies on regional level, especially with the police. In this regard, the IAAC has concluded several MoUs with related agencies.

The GPO controls and monitors the investigation of corruption offences. Prosecutors also support the investigation by approving certain investigative measures. On the other hand, prosecutors perform public prosecution in court proceedings. There are no specialized prosecutors assigned to deal only with corruption offences. The cases are distributed in accordance with territorial jurisdiction of particular prosecutor. The GPO may give particular instructions to the IAAC regarding the matters of investigation, and the latter must fulfil them even if disagree with the GPO's position. However, in practice, disagreements are rare.

Changes introduced in 2014 to assign exclusive investigatory power in corruption cases to the IAAC was a welcome step. The monitoring team is therefore troubled by the reports that there are proposals pending in the parliament that suggest reducing of the IAAC's investigative powers and instead setting up a new institution that would consolidate all investigative powers. Such decision can undermine progress made by the IAAC and remove anti-corruption specialization of investigative authorities. The former Prime Minister of Mongolia in June 2015 reportedly went as far as suggesting to disband the IAAC altogether.

***3) Establish that reports in the mass media and other public sources should serve as a ground for launching criminal investigations into possible corruption offences***

IAAC officials informed that they have a right to launch a criminal investigation based on information posted in the media, referring to Article 167.2. CPC. Usually, such information has to be checked and only upon verification can serve as a ground for launching a criminal investigation. However, in practice, they cannot manage to properly follow the media reports, since the IAAC receives too many complaints through its hotline.

Mongolia is **largely compliant** with recommendation 2.9.

**New recommendation 2.9.**

- 1) Establish independent internal investigative units in government agencies, particularly in law enforcement agencies, to enhance the resources and abilities of corruption-specific law enforcement agencies.***
- 2) Strengthen capacity of the Anti-Corruption Authority in investigation of corruption offences, in particular by increasing the number of investigators and establishing its investigative units in the regions.***
- 3) Ensure effective specialization of prosecutors in anti-corruption cases with special guarantees of autonomy for the relevant prosecutors (units).***
- 4) Provide for continuous role of a prosecutor – from supervising investigation to supporting charges in the court.***

### 3. Prevention of corruption

#### 3.2. Integrity of civil service

*Recommendation from the Review Report 3.2.*

- 1) Establish clear legislative delineation of political and professional public service; ensure merit-based appointments and promotions for all categories of public officials based on transparent and objective criteria; ensure that remuneration system for public officials is fair, transparent and objective.**
- 2) Review the prohibitions and restrictions for public officials and ensure that all types of conflict of interests are covered by law and properly enforced.**
- 3) Ensure that competent authorities empowered to apply sanctions for breach of the anti-corruption laws are clearly identified and procedures are described in detail and effective sanctions for non-compliance are provided.**
- 4) Ensure that asset declarations system cover all categories of public officials, including those in political offices; ensure effective verification mechanism for asset declarations and their proactive publication, first of all on Internet. Provide for effective and dissuasive sanctions for the failure to submit declarations and for submitting false information.**
- 5) Introduce mandatory reporting of corruption offences and protection of whistleblowers.**

#### **1) Establish clear legislative delineation of political and professional public service**

Civil service in Mongolia is regulated by the Constitution of Mongolia, the Law on Civil Service (CSL) and other legislative acts. According to the CSL, the civil service is classified into four categories: political (elected officials and their advisors/assistants); administrative (governing and executive professional positions of the central and local administrative bodies including those in the offices of the State Great Hural (parliament), the President, the Government, courts, Constitutional Court and prosecutor's organization, in the ministries, regulatory bodies, local administrations and other public bodies); special (posts related to special functions of the state including uniformed services, diplomatic posts, the judiciary and others) and support (the posts to be employed under labour agreements with functions to assist in delivering the basic state services and to ensure regular operations including those in the public bodies and service public bodies financed from the state budget in education, science, health, culture, art and others). The core civil service consists of administrative and special civil services.

Article 6 CSL clarifies that political posts are held by officials that were elected or appointed based on the election results, and provide a clear list of such posts, including: president, chief of president's chancellery and president's advisors, speaker, deputy speaker and members of parliament, prime ministers, ministers, deputy ministers, head of the cabinet and political advisors to prime minister, local governors and their deputies. However, this Article also contains an ambiguous paragraph 6.1.16 "Other posts specified by law", while no further clarification is provided regarding such other posts or laws.

Article 6.2. CSL provides that posts of the Chairmen of the Presidiums of Hurals of Representatives of Citizens of aimags, capital city, soums and districts and mayors of cities and villages are equivalent to the political civil service posts.

Article 7 CSL provides a clear definition of the administrative posts, which includes all leading and executive posts in all branches of power.

An important issue with regard to the separation of the professional civil service from the political influence in the Mongolian context is the composition and the role of the Civil Service Central body. It has strong powers, including: to select one candidate for a governing post in the administrative and special service for sending the candidacy to the body competent for appointment; to resolve civil service related disputes; to plan and coordinate the implementation of the Civil Service Reform Strategy, coordinate activities of the offices of public bodies in this regard; to provide methodological guidance and to assess the performance and qualification levels of the core civil servants.

The Civil Service Central Body consists of chairman and six members, including two permanent and four non-permanent members. The two permanent members are nominated by the Secretariat of the State Great Hural and the Cabinet Secretariat of the Government. They are appointed by the State Great Hural for a six-year term. For the same term the State Great Hural also appoints the Chairman of the body upon proposal of the President. The non-permanent/ex-officio members are the following officials: the Secretary General of the Secretariat of the State Great Hural; the Vice-Chief of the President Chancellery; the First Vice-Chief of the Cabinet Secretariat of the Government and the Secretary of the General Court Council. Such set up of a Civil Service regulation body creates risks of politicisation of the civil service in Mongolia. Actually, this was one of the main challenges for the public sector mentioned by the civil society and international organizations.

The President of Mongolia submitted the a new version of the CSL to the Parliament in July 2015 and, according to Mongolian authorities, it provides for a better delineation of political and professional posts. The monitoring team did not evaluate the draft new law.

***ensure merit-based appointments and promotions for all categories of public officials based on transparent and objective criteria***

Core civil service posts include all governing and executive positions. Recruitment to core civil service is regulated by Article 17 CSL and provides that all citizens of Mongolia meeting the criteria of the law can apply to take a centralised civil service qualification exam conducted by the civil service agency, and if they pass it, they are included in the reserve list. When there is a vacancy in the core civil service, another person holding a core civil service can be appointed; if there is no suitable candidate then a person from the reserve list can be selected; it should be the person who meets most of the requirements of the vacancy.

While this system does not contain corruption risks as such, it unnecessarily restricts the entry to the core civil service. The person from the reserve list is selected by the employing organisation that first makes an announcement on the vacancy through the Civil Service Council to those who have registered to receive such notices. The competent person of the employing organisation selects and makes appointment from those who are on the reserve list and replied to the announcement. However, no further information was provided about the procedures for selecting the person from the reserve list.

Regardless of the fact that the Civil Service of Mongolia has a model of selecting civil servants based on merit, it is widely believed in Mongolia that civil servants are appointed to the posts based on political affiliation rather than on merit. In Mongolia political civil servants are not obliged to take civil service entrance examination. According to the legislation, any civil servant who used to hold a political post that belong to government high officials category and equivalent grades of civil servants may be listed in the reserve of the Civil Service Central Body by the body's decision. Such provision undermines the merit-based principle for professional civil service and should be eliminated.

In 2014 around 1600 posts were filled by an open examination and those who received the highest scores at the examination were appointed to the post. 606 vacant posts were filled from the reserve lists (about 40% of the recruitment). In post-election years of 2012 and 2013, 351 and 443 candidates were selected and appointed from the reserve list respectively.

According to the Mongolian authorities, as of the end of 2014 there were 183,601 civil servants, among them: 2,985 political civil servants, 19,522 administrative civil servants, 35,070 special civil servants and

126,024 support civil servants. 19,969 civil servants left the civil service in 2014. The number of those who left the civil service includes those with long-term medical care, deceased, study leave, retirees, voluntary leave, etc. It appears that the civil service in Mongolia has a high staff turnover that could negatively affect institutional development of public agencies.

Promotion of civil servants is not directly regulated by the Civil Service Law. However, Article 19 on performance evaluation and Article 20 on ranks provide some guidance on this issue. Results of evaluation provide the basis for promotion. Granting of ranks is also based on the work performance, among other criteria. The evaluations are regulated by the resolutions of the central civil service body.

The system of performance evaluation is implemented for core civil servants and civil servants are evaluated based on the performance contract. As a result of evaluation of execution of civil servants' activities set in the performance contract, civil servants receive "A" or "Excellent" if they get 90-100 scores, "B" or "Good" for 80-90 scores, "C" or "Satisfactory" for 70-80 scores, "D" or "Unsatisfactory" for 60-70 scores and "F" or "Poor" in case of 0-60 scores. The Law states that results of the evaluation of the performance and qualification level the core civil servants shall provide a basis for deciding on issues of civil servants' promotion, enrolment in training of an appropriate level, granting degrees and ranks, altering remuneration, providing with rewards and incentives, and demotion. However, decisions related to those are made with managerial discretion and the enforcement mechanisms of this provision need to be developed.

Article 25.1.1 CSL provides that "unless otherwise provided for in the law, repeated (twice or more) inadequate performance of official duties" can be a ground for the dismissal of a core civil servant. According to the Mongolian authorities, the term "inadequate performance of official duties" is interpreted according to Resolution no. 8 of the Supreme Court of 2010: "inadequate performance of official duties" is execution of activities stated in job description and official function that should be performed but improperly fulfilled, including non-compliance in terms of quality, excess of time frame, violation of established procedure." Performance evaluation results are used as a basis for assessment. At the same time it is not clear what are the legal grounds for such procedure (it is not provided for in the CSL).

***ensure that remuneration system for public officials is fair, transparent and objective***

Civil servants' remuneration system is complex in Mongolia. The salary consists of basic salary, allowances for the special working conditions, length of civil service, title, rank, doctoral degree and qualification degree and others. Though the CSL states that the same amount of salary shall be established for the same civil service post, some elements of pay allow discretionary managerial decisions, for example, the bonuses for civil servants can comprise up to 40% of total of basic salary and additional remuneration. No clear and transparent guidelines are available for awarding bonuses that are left to the discretion of the management. Although the Civil Service Council informed that the system of payment of bonuses will be revised and will be based on the performance evaluation.

**Conclusion:** No major changes have been made to comply with the recommendation. The delineation of the political and professional civil service remains insufficient, appointments in the core civil service remain politicised and often not based on merits of candidates. Main interlocutors reported that after the change of political leadership the whole administration is often changed too (up to 75-90 %), not just the senior administrative positions but also middle and lower level, which can have devastating effect on the public administration. This concerns even local government and public companies. Composition of the Civil Service Council raises serious concern, as it is composed of politically affiliated officials. Payment of bonuses to civil servants is not subject to clear and transparent rules and is not based on objective criteria.

***2) Review the prohibitions and restrictions for public officials and ensure that all types of conflict of interests are covered by law and properly enforced.***

The Law on Conflict of Interest (COI Law) has some serious gaps that can hinder its effective implementation. For example, "private interest" is defined as economic or non-economic interest of a

public official or his/her related person that may influence the performance of official duties by the said public official. It is important to mention that “private interest” should not only focus on the related persons’ any pecuniary or non-pecuniary benefit or any advantage (not interest as mentioned in the Law) but also those of other natural or legal persons with whom the official has or has had personal, business and political relations. Meanwhile, the definition of “public interest” formulated as trust of the society to the official shall also be reviewed. Besides the Law has two separate regimes of related people: "related persons" and "common interest persons" which doesn't seem very effective.

As for the restrictions on employment after public office, the Law states that public official shall not take up employment with an economic entity or organization in relation to which he/she had performed official duties, but it fails to prohibit negotiations with the future employer. It should also provide for an enforcement mechanism for this “revolving door” regulation (for example submitting declarations for up to 2 years after terminating the public office). Time limitation of two years in the regulations on prohibitions and restrictions is not justified. For example, the Law states that an official shall be prohibited from issuing administrative acts, performing functions of supervision, audit and inquiry, take punitive measures and participate in the preparation, negotiation and approval of contracts with regard to a common interest person only for two years after the termination of for-profit activities established with this person.

The COI Law does not cover apparent conflict of interests and there are no clear restrictions on working together with related persons.

Most importantly, there are no explicit regulations and restriction for high risk sectors (for example public procurement, licensees and others) and it does not clearly cover issues related to public officials’ political relations (this is important since the civil service is considered to be politicised). Therefore the COI Law needs to be carefully reviewed.

According to the Law on Conflict of Interest, officials of public service and persons nominated for offices shall file private interest declarations. The Legal Standing Committee of the State Great Hural approves the list of officials to submit private interest declaration, based on the proposal of the Independent Authority Against Corruption.

Separately, the organization or official vested with the power of appointment shall receive the preliminary private interest declaration of the nominee for public office and forward it to the the Independent Authority Against Corruption. The Independent Authority Against Corruption examines the preliminary private interest declaration of the candidate for a public office within 10 working days and advises the competent organization or official concerned on the probability of conflict of interest in the case of the candidate. The appointing organization or official have to abstain from appointing the candidate where it has been established that his/her entry into public office may result in a conflict of interest.

Officials are also supposed to declare non-existence of a conflict of interest each time prior to issuing an administrative act, performing the functions of supervision, audit and inquiry, taking punitive measures and participating in the preparation, negotiation and approval of contracts.

As for the disclosure of private interest declarations, they are open to the public and organizations and public officials have to provide free access by citizens to private interest declarations of public officials. The Law does not require publication on the Internet, which is a deficiency. The sanctioning system for conflict of interests violations is described in the sanction part of this recommendation.

**Conclusions:** A certain infrastructure of conflict of interest has been implemented and functioning in Mongolia. However, it is important to improve legislation to fill the gaps in order to increase the effectiveness of the system in place, in particular with regard to the definition of the conflict of interests.

***3) Ensure that competent authorities empowered to apply sanctions for breach of the anti-corruption laws are clearly identified and procedures are described in detail and effective sanctions for non-compliance are provided.***

Sanctions for breaching the anti-corruption laws in Mongolia are foreseen in both the Law on Anti-Corruption and the Law on Conflict of Interests. The punishments imposed by the Law on Anti-Corruption are related to: corruption prevention, violation of the legislation on anti-corruption and violation of legislation on asset declarations. The corruption prevention tools imply disciplinary penalties for any official who fails to perform the duties regarding the prevention and combating of corruption by authorized officials. Also, a judge shall impose a fine equal to 1-50 monthly salaries in MNT on any official who would not apply the disciplinary penalties for the abovementioned case.

As for the sanctions related to the violations of the anti-corruption legislation, the Law (Article 33) foresees: i. 30 per cent salary reduction for up to three months if an official did not perform his/her duty report to the Anti-Corruption Agency any “corruption-related information”; ii. position demotion if an official failed to perform reporting duty on multiple occasions or violated provisions on prohibitions of the Law (if downgrading of the position is not possible, the salary shall be reduced by 30 per cent for up to three months) and the decision made in corruption-related conditions shall be invalidated; iii. dismissal from the public service of the person who violated the provisions on prohibitions on multiple occasions and invalidation of the decisions if those were taken in corruption-related conditions. The mentioned prohibitions of the Law (Article 7.1. of the Law on Anti-Corruption) are related to exerting pressure on and interfering with a view to influence state officials who perform their duties in a due form, giving bribes or promising to give or mediating to other persons; providing illegally preferential treatment or promise to provide such treatment to other persons, limiting the rights of other persons when performing official duties; spending the budget funds, grants and aid resources for other purposes; receiving bribes from other persons when performing or not performing official duties; abusing official power and office, exceed own competence; obtaining property and preferential right through abuse of office and illicit enrichment.

Special sanctions are provided for violation of provisions on asset disclosure (Article 13.8 of the Law on Anti-Corruption) – see below.

The wording of infringements and sanctions used in the Law is now sufficiently clear (“failure to perform the duties of prevention and combating of corruption”, “position demotion for failing to perform reporting duty on multiple occasions”, “dismissing from public service for violated the provisions on prohibitions on multiple occasions”, etc.).

Also many offences mentioned in Article 7.1. of the Law on Anti-Corruption are covered by the Criminal Code, while the provision of the Law specifies that sanctions in Article 33 of the Law apply only if the person is not subject to criminal liability. Violations specified in Article 7.1. are of the most serious nature (bribe taking, illicit enrichment, etc.) and should trigger criminal sanctions. Sanctions provided in Article 33 of the Law on Anti-Corruption appear to be of disciplinary nature and should be applied even if criminal sanctions are applicable, they should be secondary consequences for a criminal sanction, not a replacement. Furthermore mere demotion or reduction in salary are not proportional sanctions for the said violations. Violation of these provisions should lead to dismissal of the official and even possibly a ban to hold public office for a certain period of time.

Apart from the Law on Anti-Corruption, sanctions for the violation of conflict of interest regulations are imposed by the Law on the regulation of public and private interests and prevention of conflict of interest in public service (COI Law). The Law states that, when establishing and enforcing a code of ethics on prevention of conflict of interest as well as receiving, registering and verifying private interest declarations and statements on non-existence of private interest, if the management of a public body reveals a violation, they should turn the case over to the Independent Authority Against Corruption for investigation. The Law also foresees administrative sanctions imposed by the judge for the cases specified in the Law, if the offence of the legislation on the regulation of public and private interests and prevention of conflict of interest is not subject to criminal liability. Those include a fine amounting to one to five minimum monthly wages, a compensatory payment of the value of illegally accepted gift or service, dismissal from the public office illegally obtained on an official, nullification of the agreement, contract or license. Besides, breach of the legislation on conflict of interest is also subject to the following disciplinary sanctions for the



specific cases mentioned in the Law: a warning, a 30 percent decrease of the monthly pay for a period up to 3 months, demotion and dismissal.

It is recommended to publish all decisions on sanctioning on the Internet, which is a useful approach to promote integrity among the public officials.

Statistics. Although no aggregated statistics on the application of corruption-related sanctions in the country was provided, the IAAC provided information within its jurisdiction. In 2014, out of 13,226 preliminary declarations of candidates for public posts, IAAC identified potential conflict of interests in 3,344 declarations and 1,000 declarations were sent back to the employer due to the impossibility to process. Furthermore, 1,225 decisions on appointment which were illegally issued by skipping the procedure to submit the preliminary declarations to the IAAC were annulled and 162 conclusions on noticeable conflict of interest situations in exercising the authority by the candidate were delivered to the employing organization. In the first half of 2015, preliminary declarations of 4,784 persons were verified out of 4,910 candidates for public positions.

In 2014, from all personal interest and asset declarations investigated, 45 cases of falsified declarations and 45 cases of COI legislation violations were revealed respectively. Among 90 cases that were sanctioned, 27 officials were dismissed from work, 5 officials were demoted, 41 officials' salary was lowered by 30% up to 3 months period and 17 officials were reprimanded. In 2015, from all personal interest and asset declarations investigated, 29 cases of falsified declarations and 36 cases of COI legislation violations were revealed respectively. Among 65 cases that were sanctioned: 8 officials were dismissed from work, 1 official was demoted, 30 officials' salary was lowered and 15 officials were reprimanded.

**Conclusions:** It appears that this part of the recommendation has been partly implemented. The sanctions for violation of provisions in the Law on Anti-Corruption remain weak and not effective; serious violations are punished by disciplinary sanctions which should only be additional to criminal ones. There are no clear procedures for application of sanctions. Better sanctioning regime is established in the COI Law, but there is only partial statistics on its application which makes it difficult to evaluate how effective the law is.

#### ***4) Ensure that asset declarations system cover all categories of public officials, including those in political offices***

The Law on Anti-Corruption (Article 10.1.) provides that persons specified in Article 4.1. of the Law (see Annex) are obliged to submit income and asset declarations. Additional list of declarants may be approved by the Standing Committee on Legal affairs of the State Great Hural upon proposal of the Anti-Corruption Agency. Such list was approved in 2012 by the State Great Hural's resolution on "Approval of procedure for registration, verification and filing of official's declaration of private interest, and declaration of asset and income and the forms for declarations". The resolution also includes a list of officials who are exempted from the duty to submit declaration.

The legislation of Mongolia provides for several forms of declarations: "Form of official's declaration of private interests and declaration of assets and income", "Form for a preliminary declaration of private interests of a candidate to a public office", "Form for non-conflict of interest statement and the report on occurrence of conflict of interest" and "Form for declaration of assets and income of an election candidate".

The system of declarations is quite complex and the number of declarations to be submitted by the public official should be optimized. Also, the Law does not provide criteria for selecting the list of officials who must submit income and assets declarations (legislation does not include such factors as high corruption risk positions or areas). The Resolution approves the list of officials who must submit income and assets declarations. Recently, it was reduced and currently, about 34,632 or 19 % out of around 180,000 officials shall submit the declarations.

The asset declaration system is decentralized and the following organizations and officials are responsible for registration and storage of income and assets declarations: the Anti-Corruption Agency (for the

declarations of the President, members of the State Great Hural, Prime-Minister, members of the Government of Mongolia as well as of officials appointed by the SGH, the President and the Government); the Legal Standing Committee of the SGH (for the declarations of senior and executive officials of the Anti-Corruption Agency); the General Council of Courts (for the declarations of members of the Constitutional Court and of judges of all level courts); Offices of Hurals of Citizens' Representatives of respective level (for declarations of members of aimag, capital city, soum, district Hurals of Citizens' Representatives); senior officials with power to appoint or supervise officials for the declarations of other officials; as well as the General Election Commission and district election committees and aimag, capital city, soum, district election committees (for the declarations of candidates in the elections of the President of Mongolia, the SGH and Hurals of Citizens' Representatives of all levels).

The declarants shall submit their income and assets declarations within 30 days since appointment or election to office and annually thereafter by 15 February reflecting changes throughout duration of office.

The management of civil service shall delegate the function related to registration, verification and filing of declaration to a competent official in the administration or legal department (for a remuneration equal up to 40% of his/her basic salary) who shall: a/ submit a report on the fulfilment of the declaration procedure; b/ ensure the declarations are compliant with relevant regulations; and c/ make inquiries within their competencies if there is a breach of law and transfer it to the IAAC for further investigation. The responsible organizations and officials submit implementation reports to the IAAC together with the name list of declarants within 14 days after the completion of receiving declarations. Meanwhile, the General Election Commission submits income and assets declarations of elected persons to the Anti-Corruption Agency within 14 days after completion of election voting.

Currently, declaration and analysis unit of the Investigation and Analysis division of the IAAC organizes and collects the Personal Interest & Asset declarations all around the country. Around 1,550 authorized officers of public organizations and their branches are appointed to collect, review and file the declarations.

The compliance rate of asset declaration submission is high. In 2014, from 51,584 state registered applicants 51,579 declarations (99.99%) were registered. 51,573 applicants (99.98%) declared within legally specified time, 6 applicants or 0.01 per cent declared with delay, 5 applicants or 0.01 per cent failed to submit their declarations. In accordance with the Law on Anti-Corruption, 11 applicants were submitted for punitive measures and 6 of them were punished. See also statistics on sanctioning above.

**Table 16. Submission of assets and income declarations in Mongolia**

		2009 Asset Declaration	2010 Asset Declaration	2011 Asset Declaration	2011 Personal Interest &Asset Declaration	2012 Personal Interest &Asset Declaration	2013 Personal Interest &Asset Declaration
Total number of declarations to be submitted		54604	56832	58251	45858	47142	51584
From them	Submitted with delay	15	49	25	7	22	6
	Not submitted	136	69	64	96	15	5
Percent of declarations submitted on time		99.75	99.87	99.89	99.79	99.97	99.99

***ensure effective verification mechanism for asset declarations and their proactive publication, first of all on Internet***

The Anti-Corruption Agency is to review, analyse and inspect the assets and income declarations and its mandate includes supervision of the competent organizations' and officials' adherence to the procedure for registering, storing and monitoring declarations of assets and income declarations, and provide them with information as well as overseeing and investigation of the submission of assets and income declarations by declarants. It also is connected to state electronic databases including civil registration database, the vehicle database and legal entities register. The Agency imposes the penalties on persons who fail to submit declarations on time or who deliberately provide false information. According to the Law against corruption, the Agency carries out inspection based on complaints and information or in accordance with its monitoring plan. The number of verified declarations on the Agency's initiative in 2013, 2014 and first half of 2015 were 363, 361 and 272 respectively. The total number of verified declarations in 2014 was 2,528.

The Law however, does not provide the methodology for the elaboration of the monitoring plan and does not specify that the priority should be on high corruption risk positions or areas. Mongolia has significant experience of corruption surveys that could help identify those positions and areas.

The Legal Standing Committee of the State Great Hural is responsible for reviewing income and assets declarations of senior and executive officials of the Anti-Corruption Agency; and the Ethics Sub-Committee of the State Great Hural reviews income and assets declarations of members of the State Great Hural and transfer cases to the relevant authorities if the violations require criminal investigation. If members of the State Great Hural are concurrently members of the Government, the income and assets declarations are reviewed by the IAAC.

Officials in charge of registration of income and assets declarations examine whether the declarations are filled in fully and correctly and submitted in due time, can demand amendment of declarations in accordance with the procedures and in case of violations – carry out inspection within their power or transfer the case to the IAAC for an investigation.

Overall, the outcome and effectiveness of verification mechanisms outside of the IAAC is not clear at all and does not appear to be effective. No statistics was provided on this (including the verification results of declarations of the judiciary and parliament).

Meanwhile, the list of officials whose asset and income declarations shall be published regularly in the Government News Magazine within the second quarter of each year and placed on the Internet is specified in the Law. According to Article 14 of the Law on Anti-Corruption declarations of the following declarants are subject to publication: the President of Mongolia; the State Great Hural Speaker, deputy speaker and members; the Prime Minister, Cabinet members, ministers and deputy ministers; The Chairperson, Deputy Chairperson and members of the Constitutional Court; The Chief Justice of the Supreme Court, judges of the State Supreme Court, the Executive Secretary of the Court General Court Council; the Prosecutor General and the Deputy Prosecutor General; the President, 1st Vice President and Vice President of Mongol Bank; the Secretary of the National Security Council; the Head of the Prime Minister's Cabinet Secretariat; the Head of the President's Chancellery; the General Secretary of the State Great Hural Secretariat; the Chairperson and the Deputy Chairperson of the Anti-Corruption Agency; the Chairperson and members of the Financial Coordination Committee, and the Chairperson and members of the Control Council; the Chairperson and Deputy Chairperson of the National Statistical Bureau; the Chairperson and members of the National Human Rights Commission; the Chairperson and Secretary of the General Election Committee; the Chairperson and members of the Government Service Council; the Auditor General and Deputy Auditor General; the Directors of Government agencies; the Chairperson of aimag and the capital city Citizens' Representatives' Hurals; the Aimag Governors and the capital city Mayor.

The current list of asset and income declarations available online is insufficient and should be extended as much as possible, in particular, as a minimum, it should include declarations of officials working in high corruption risks positions and areas.

***Provide for effective and dissuasive sanctions for the failure to submit declarations and for submitting false information***

The Law on Anti-Corruption foresees the following sanctions for declarants in case they are late to or failed to submit their income and assets declarations as well as for providing false information:

- 1) Warning - if the declarant failed to declare income and assets equal to his/her monthly salary or provided false information and in case of late submission of income and assets declaration if there was a justified ground for delay.
- 2) Reduction of salary by 30 per cent for up to three months - if the declarant failed to declare income and assets equal to his/her half-year salary, or provided false information, or repeatedly submitted income and assets declaration after deadline;
- 3) Demotion from the position or reduction in salary by 30 per cent for up to three months - if the declarant failed to declare income and assets higher than his/her half-year and up to annual salary, or provided false information;
- 4) Dismissal from the position - if the declarant failed to declare income and assets equal to or higher than his/her annual salary, or provided false information, or failed to submit or refused to submit income and assets declaration.

Separate sanctions are provided for responsible official's failure to perform duty of registration and monitoring of income and assets declarations.

It is not clear from the Law when providing of false information will result in warning, reduction of salary, demotion or dismissal. The system allows discretionary exercise of sanctioning power. It is not clear if providing false information covers submission of incomplete information; it appears that the latter is not subject to sanctioning.

**Conclusions:** The asset declaration system functions in the country and related infrastructures has been built. However, the system does not appear to be effective, in particular in its verification component. It is recommended to significantly extend the list of declarations subject to mandatory publication on the Internet. The sanctions should be strengthened as well, and Mongolia should consider introducing criminal sanctions for submission of false information in asset declarations.

***5) Introduce mandatory reporting of corruption offences and protection of whistleblowers***

The Anti-Corruption Law of Mongolia requires from persons specified in the law to immediately report to the Anti-Corruption Agency any corruption-related information obtained while performing their official duties. The Anti-Corruption Law sets the obligation for the persons in the following positions: a/ executive or managerial position in the political, administrative or special office of the state and the public service; b/ managers or authorized employees of legal entities in which the state or the local administration has full or partial equity interest; c/ managers and executive officers of non-governmental organizations, temporarily or permanently performing particular state functions in compliance with legislation; d/ electoral candidates; and e/ public officials who have been included in the list approved by an authorized entity. Information on enforcement of this provision (on internal and external reporting, outcomes of reports) was not available.

There is no legislation on the protection of whistle-blowers. No initiatives of facilitating whistleblowing by the state authorities were reported and statistics on the whistleblowing cases is not available. The importance of having an important whistle-blower protection system was also raised by the civil society representatives.

**Conclusions**

Civil service in Mongolia remains politicised and the delineation of political and professional servants is not followed in practice. Merit-based approach is not implemented in the promotion of civil servants. The

composition of the Civil Service Council raises serious concern. Clear and transparent guidelines on payment of bonuses should be approved.

Mongolia has developed comprehensive legislation on anti-corruption restrictions and prohibitions, conflicts of interests and asset disclosure. The legislation, however, is not coherent and too cumbersome and would benefit from streamlining. It is recommended to revise two main anti-corruption laws (Law on Anti-Corruption and COI Law) and possibly to merge them into one law with a clear system of restrictions, obligations, procedures and sanctions.

It is also recommended to simplify the system of declarations and to centralise control of submission and verification of the declarations under the IAAC. Mandatory on-line publication of all or most of the declarations should be implemented. Conflicts of interests definition should be extended in line with international standards.

Overall since the review report no major changes have been introduced in the relevant legislation and practice.

Mongolia is **partially compliant** with recommendation 3.2., which remains valid.

### 3.3. Promoting transparency and reducing discretion in public administration

#### *Recommendation from the Review Report 3.3.*

- 1) *Introduce anti-corruption screening of draft laws and other normative legal acts with publication of relevant findings.*
- 2) *Adopt an administrative procedure act in line with international standards to regulate procedures of the public administration.*
- 3) *Review procedure and practice of mandatory preliminary administrative complaint (before appealing against administrative decision, action or inaction to the court) and introduce amendments, if needed, to ensure effective appeal system against public administration.*

#### *1) Introduce anti-corruption screening of draft laws and other normative legal acts with publication of relevant findings*

Article 18.4.2. of the Anti-Corruption Law provides that if it is determined that conditions conducive to corruption have emerged or that conflicts of interest exist, the Anti-Corruption Agency should demand revision and invalidating of orders, decisions, procedures and rules enacted by state bodies or officials. Mongolian authorities explained that this provision in practice is used when the IAAC carries out inspections of local public authorities; during such on-site inspections the IAAC team also reviews legal acts approved by the agency to check if there are provisions fostering corruption. Anti-corruption screening is therefore not a separate function; there is no schedule for screening activity. In 2013 the IAAC organised such inspections (“missions”) to 20 provinces and 4 districts; 10 orders and decisions were invalidated based on the IAAC inspection missions. Draft legal acts are not covered by any screening.

In response to this round monitoring Mongolian authorities indicated that in practice the IAAC provides comments on draft laws prepared by the ministries and agencies, but it is a sporadic activity.

The Mongolia’s Ministry of Justice indicated that the Ministry carries out several types of screening of the draft laws based on the methodologies approved by the Ministry in October 2010, namely: Methodology for predicting the effectiveness of the draft laws, Methodology for estimating effectiveness of the draft laws, Methodology for calculation of cost of the draft laws. One of these methodologies (on “estimating effectiveness”) reportedly includes anti-corruption screening (Article 4.10.13 of Section 4) requiring to establish whether the draft law contains any provisions that enable corruption and bureaucracy. Anti-corruption screening of other draft normative acts is included in the procedure of “analysis of impact during preparation of administrative normative acts” regulated by another methodology adopted by the Ministry of Justice in May 2011. However, when the new General Administrative Law and the Law on Draft Statutes will be put in effect, respectively, on 1 July 2016 and 10 February 2016, the aforementioned methodologies will be invalidated as the laws include new regulations for anti-corruption screening. According to the ministry, Article 12 of the Law on Draft Statutes provides that the Government shall adopt methodology for assessment of effectiveness of draft statutes, while Article 61.6 of the General Administrative Law provides that the member of the cabinet in charge of legal affairs shall adopt the methodology for analysis of impact.

The monitoring team welcomes that anti-corruption assessment is after all included in the legal drafting process under current and upcoming laws. At the same time mentioned provisions do not appear to provide for a full-fledged anti-corruption screening of draft and active legal acts. Overall such screening could be a part of general impact assessment, but should be regulated in detail and provide a thorough analysis of whether the draft legal act is corruption-prone and how exactly (based on the established corruption-prone factors to be detected in the draft text).

It is therefore highly recommended to introduce systemic evaluation of draft laws and other important legal acts to detect and remove corruption prone provisions. Such screening could be conducted by the IAAC experts. Active legal acts should also be reviewed on regular basis to eliminate provisions that foster corruption.

***2) Adopt an administrative procedure act in line with international standards to regulate procedures of the public administration***

Mongolia adopted the Administrative Procedure Code in December 2002. It regulates the preliminary decision-making on administrative cases according to the complaints and claims submitted by citizens and legal entities who consider an administrative act as illegal in order to protect their infringed rights, and the proceedings on administrative cases in the Administrative Cases Courts. The scope of regulation of the Code is therefore limited to consideration of complaints – through administrative and judicial proceedings.

The Mongolian authorities informed that a General Administrative Procedure Law was adopted on 19 June 2015 and will be enforced on 1 July 2016. As the text of the new Law was not provided it is impossible to assess how it affects compliance with the previous recommendation. At the same time the monitoring team welcomes Government's plans to separate regulation of substantive law on the public administration procedures and judicial procedure for considering administrative complaints. The former would be regulated by the new General Administrative Procedure Law, while the latter – by the Administrative Proceedings Code that is being drafted.

***3) Review procedure and practice of mandatory preliminary administrative complaint (before appealing against administrative decision, action or inaction to the court) and introduce amendments, if needed, to ensure effective appeal system against public administration***

The Law on Administrative Cases Procedure provides for mandatory preliminary administrative appeal - a complaint against an administrative act (understood broadly as any individual or normative legal act, action or inaction of the administrative authorities and officials) has to be first lodged with the higher administrative body or official. An appeal to the administrative court may be lodged only if: claimant does not agree with decision of the higher instance administrative body or official; the administrative body, official does not execute the decision issued by administrative body which considered the initial complaint; the higher instance administrative body, official has not examined complaint within the term prescribed by the Law (i.e. 30 days). A claim is also submitted directly to court in case of absence of a higher instance administrative body or official. The Mongolian authorities were recommended to evaluate how this procedure is implemented in practice to see if mandatory preliminary complaint impedes effective appeal against administrative acts.

A similar approach is preserved in the new General Administrative Procedure Law (see above). The new complaint review “hierarchy” will be as follows: 1) option of annulling its own decision by public organization; 2) annulling the lower body's decision by the superior body; 3) complaint submission to a specialized dispute resolution committee (if available); 4) Submission of claim to the Administrative Court.

According to the Ministry of Justice, during preparation of the new General Administrative Procedure Law the Government analysed the existing complaint procedures, in particular whether preliminary administrative appeal and statute of limitations for court appeals preclude submission and consideration of complaints. It therefore appears that Mongolia complied with this part of the recommendation.

Mongolia is **partially compliant** with recommendation 3.3., which remains valid.

### 3.4. Public financial control and audit

#### *Recommendation from the Review Report 3.4.*

- 1) Strengthen institutional and operational independence of the Mongolian National Audit Office in line with international standards, in particular with regard to budget and staff remuneration autonomy. Ensure publication of audit reports approved by the National Audit Office. Introduce merit-based and competitive selection of the Chief Auditor and Deputy Chief Auditor.*
- 2) Introduce Financial Management and Control system and raise awareness among managers in public sector about it. Determine the main directions of reforms in the area of public financial control and audit, in particular in order to effectively delineate key functions such as external and internal audit and financial inspections.*
- 3) Avoid duplication of inspection function within the ministries and spending units and ensure separation of this function from internal audit function.*
- 4) Create secondary legislation on internal audit functions, which will give clear definition of the functions, stress their advisory and assurance role, independent and impartial activity of internal audit units, with focus on systems and performance of organisations, not only on finance and compliance.*
- 5) Strengthen the capacity and define clear functions of the co-ordination (harmonisation) body in the Ministry of Finance, which will co-ordinate the implementation of internal audit and financial management and control within the public sector.*

#### **Financial management and control**

To address the gaps of the Public Sector Management and Finance Law (2002) and the General Budget Law (1992), the Integrated Budget Law of Mongolia (IBL) was enacted in January 2012. It aimed at significantly strengthening public financial management in Mongolia through better investment planning and capital budgeting processes. The specific objectives of the IBL were the following: (i) strengthen the medium term fiscal framework and ensure fiscal stability; (ii) improve the comprehensiveness of the budget; (iii) strengthen the public investment planning and capital budgeting process; (iv) ensure efficient financial management; (v) significantly increase the authorities and financial resources of local governments; and (vi) strengthen accountability through participatory budgeting.

Through the IBL, the powers of local governments have been significantly strengthened, with the capital city and aimag governments responsible for basic education, primary healthcare, urban planning and construction, social welfare services, water supply and sewerage, public transport, urban roads and bridges, and municipal services such as street lighting and garbage removal. These local investments and financing are to be provided through local taxes and fiscal transfers from shared taxes from the central government, with the transfer formula based on the size of the local population, population density, remoteness and the size of the local government, and the level of local development.

Alongside the increased authority for local governments, the IBL redefines the responsibilities of budget governors at different levels as they pertain to budget preparation, budget and internal controls and internal and external audits. Supplemented by the Law on State Audit (LSA) and the secondary regulations on government internal audit, the IBL sets the legal basis for public sector financial management and control arrangements in the country. Since the IBL has been in force for only a few years, building relevant



capacity especially at the local budget governors' level for enhanced accountability and controls continues to be an area of focus and efforts for the government.

### **External audit**

The Law on State Audit (2003) established the Mongolian National Audit Office (MNAO) as the country's Supreme Audit Institution (SAI) with the mandate to perform external audits of activities of the state entities. Following the decentralization of budget accountability to the local authorities, as introduced by the IBL, the LSA was also amended in 2013 to enhance independence of the MNAO – both in terms of its financing and human resource management.

The amended law provides the MNAO with a new organizational structure that requires local state audit branches to report to the Auditor-General of Mongolia instead of reporting to their respective local authorities as previously mandated. This vertical organizational structure allows state auditors at all levels to receive their operational directions and technical guidance from the Auditor-General and report to one central authority that in turn will enable the SAI more effectively and efficiently provide oversight, enhance accountability and support implementation of the decentralized budget nationwide at all levels of government.

Amendments to the LSA also provided for closer relations between the MNAO and the Parliament in two areas: i) for enhanced accountability, the Parliamentary Standing Committee procedures were introduced for conducting hearings on audit findings and ultimately issuing a decree with the key implementation actions for rectifying the relevant situations and ii) for increased financial independence, the MNAO's annual budget is now directly reviewed and approved by the Budget Standing Committee. However, the MNAO has no special powers in defending its budgetary request before the government and the Parliament.

According to the amended LSA, the Budget Standing Committee also approves the personnel and organizational plans for MNAO submitted by the Auditor-General. The current number of staff, including at the subnational level, as approved by the decree of the Budget Standing Committee of the Parliament for the MNAO, is 389. This number of staff appears insufficient and even requires from the MNAO to outsource some of its audit work to independent auditors. The salary scale and remuneration of state auditors is set within the framework of those for the civil service and is thus approved by the Government – another factor that affects independence of the MNAO.

The MNAO's mandate to perform external audit covers all state entities, except for the Parliament, irrespective of their source of funding. Only the financial statement audit of the Parliament is conducted and an audit of its other activities may be carried out by the MNAO, if the Parliament requests so. MNAO is a member of INTOSAI (International Organization of Supreme Audit Institutions) and ASOSAI (Asian Organization of Supreme Audit Institutions). MNAO auditors follow the International Standards on Auditing as promulgated by the International Auditing and Assurance Standards Board of the International Federation of Accountants and the International Standards of Supreme Audit Institutions, which have been translated into Mongolian to facilitate wider implementation of the standards.

The INTOSAI International Development Initiative extended its support to the MNAO for the development of its 2013-2018 Strategic Plan. The latter provides the institution with a strong strategic direction and has been driving the actions taken by MNAO in recent years towards improving its systems and processes, e.g. legal framework, audit methodology and standards, collaboration with stakeholders including the Parliament. The organization's leadership now lies solely with the Auditor-General, while the position of the Deputy Auditor-General was revoked by the amended LSA. The Auditor-General is appointed by the Parliament as recommended by the Speaker and has a legal term of 6 years with one possible extension of the term. The current Auditor-General was appointed in 2012 and the tenure of the previous Auditor General was 2009-2012 (resigned at own request). It appears that the previous recommendation of introducing merit-based and competitive selection of the Auditor-General has not been implemented so far.

The MNAO itself is audited by an independent audit firm appointed by the Budget Standing Committee and reports on its operations annually to this Parliamentary Standing Committee. The MNAO's 2014 report indicated that the MNAO conducted 248 performance audits, 4543 financial statement audits and 187 compliance audits, thus performing a total of 4978 audit engagements; the audit reports were made available to the public on the MNAO website.

Besides financial audits, which follow the budget calendar specified in the IBL, the Parliament's Budget Standing Committee decides on the annual auditing plan of the MNAO for performance and compliance audits. The Budget Standing Committee also decides which MNAO reports are to be presented to the Parliament. Such practice raises an issue with regard to independence of the MNAO.

### **Internal audit and financial inspection**

The IBL created the legal framework for establishing an internal audit function in public sector entities in Mongolia. This new internal audit function supplements the Monitoring and Evaluation function that was created in 2004 and has been functional since 2006. Many of the new internal auditors have moved over from the Monitoring and Evaluation function and some continue to perform both functions.

Within only a couple of years after the IBL went into force, an internal audit function had been established in all line ministries and 46 ministries and agencies in total. Additionally, an internal audit committee had been established at each line ministry. Centrally, the Ministry of Finance (MoF) bears the legal responsibility for providing methodologies and guidelines for the public internal auditors. This function, as well as the execution of internal audits of the Ministry itself, is performed by the Internal Auditing, Monitoring and Evaluation Division under the Budget Control and Risk Management Department of the MoF. The Ministry represents Mongolia as a corporate member of the International Internal Audit Associations. The Government approved the Internal Audit Charter (2012) and the Medium-term Strategy (2014). The Internal Audit Charter establishes that internal audit units in ministries and agencies will report to their respective budget governors or to an Internal Audit Committee, if one exists. Thus, the internal audit function aims to comply with the principle of independence. The Government plans to adopt a Law on Internal Audit and it is currently being drafted.

The MoF internal auditors have provided on-site training through its internal audit engagements carried out at the line ministries and by jointly conducting internal audits with the line ministries' internal auditors. More than half of these audits were reported as systemic audits with preliminary agreed plans and were conducted based on the guidelines to review and improve the effectiveness of public sector entity risk management and control processes.

While Mongolia's auditing standards comply with international standards, a consistent understanding and application of these standards and audit guidelines across the many new public sector internal audit units and individual internal auditors is still lacking. The International Standards for the Professional Practice of Internal Auditing were translated into the Mongolian language. Public sector internal audit guidelines that comply with the above mentioned standards were published and distributed to public sector internal auditors. A number of internal audit training workshops were subsequently delivered based on these documents. However, a number of the mandatory International Standards have not been fully met at this early stage of the public sector internal audit establishment. Despite its achievements within a short period of time, internal auditing in Mongolia's public sector is still relatively in its infancy and much remains to be done to ensure that the function continues to develop.

In order to further support implementation of the IBL, in October 2014, the Cabinet of Ministers issued a resolution to shift the financial inspection function that was previously executed by the State Specialized Inspection Agency to the MoF (8 staff positions were moved), to line ministries (37 staff positions were relocated) and to the local budget governors (117 staff positions were moved). While at the central level at the MoF, a Financial Inspection Division was established under the Budget Control and Risk Management Department, in parallel with the Internal Auditing, Monitoring and Evaluation Division, at the level of line ministries and local budget governors the financial inspection function was assigned to the existing units

where the internal audit and Monitoring and Evaluation functions have been performed. Given the limited number of staff within these Monitoring and Evaluation and internal audit units, in practice, it has become common for the staff in these units to conduct joint inspections/audits creating questions on the purpose, methodology, intended results, etc. Furthermore, Article 69.4 of the IBL, which states that “The Internal Auditor shall hold a state financial inspector’s license” generates ambiguity in practice on the differences of roles and responsibilities of those executing the internal audit and financial inspection functions. Therefore, coordination and/or harmonization among these functions could be strengthened in order for them to consistently deliver high quality auditing and advisory services to officials responsible for government programs at different levels and to ultimately contribute to more effective, efficient and economic service delivery to the public.

**Conclusions.** Considering the major reforms introduced in Mongolia to strengthen its public financial control and audit, Mongolia is **largely compliant** with recommendation 3.4.

*New recommendations 3.4.*

- 1) Strengthen coordination and harmonisation capacity in the government to effectively implement internal control, financial management and internal audit functions in the public sector.*
- 2) Clearly delineate the internal audit and financial inspection functions in the public sector to avoid duplication. Ensure independence in practice of internal audit units in central and local state entities.*
- 3) Adopt and implement the Law on Internal Audit in line with international standards.*
- 4) Strengthen institutional and operational independence of the Mongolian National Audit Office in line with international standards, particularly with regard to budget and staff remuneration autonomy. Introduce merit-based competitive selection of the Auditor-General.*

### 3.5. Public procurement

#### *Recommendation 3.5. from the Review Report*

- 1) Review the Public Procurement Law to eliminate omissions and inconsistencies in its text, to revoke excessive exemptions and close opportunities for abuse and corruption (splitting of procurement objects, modification of contract terms by tenderers, affiliation rules, etc.) and to expand the toolbox of procurement procedures available to the procuring agencies.*
- 2) Strengthen criteria for evaluation committee members and amend provisions in respect of evaluation to eliminate subjectivity.*
- 3) Ensure transparency of public procurement by proactive publication of all main procurement-related information, including on the results of the procurement and procurement contracts. Create a single-entry government web-portal for disclosure of procurement information and e-procurement. Publish information on concessions granted and use of public resources through other public-private partnership mechanisms.*
- 4) Strengthen review mechanisms by ensuring adequate level of independence of relevant bodies, transparency of their procedures and guarantees of fair proceedings.*
- 5) Revise the scale of fines to ensure that sanctions are dissuasive and develop the debarment system in line with international best practice and standards.*
- 6) Further develop e-procurement in line with the best international practice.*

*1) Review the Public Procurement Law to eliminate omissions and inconsistencies in its text, to revoke excessive exemptions and close opportunities for abuse and corruption (splitting of procurement objects, modification of contract terms by tenderers, affiliation rules, etc.) and to expand the toolbox of procurement procedures available to the procuring agencies*

The Public Procurement Law (PPL) was revised in 2011 and took effect in January 2013. According to the Law, the Government Procurement Agency (GPA) was established and began its operation in October 2012, as a procurement professional organization. According to the Law, the GPA is a Governmental implementing agency responsible for organization and implementation of procurement operations. Thus, the GPA is in charge of all procurement of large projects (such as inter-regional roads and power plants) and of establishing framework agreements for common use items (such as office supplies) that are purchased by line ministries. Local governments are responsible for all procurement of works, goods, and services financed from the local budget, as well as for local projects (e.g. schools and hospitals) financed from the national budget.<sup>29</sup>

The Ministry of Finance is in charge of Government procurement policy, methodology, monitoring and implementing authorities allowed by this Law.

The review of the modified Public Procurement Law of Mongolia and its application suggests that during last two years a breakthrough has been achieved in transparency of public procurement in the country. Expansion of the application of e-procurement increases the rate of participation, overall transparency and specific information disclosure in the system, which shall be highly commended.

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<sup>29</sup> Mongolia: Report on Public Expenditure and Financial Accountability (PEFA), World Bank, April 2015, page 17, available at <https://openknowledge.worldbank.org/handle/10986/22093>.

At the same time, given the exemptions in the law (especially in respect of procurement of the contracts financed by the Development Bank of Mongolia (DBM) and in the road sector) and the reported volume of procurement, a substantial volume of public sector contracts is exempted from the application of the Law. For example, the volume of potential procurement under two projects carried out by the DBM in 2015 is 124.5 billion MNT, while the entire volume of the public procurement in Mongolia in 2014 was 1,046.7 billion MNT.

The Law shall be amended to eliminate or at least minimize the exemptions. Alternatively (although it is not a preferred option) additional laws shall be adopted to ensure that the procurement exempted from the Law, to the extent possible, is carried out through open tenders or other competitive procedures, which would ensure economy, efficiency and transparency of the procurement processes and reduce grounds for corruption. Special considerations shall be made in respect of PPP/concession award procedures to ensure that they have fair and competitive basis. That may be better done through a dedicated law.

Based on the information provided by the GPA majority of public contracts in 2013-2015 were awarded through an open tendering procedure (even for consultancy services). At the same time it was reported that in 2014, 1,935 contracts were awarded through open tenders, 1,560 – via shopping (so called comparison method), 581 – direct contracting and 15 – via limited tendering. The number of tenders and resulting contracts appears to be decreasing over the last three years, as well as their overall volume, which was reported to be 1,663.7 billion MNT in 2013 and shrunk by 37 per cent to 1,046.3 billion MNT in 2014. Nevertheless, the level of participation in tenders remains high, nationwide 475 tenders were conducted by the GPA in 2014, in which 1,644 entities participated.

Notwithstanding the above, the list of the competitive procurement procedures provided for in the Law shall be extended to provide for more efficient procurement arrangements to support development of the economy and minimize the cost of participation in the tenders, thus promoting competition. This is especially important given the rapid expansion of the Mongolian e-procurement system. It appears that the current Law does not cover in reasonable details some of the procurement techniques used. Provisions of the UNCITRAL Model Law on Public Procurement 2011 may be used as a basis for development of the respective legislation. Some procedures envisaged under the Law may need some revision, as they do not seem to be reflecting an internationally accepted best practice in their respect.

The text of the Law still requires enhancement to eliminate omissions, contradictions and inconsistencies (although some of them may be a result of an incorrect translation into English).

The provisions of the Law (Article 8.6) allowing procuring agencies to split the goods, works or services into small packages may be counterproductive and lead to a manipulation with the procedures (circumventing open tendering procedures) and therefore shall be revised to eliminate such risk.

The provisions for application of domestic preference seem to be open for manipulation with the outcome of tenders and needs to be tightened up. Verification of the correctness of tenderers' declarations in respect of domestic inputs, during contract implementation is unclear. However, it appears that the procurement system attracts extremely limited interest from foreign tenderers. Only six tenders have been submitted during last three years resulting in award of two contracts for the amount of 30,000 MNT.

The Law (Article 47.3) defines basic affiliation restrictions. They need to be expanded to avoid potential manipulations with the outcome of tenders or provide a commercial advantage to selected tenderers.

## ***2) Strengthen criteria for evaluation committee members and amend provisions in respect of evaluation to eliminate subjectivity***

The Law, as amended in 2011, states that “at least two members of an evaluation committee shall be representatives of a professional association or private sector or an NGO and a citizen appointed by Citizen’s Representative Council and a staff at local governor’s office in local”. Since 2014 the GPA is selecting representatives of NGOs in the evaluation committees randomly and representatives of NGOs

serve the role of public control. Representatives of NGOs sitting on the evaluation committees sign a contract with the GPA and commit to abstain from conflict of interest.

Composition of the evaluation committees is established by using a random selection programme in order to eliminate the impact of subjective assessment of bidders. Before randomly selecting representatives of NGOs as members of evaluation committees, the GPA conducts a survey of every NGO representative for dual employment and to assess risks. In some cases, the head or member of an NGO is also employed in the tender participating company, thus causing a conflict of interest. If there is a risk of conflict of interest, the representative of the NGO is not included in the evaluation committee. No cases of removal from the committee due to conflict of interests were reported during the on-site visit.

In accordance with the Law and “Procedure on organization, operation, and formation of the evaluation committee” (approved by the Minister of Finance’s Ordinance No. 212 of 30 September 2014), a procurement evaluation committee adheres to principles of transparency, equal opportunities for competition, effectiveness, efficiency and accountability as provided in the law and regulations.

A member of evaluation committee shall have a certificate of procurement competence (A3) and submit information on their employment to avoid conflicts of interest. In 2014 the GPA awarded A3 procurement certificates to 2,699 individuals and published the A3 certificate holders list on the GPA website.

At the same time the professional criteria for selection of the evaluation committee members seem to have non-mandatory nature, which may lead to unreasonable tender documents (specifications) and unprofessional evaluation of tenders. However, the reported practice suggests that the professional qualification, especially the procurement knowledge is considered in appointing the members of the committees. The Law provisions shall be strengthened in this respect.

Some requirements of the Law in respect of evaluation seem still to provide for a substantial degree of subjectivity, which is nourishing ground for corruption.

Provisions of the Law for soliciting clarifications in respect of the tender documents and opening of tenders also provide for an opportunity to manipulate with the outcome of tenders, mainly due to the time limits set in the Law. Similarly the minimal time limits for limited tendering and selection of consultants appear to be too tight, hence, providing for manipulation with the outcome of the selection process. The review of practice suggests that short periods provided for preparation of tenders is a common practice.

Further work shall be done for the professionalization of procurement as well as overall capacity building for people involved in procurement shall be enhanced.

***3) Ensure transparency of public procurement by proactive publication of all main procurement-related information, including on the results of the procurement and procurement contracts. Create a single-entry government web-portal for disclosure of procurement information and e-procurement. Publish information on concessions granted and use of public resources through other public-private partnership mechanisms.***

Government procurement agency has been implementing objectives mentioned on the Government Action Program 2012-2016, “transferring public procurement procedure into electronic system fully and conducting public procurement transparently under public control and changing current tender structure in order to reduce tender confusion, corruption and bribes” and strengthening Agency operation, improving capability especially e-procurement system by stages.

The GPA and local procurement agencies inform citizens by publishing annual and quarterly procurement plans, cost estimates, tender documents and information on tender selection via the GPA website ([www.e-tender.mn](http://www.e-tender.mn)), procurement electronic system ([www.meps.gov.mn](http://www.meps.gov.mn)), Government procurement website ([www.e-procurement.mn](http://www.e-procurement.mn)). According to the GPA Director’s order of 21 April 2014, information on tender participating companies is published as well. In 2014, the GPA published information on all tender selection procedures, information on companies winning contracts in the e-procurement system

www.meps.gov.mn. The budget of tenders conducted by the GPA is published in the e-procurement system as well. Tender and consulting service notices are published in the newspapers “Udriinsonin”, “Zuuniimedeesonin”, “UB post” and websites: www.e-tender.mn and www.e-procurement.mof.gov.mn on regular basis.

In accordance with Glass Account Law, information related with procurement and finances of agencies is published on the Glass Account integrated portal system <http://shilendans.gov.mn>, the GPA website: www.e-tender.mn, www.meps.gov.mn, and www.e-procurement.mof.gov.mn.

All the above measures are commendable and further strengthening of the e-procurement system shall be encouraged and supported.

Based on “Rule on informing results of bidding” of the Government procurement agency’s director’s order No.B/69 of April 21, 2014, results of tendering are disclosed publicly. At the same time it is not allowed to publicly disclose information on financial capabilities of bidders or details of the companies at any point in time.

Therefore, following endorsement of e-procurement by the Law and its rapid expansion, it shall be further developed to cover broader range of procedures and ensure timely and complete presentation of information, as well as disclosure of the tender results and key information on participating tenderers.

***4) Strengthen review mechanisms by ensuring adequate level of independence of relevant bodies, transparency of their procedures and guarantees of fair proceedings.***

No information was provided on new measures.

At the same time the Law lists the cases, which may be challenged/appealed against. The Law in Article 7 also describes the stages of complaint procedure and provides the respective timeframes. Overall, the complaint procedure depends on the procurement stage: complaints received before the deadline for submission of bids are reviewed by the GPA (two full-time staff members dealing with complaints), after the deadline, but before the contract award – by the Ministry of Finance (12 staff members dealing with complaints) and after the contract was signed – by court. At any procurement stage before the contract is signed, prior administrative complaint is mandatory before applying to court.

In 2014 the Ministry of Finance reviewed 560 complaints, 224 of those were accepted as justified.

Under the Law the Ministry of Finance should also have Procurement Inspectors. The Government informed that in September 2015, officials were assigned and given inspecting powers according to the Public Procurement Inspection Regulations, which were approved by the Government of Mongolia in August 2015. Currently there are ten procurement inspectors working at the Ministry of Finance, while the State Secretariat of the Ministry has the position of the General Inspector.

All decisions related to procurement are subject to administrative or judicial appeal. This includes method of procurement that may be challenged both with the Ministry of Finance and with the GPA. Only bidders have the right of appeal. The IAAC has no power to challenge in court procurement conducted in violation of the Anti-Corruption Law.

Certain sanctions, including revocation of the financing contract and/or dismissal of public officers involved in the decision-making, are provided for in the Law in case the tender process was in breach of the Law.

The GPA reported an increase in the number of complaints, which may indicate an increase in trust to the system. The overall number of complaints is for last three years was 187, of which 156 were submitted to the Ministry of Finance, 17 to the Authority for Fair Competition and Consumer Protection, ten to court and four to the Anti-corruption Authority. The statistics on the decisions made in support of complaints and rejection of them appear to be largely in balance (104 and 75 respectively).

Additionally, in order to ensure a certain degree of fairness of proceedings an internal audit is undertaken twice a year, during which tendering is inspected and recommendations are made. The audit is undertaken by officers in charge of supervision of the legal and supervision division of the GPA.

It is worrying that according to the Law, courts are prohibited, in many circumstances, to suspend the decision made by the state central administrative body in charge of budget matters in respect a complaint related to tendering process.

**Table 17. Statistics on the review of procurement-related complaints**

	2013	2014	As of June 2015	Total
<b>Number of complaints</b>	56	81	50	187
<b>Complaints submitted to:</b>				
Courts	5	4	1	10
Authority for Fair Competition and Consumer Protection	2	10	5	17
Ministry of Finance	47	65	44	156
Independent Authority against Corruption	2	2	0	4
<b>Resolving complaints:</b>				0
Procuring entity's decision is justified	29	45	30	104
Retendering is undertaken	20	27	16	63
cancellation of tender	3	1	-	4
Lack of information	2	-	-	2
Under review	2	-	-	2
Amendment of technical specifications is ordered	-	3	3	6
Other	2	-	-	2

**5) *Revise the scale of fines to ensure that sanctions are dissuasive and develop the debarment system in line with international best practice and standards.***

No new measures have been undertaken since the Review of 2014.

The debarment system needs to be improved and shall provide for objective grounds for exclusion tenderers from procurement process. The information on debarred companies shall be placed in a public domain. The debarment system shall complement the criminal penalties for corruption and other prohibited practices offences.

The fines imposed by Law for breaching its provisions seem to be inadequate to the losses to the country's economy or particular purchasing institutions in many instances. The fine scale shall be revised.

**6) *Further develop e-procurement in line with the best international practice***

As mentioned above the GPA has been implementing measures included in the Government Action Program for 2012-2016 to transfer public procurement procedure into electronic system and conducting public procurement transparently under public control.

The Procurement Management, Monitoring and Information System (<http://pmmis.e-procurement.mof.gov.mn>) was launched in 2011. A project was implemented with the grant from Samsung SDS companies ([www.meps.gov.mn](http://www.meps.gov.mn)) to introduce e-Bidding, e-Shopping Mall, e-Catalogue subsystems. In January 2013 the Ministry of Finance approved order to organize e-tendering procedures.

In 2014, at least 80% of tenders conducted by the GPA and 10% of tenders conducted by local authorities were planned to be carried out via an electronic system. The GPA conducted 100% of tenders via the



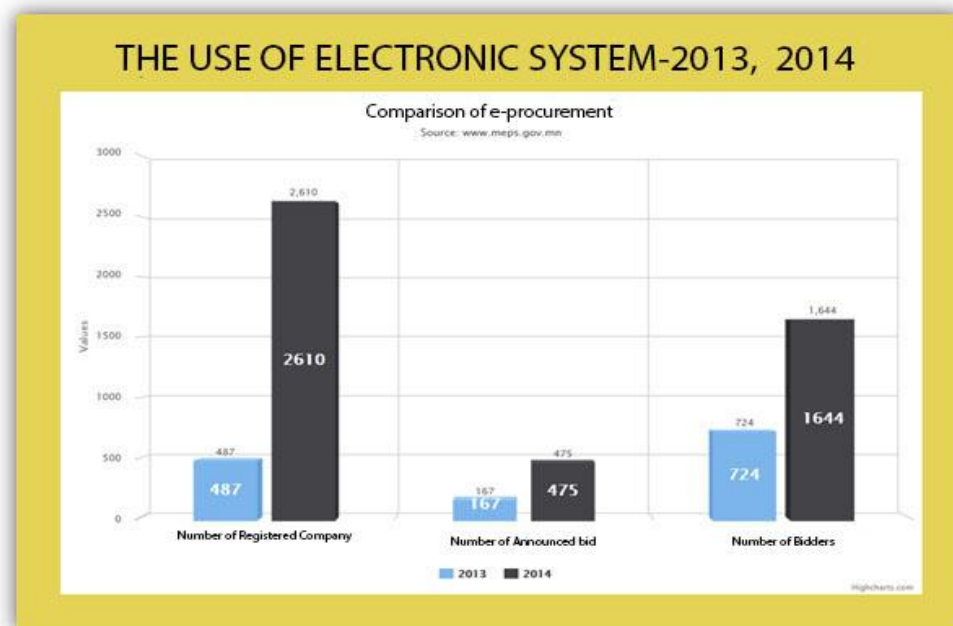
electronic system. In 2014, Capital city, Bayan-Ulgii, Darkhan-Uul, Dornod, Dornogobi, Zavkhan, Uvurkhangai, Sukhbaatar, Tuv, Uvs, Khovd, Huvsgul and Hentii provinces and Khan-Uul district has conducted 37% of all tenders via the electronic system.

Nationwide 475 tenders have been conducted in 2014, where 1,644 entities participated. Out of these tenders, the GPA conducted 199 tenders for 132 projects, where 957 entities have participated. Tender selection information is available on the “Tender invitation” menu of the procurement electronic system, [www.meps.gov.mn](http://www.meps.gov.mn).

According to the Mongolian authorities, introduction of the electronic procurement system led to significant results: improving openness, efficiency, fair trade, transparency of tender selection procedure, reducing tender costs, reducing budget inefficiency, improving procurement monitoring, prompt exchange of information necessary for tender selection procedure, serving citizens with no bureaucracy.

Within the electronic procurement reform, the Government implemented the “e-procurement 2” project with the budget of 1.5 billion MNT financed by the state budget. “e-procurement 2” establishes an integrated procurement system which enhance the system with the following modules: Procurement Planning and Reporting; e-Bid; e-Store; e-Category System; e-Contract; e-Examination system; e-Reporting system; Portal; sub-system of information exchange; smart phone applications. Development of "e - Procurement System 2" progresses very well (90% of it has been completed).

**Figure 5. Use of electronic system of procurement**



Source: Information by the Mongolian authorities.

The recent development of the e-procurement system is very encouraging. With full coverage of all public procurement by e-system the level of transparency will be dramatically increased, which will reduce the corruption risks. The focus of development of the system shall be more on disclosure of information with introduction of Open Data/Open Contract principles and major elements, as well as expansion of available procurement procedures to reflect best international practices.

## Conclusions

While the revision of the Public Procurement Law in 2011 has significantly improved legal framework for public procurement, it requires further adjustments to eliminate corruption possibilities. All public contracting should be covered by the general PPL or special legislative provisions providing for competitive procurement procedures. This includes the procurement funded by the Development Bank of Mongolia and other extra budgetary funds, as well as the procurement in the road sector.

According to the interlocutors corruption in the public procurement in Mongolia remains wide spread especially when related to large infrastructure projects. This concerns also public-private partnerships and concession arrangements.

The establishment of the GPA was a positive step, but the scope of procurement conducted by it has been gradually diminishing with more and more procurement returning to line ministries where control is weaker, vested interests stronger and, therefore, undue interference is more likely. The GPA should be strengthened both in powers and staff capacity.

The e-procurement drive is a welcome development and should be continued with all stages of the procurement cycle moved to the electronic and transparent system. At the same time e-procurement needs to be streamlined in particular by developing a one-stop web-portal to provide all relevant services for all public procurement operations.

Involvement of civil society experts in the procurement process is commendable and should be further developed. So are the provisions on conflicts of interests of the procurement committee members. The latter, however, have to be properly enforced and supervised. The IAAC should have bigger role in this and, in particular, should be able to challenge in court procurement acts where conflict of interests or other anti-corruption provisions were not followed.

Oversight mechanism should be strengthened overall, in particular it should aim to minimise the number of bodies reviewing complaints. The complaint mechanism should be independent from the Government and have sufficient capacity. Maximum transparency is required here as well. Control and audit have to be stepped up in this area. In particular, procurement inspectors in the Ministry of Finance should finally be given proper inspection powers. Complaint procedure should be moved on-line and become part of the comprehensive e-procurement system.

The focus of the further development of the procurement system shall be shifted to enforcement of the Law and its application, strengthening institutional capacity of procurement specialists and enhancing the procurement practices in line with the best international standards.

Mongolia is **partially compliant** with recommendation 3.5.

### *New recommendation 3.5.*

#### ***1) Review the Public Procurement Law to:***

***Cover procurement contracts financed by the Development Bank of Mongolia and in the road sector***

- ***Prohibit unreasonable splitting of works, goods or services which circumvents competitiveness and openness of respective procurement***
- ***Minimise application of domestic preferences***
- ***Streamline time limits in the law to reflect international best practice***
- ***Strengthen criteria for professionalism of evaluation committee members***

- *Expand affiliation rules.*
- 2) *Revise the public-private partnership and concession award procedures to ensure fair competition, efficiency and transparency*
- 3) *Extend e-Procurement system to fully cover all public procurement at all levels. Create a single-entry government web-portal for disclosure of procurement information and e-procurement.*
- 4) *Ensure publication of key information in respect of procurement contracts*
- 5) *Strengthen review mechanisms by ensuring adequate level of independence of relevant bodies, transparency of their procedures and guarantees of fair proceedings.*
- 6) *Revise the scale of fines to ensure that sanctions are dissuasive and further develop the debarment system in line with international best practice and standards.*

### 3.6. Access to information

#### *Recommendation from the Review Report 3.6.*

- 1) *Ensure that all public law institutions and entities receiving public funding or performing public functions are covered by the transparency and access to information requirements.***
- 2) *Stipulate that no category of information should be absolutely exempt from disclosure; any restriction of access to information, including state secrets, should be based on the law, be necessary and proportionate and possible only upon compliance, on a case-by-case basis, with the harm and public interests tests in line with international best practice. The law should also establish information which may not be restricted in access, in particular on corruption and other infringements of the law, any use of public money and other public resources.***
- 3) *Remove unnecessary formalities from the law with regard to obtaining of information on request by simplifying and clarifying the procedure as much as possible.***
- 4) *Introduce dissuasive administrative sanctions for violation of the access to information provisions by public officials.***
- 5) *Establish an independent supervisory mechanism for enforcement of the access to information right with adequate resources and powers, including access to any classified information and issuing of binding decisions.***
- 6) *Decriminalise all defamation and insult offences; ensure that civil law provides effective constraints not to stifle freedom of information with unjustified defamation lawsuits.***
- 7) *Improve budget transparency, oversight and public engagement by implementing recommendations given to Mongolia as the outcome of the 2012 Open Budget Index.***

The special Law of Mongolia on Information Transparency and Right to Information (“Right to Information Law”) was adopted in June 2011. It is the framework law on access to information held by public authorities; other relevant laws are the Law on State Secrets (1995), the Law on Approval of the State Classified Information List (2004) and the Law on Privacy (1995). Mongolia’s Right to Information Law was ranked 53rd in the global right to information rating (out of 95 countries).<sup>30</sup>

#### ***1) Ensure that all public law institutions and entities receiving public funding or performing public functions are covered by the transparency and access to information requirements.***

The Mongolia’s RTI Law covers a broad range of organisations subject to the requirement to provide information (proactively and upon request): Secretariat of the State Great Hural (Parliament); office of the President; Government Cabinet; Administrative office of the National Security Council; state central administrative or other state administrative organisations; judiciary and prosecutor’s offices of all instances; institutions established by the State Great Hural with exception of the Government Cabinet; administrative offices of local municipal and self governing bodies, legal entities owned (partially or fully) by the local government; state-owned (including partially) legal entities; non-governmental organisations executing specific functions of the executive branch in accordance with the Law on Government; Mongolian National Public Radio and Television.

The Law, however, does not apply “in ensuring transparency in operation of the armed forces, border protection and internal troops, and intelligence organization”. It was not clear whether this exception

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<sup>30</sup> See [www.rti-rating.org/country\\_data.php](http://www.rti-rating.org/country_data.php). Rating is compiled by NGOs ‘Access Info’ and ‘Centre for Law and Democracy’ and reflects quality of the legal text without assessment of its enforcement.

related only to the proactive publication or to access to information through requests as well. In any case, according to the Review Report, such broad exclusion is not justified – all public entities without exception should be covered by the transparency and access to information provisions; exemption should be based not on the type of institution but on the content of specific information and should be governed by the general rules on the restriction of information in access.

The Parliament and the President should be covered by the Law as such, not only their offices (secretariat), as this may exclude from the Law's scope e.g. information related to legislative work, produced by the MPs or the President and not their secretariats.

No changes have been introduced in this regard.

***2) Stipulate that no category of information should be absolutely exempt from disclosure; any restriction of access to information, including state secrets, should be based on the law, be necessary and proportionate and possible only upon compliance, on a case-by-case basis, with the harm and public interests tests in line with international best practice. The law should also establish information which may not be restricted in access, in particular on corruption and other infringements of the law, any use of public money and other public resources.***

No new provisions have been introduced.

***3) Remove unnecessary formalities from the law with regard to obtaining of information on request by simplifying and clarifying the procedure as much as possible.***

No changes have been introduced in this regard.

***4) Introduce dissuasive administrative sanctions for violation of the access to information provisions by public officials.***

The Right to Information Law provides for disciplinary sanctions in accordance with the Civil Service Law which should be imposed on civil servants for violation of legal provisions on information transparency and the right to information. Such measures should be imposed by the competent authority which appointed the civil servant. A civil servant who “repeatedly or seriously” violated the right to receive information should be dismissed by the competent official. Failure to dismiss such an official should result in a fine imposed by a judge on the respective decision-maker (in the amount of 5 minimum salaries or about USD 550).

It appears that administrative sanctions for non-compliance with the access to information provisions were not introduced, as recommended.

***5) Establish an independent supervisory mechanism for enforcement of the access to information right with adequate resources and powers, including access to any classified information and issuing of binding decisions.***

According to the Mongolia's Right to Information Law, complaint against action or inaction of the public organisation and its official violating the right to receive information may be lodged with a higher level organisation or official, the National Commission for Human Rights (Ombudsman institution), or court. The Law on the National Commission for Human Rights of Mongolia provides that the Commissioners may issue demands and recommendations concerning violation of human rights and freedoms; the relevant organization to whom it is addressed is obliged to consider and reply in writing within one week in reaction to a demand and within 30 days to a recommendation. Commissioners may approach the court, according to the procedure established by law, with regard to the business entities, organisations or officials who refused to undertake relevant measures as provided in the demand and/or recommendation. Commissioners also have a right to publish their demands or recommendations through the mass media. It is not clear what procedure is used in courts to address submissions by Commissioners and what enforcement action can be taken. During the on-site visit representative of the National Commission (Ombudsman) informed that no complaints were submitted on access to information, which confirms that

the current arrangement is insufficient.

An independent supervisory mechanism for enforcement of the access to information right has not been established.

**6) Decriminalise all defamation and insult offences; ensure that civil law provides effective constraints not to stifle freedom of information with unjustified defamation lawsuits.**

No new measures were taken in this regard.

The Mongolian Criminal Code contains several offences of insult and defamation:

- Article 110 (in translation provided by the authorities it is called “Slander” but appears to cover insult) criminalises wilful humiliation of an individual’s honour or dignity expressed through the mass media which is punishable by a fine of 20 to 50 amounts of minimum salary (about USD 2,200 to 5,500) or by imprisonment of 1 to 3 months.

- Article 111 (Defamation) criminalises spreading of knowingly false fabrications defaming another individual and punishable by sanctions similar to Article 110, with higher sanctions for aggravated offences (defamation through mass media, by person who was previously imposed an administrative penalty for defamation or insult – maximum sanction is imprisonment of 3 to 6 months; defamation connected with accusation in commission of a serious or a grave crime – maximum sanction is imprisonment of 2 to 5 years).

- Article 231: Insult of a state official or a “public order public inspector” in public in connection with performance of their duties is punishable by a fine of 5 to 50 amounts of minimum salary, 100 to 150 hours of forced labour or by imprisonment of 1 to 3 months.

- Article 259: “Slander” of judge, citizens’ representative, inquirer, investigator, prosecutor, advocate or court decision executor in connection with consideration of a court case, conduct of inquiry and investigation or execution of the court decision is punishable by a fine of 5 to 50 amounts of minimum salary, 100 to 250 hours of forced labour or by imprisonment of 1 to 3 months.

According to the official information, 7 persons were convicted under Article 110 CC, 21 – under Article 111 CC, 1 person – under Article 231 CC and no convictions under Article 259 CC (it is not clear what period is covered by the statistics).

It is clear that insult and defamation provisions are actively enforced and are not dormant norms. Interlocutors provided examples when the Prime Minister filed a lawsuit against a newspaper<sup>31</sup> and a website was shut down after critical reports against the Government. Criminal defamation and excessive civil lawsuits against the media curtail not only the media freedom but also investigative journalism – one of the main source of information on corruption dealings. Mongolia, as was previously recommended, needs urgently to decriminalise defamation and insult and provide effective constraints so that the civil law does not stifle freedom of information with unjustified defamation lawsuits.

Filtering of on-line content raises additional concern. In February 2013 the Communications Regulatory Commission (CRC) introduced regulations requiring Internet Service Providers to install software to filter and delete user comments containing libel, insult, obscenity and threats, as determined by a list of “prohibited words” published by the CRC. The CRC resolution requires websites to regulate content generated by users, including posting warnings to users stating that if the comment “violates legal and moral standards, the administrator is entitled to delete them”. This can be seen as prior censorship and may

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<sup>31</sup> In 2013, an editor and two journalists from the newspaper *Terguun* faced fines for defamation. The case against them, launched in 2012 by Prime Minister Norovyn Altankhuyag, ended at the Supreme Court in December 2013, where an earlier district court ruling against the three individuals was upheld. Source: Freedom of the Press 2014, Freedom House, <https://freedomhouse.org/report/freedom-press/2014/mongolia>.

have chilling effect on media freedom and on-line expression, including corruption allegations.<sup>32</sup>

**7) *Improve budget transparency, oversight and public engagement by implementing recommendations given to Mongolia as the outcome of the 2012 Open Budget Index.***

On 1 July 2014 Mongolia adopted a new Law on Transparent (“Glass”) Accounts (entered into force on 1 January 2015). The purpose of the law is to create a transparent system (“glass accounts”) to enable public monitoring and disclosure regarding decision making processes and activities related to budget management. The law extends to legal entities owned by state or local administrations, state owned factories, companies whose controlling shares are vested in the state, local government administration or their affiliated entities, enterprises and organisations carrying out investments, projects, programmes, activities, works and services with state or local administration budget and contractors carrying out state functions on the basis of law and agreement. The organisations covered by the law should disclose on their web-sites: annual budgets, procurement plans and local development fund plans (prior to 10 January each year); half-year annual budget performance reports (before 15 August), previous year annual budget performance report (before 25 April), and monthly and quarterly performance reports (by 8<sup>th</sup> of the following month); budget for the following year (before 15 September each year); year-end financial reports (before 25 April of the following year) and half-year financial report (before 15 August); audit reports with respect to budget of the general budget governor (before 25 April); budget savings, surplus and their reasoning (on quarterly basis).

The Ministry of Finance, in addition to the above mentioned information, shall also disclose: income, outcomes and investments of the state budget, social security fund budget, human development fund budget and unified budgets (before 15 July for half-year and 15 January for year-end); information regarding government's loans and grants; information regarding foreign and domestic debt (on a quarterly basis); state budget savings, surplus and their reasoning (on a quarterly basis); monthly performance information of unified budget (by 15<sup>th</sup> of each month); budget performance and audited consolidated financial report (by 25 August of the next year); information regarding securities issued by the government for the purpose of funding state budget deficits; concession agreements; all details, except those regarded as confidential, of the entity party to the concession, concession items, works to carried out or services to be provided through the concession agreement; research and calculations containing comparisons of state unified budget with the macroeconomic indicators (on a quarterly basis).

The monitoring team was pleased to find out during the on-site visit that implementation of the Law appears to be right on track. Ministry of Finance is responsible for implementation of the Law and reported after 1<sup>st</sup> quarter of 2015 about 70% compliance (the Law covers about 7,000 budgetary organisations). A conference was held in May 2015 to take stock and analyse implementation. The unified “glass account” web-site is planned to be launched in June 2016; it will be operated by the Ministry of Finance and include 37 types of information to be published according to 19 templates. The National Audit Office is supervising implementation of the Law and conducted relevant audit in May 2015 finding implementation to be satisfactory (while reporting about some inconsistencies, inaccurate information in some cases, lack of Internet access of in some regions, etc.).

Adoption of the law is a welcome development and can serve as an example to other countries. It needs to be properly and fully implemented. At the same time civil society organisations interviewed stated that while a lot of information is made available based on the Law it is often of poor quality and is difficult to understand. It is therefore recommended that information under the Glass Accounts Law be published in open data (machine-readable) formats and visualisation tools are used to better present information.

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<sup>32</sup> See negative evaluation of the measure in the Freedom House report “Freedom of the Press 2014” (cited above), Final Report of the OSCE/ODIHR Election Observation Mission of Presidential Elections in 2013, page 15, available at [www.osce.org/odihr/elections/105150](http://www.osce.org/odihr/elections/105150).

## **Media ownership transparency**

One of the issues raised by several interlocutors was the transparency of media ownership in Mongolia. The media cannot perform their watchdog role properly and in particular uncover corruption if the government or businessmen supporting the government controls them directly or indirectly. That is why transparency of the media, especially influential broadcasting ones, is important for prevention of corruption. The importance of the media ownership transparency in Mongolia was also stressed by the OSCE Representative on Freedom of the Media.<sup>33</sup>

According to the OSCE/ODHR report, the media market in Mongolia allows for a certain level of political pluralism, the media environment is characterized by an overwhelming majority of media outlets reportedly being directly or indirectly owned by political actors. Journalists informed about a common practice of access to news programmes either through interference of owners in the editorial autonomy or through payment.<sup>34</sup>

The monitoring team recommends urgent adoption of amendments in the legislation to introduce ownership transparency requirements.<sup>35</sup> Such provisions should establish a robust mechanism of making public and verifying ownership structure of the media, including their beneficial owners and major shareholders (direct or indirect). The law should make issuing of broadcasting licences to the media contingent on the full disclosure of their ownership structure with all its levels and beneficiaries and regular publication of detailed financial reports of the broadcasters.<sup>36</sup>

## **Extractive Industries Transparency Initiative**

The government of Mongolia committed to implement EITI in December 2005 and was admitted as EITI Candidate in September 2007. The first EITI report was published in 2006, the latest – in 2015 (2013 EITI report). Mongolia reached the “Compliant” status in the EITI back in 2010. According to the EITI, Mongolia’s reports are highly comprehensive. They include a good overview of the extractive sector, including number of deposits, production figures by commodity, and a map of current oil exploration and production activities. The reports disclose revenues collected at provincial and levels, including fines and environmental remediation costs, and social payments and donations.<sup>37</sup>

The coverage of EITI reporting in Mongolia continues to expand. 1617 companies were included in the latest report. In addition, the report included information on social payments to individual government institutions and NGOs; the status of the implementation of annual mining and environmental rehabilitation plans; contracts between extractive companies and local authorities; and the names of individuals who owned more than 5% of the shares of more than 216 operating companies.<sup>38</sup>

There is a Working Group in the parliament working on the Draft Law on Natural Resources Transparency. The monitoring team welcomes development of the draft law and calls for its swift adoption. It is important that the draft law complies with the new EITI standards and enhances contract transparency and beneficial ownership disclosure in Mongolia.

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<sup>33</sup> OSCE Representative on Freedom of the Media, Statement, 5 May 2015, available at [www.osce.org/fom/155216](http://www.osce.org/fom/155216).

<sup>34</sup> Final Report of the OSCE/ODIHR Election Observation Mission of Presidential Elections in 2013, cited above, page 15.

<sup>35</sup> President of Mongolia submitted in the parliament a draft Law on Freedom of the Press that included provisions on ownership transparency but the President withdrew it after the second reading in 2013.

<sup>36</sup> For relevant standards see: Ten Recommendations on Transparency of Media Ownership, Access Info Europe, November 2013, [www.access-info.org/wp-content/uploads/TMO\\_Recommendations\\_05\\_November\\_2013.pdf](http://www.access-info.org/wp-content/uploads/TMO_Recommendations_05_November_2013.pdf).

<sup>37</sup> Source: <https://eiti.org/Mongolia>.

<sup>38</sup> Source: <https://eiti.org/news/mongolia-new-government-challenged-vulnerable-economy>.



## **Open Government Partnership (OGP)**

Mongolia joined the OGP in 2013 and is now implementing its first National Action Plan for 2014-2015. The key priorities of Mongolia's OGP Action Plan are: a) Improving public service b) Increasing transparency of public institutions c) Enhancing justice and reducing corruption. Under these priorities, Mongolia committed to strengthen its transparent budget system, improve the quality of public service and pursue fair, accountable policies. This is supposed to promote an open and transparent government in Mongolia.<sup>39</sup>

The Action Plan includes important anti-corruption measures as well, e.g.:

- Develop and publish e-mapping of crime occurrence.
- Create a central information database on law enforcement activities, crimes and violation records, and ensure that the database is accessible to relevant bodies.
- Introduce a system of random disclosure to the public of assets and financial statements of any public servants.
- Publish on a government website the assets and financial statements of officials who work in organizations that are reported to have higher levels of corruption and ensure citizen monitoring.

Timely and full implementation of the action plan is encouraged.

Mongolia is **partially compliant** with recommendation 3.6., which remains valid.

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<sup>39</sup> Source: [www.opengovpartnership.org/country/mongolia](http://www.opengovpartnership.org/country/mongolia).

### 3.7. Political corruption

#### *Recommendation from the Review Report 3.7.*

- 1) Review the system of regulation of political party financing to establish reasonable restrictions on sources of party financing and limits on individual contributions, including membership fees; prohibit cash contributions beyond certain limit and anonymous donations.**
- 2) Ensure transparency of party finances, by requiring annual financial reports with details of all contributions (except for very small ones) and each contributor, as well as party expenses; such reports should be standardised and published on internet.**
- 3) Improve rules for disclosure of election campaign finances, including submission and publication of financial reports before election day.**
- 4) Review the system of independent monitoring and supervision mechanism for party finances and financing of election campaigns in order to ensure clear separation of tasks, availability of adequate resources and powers, in particular to impose proportionate and dissuasive sanctions.**

No major changes have been introduced in the legislation on political parties and their financing, both in relation to and outside of election campaigns. Mongolian authorities informed that a working group has been established in the parliament to prepare comprehensive amendments on transparency of political financing. This is a good opportunity to address recommendations of the IAP and improve relevant legislation and practice. The drafting of the said amendments should be conducted in a transparent manner with close involvement of the civil society.

***1) Review the system of regulation of political party financing to establish reasonable restrictions on sources of party financing and limits on individual contributions, including membership fees; prohibit cash contributions beyond certain limit and anonymous donations.***

#### **Private contributions**

According to the Law on Political Parties, party's revenues can consist of the following: membership fees; donations from members, natural persons and legal entities; subsidies from the state; sale of merchandise with party's symbols; revenue from publishing and media activities; revenue from renting or selling its own properties; interest on its savings in banks.

The law establishes caps on the private donations. The maximum amount of a one-time donation for a legal entity is MNT 10 million (about EUR 4,300), for a natural person MNT 1 million (EUR 430). A donor is allowed to give a donation to one organization of the party not more than two times a year. According to the Law, the party shall publish information about its donations (scope of information to be published is not specified).

Donations from the following sources are forbidden: Mongolian citizens under 18 years of age; state and state-related organizations, companies; religious organizations; international organizations, foreign citizens, foreign legal entities, stateless persons; legal entities that are less than one year old after their establishment; anonymous persons or without address specified; legal entities that have bankrupted or have expired bank loans; other persons forbidden so by law. Exclusion of international organisations and foreign legal entities does not cover sponsorship of projects, events in co-operation with international organizations, other foreign political organizations, funds.

The described legal provisions provide some basis for regulation of the sources of party finances, but they are not sufficient and should be improved:

- 1) The term “donation” should be defined in the Law and should cover “any deliberate act to bestow advantage, economic or otherwise, on a political party”<sup>40</sup>, including in-kind donations (e.g. free supply of office, transport, equipment or staff, free advertisement, sponsorship of events, discounts of goods/services).
- 2) All donations and membership fees should be registered in the party’s records.
- 3) Restrictions on donations should cover not only the party itself but any entity related, directly or indirectly, to the party or which are otherwise under the control of the party.
- 4) Maximum amount of the membership fee should be defined in the law, so membership fees are not used to circumvent restrictions on donations.
- 5) The Law should specify the rules on publication of information about donators and donations (how published, what information, etc.).
- 6) Prohibition of donations from public organisations or publicly owned companies should be clarified to explicitly cover all companies owned by the state or local self-government, companies in which the state or local self-government has shares, as well as entities established by such companies. It is also recommended to prohibit donations from companies that received e.g. during the previous year a certain amount (e.g. certain per cent of their annual income) of public funding through public procurement or other similar mechanisms (export credits, state aid, etc.).

While the law requires that all donations be made through bank accounts, according to interlocutors met during the on-site visit, in practice, cash donations are very frequent and not recorded in party’s books and accounts, which underscores the need for effective supervision. Similarly, the requirement that parties publish their financial reports is not followed in practice and there are no sanctions for non-compliance. Restrictions on donations are circumvented by legal entities splitting large contributions and supplying them through their employees.

### **State funding**

Article 19 of the Law on Political Parties provides for two types of subsidies: a one-time subsidy after the elections and regular payments to parliamentary parties. A party that has seats in the parliament receives a one-time payment within three months after the election result is announced. Each vote is valued as MNT 1,000 MNT<sup>41</sup> and “votes of the party in parliamentary election shall be compared to the total number of votes”. The party which has seats in the parliament also receives quarterly subsidy from the state budget during the parliament’s term of office; for each seat in the parliament the party receives MNT 10 million. 50% of this subsidy has to be spent for the parliamentary election unit areas.

Only parliamentary parties (those that passed election threshold – i.e. 5% at the last national elections in 2012) are eligible for state funding. This is not in line with international best practice – to foster political pluralism it is recommended to provide state funding to parties that obtained a certain level of support even if it is below the threshold to enter the parliament (e.g. 1-2 % less than the threshold).

No information was provided on the implementation of provisions on state funding of political parties. Overall, according to international standards, the “amount of public funding awarded to parties must be carefully designed to ensure the utility of such funding while not eradicating the need for private contributions or nullifying the impact of individual donations. Subsidies should be set at a meaningful level to fulfill the objective of support, but should not be the only source of income and should not create

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<sup>40</sup> See Council of Europe’s Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003, Article 2 of Common Rules, available at [www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)4\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf).

<sup>41</sup> MNT 1,000 MNT equals about EUR 0.43.

conditions for over-dependency on state support”<sup>42</sup>.

**2) *Ensure transparency of party finances, by requiring annual financial reports with details of all contributions (except for very small ones) and each contributor, as well as party expenses; such reports should be standardised and published on internet.***

No changes have been introduced in this regard.

According to the Law on Political Parties, party finances are controlled only internally by the party itself. The central organization of the party is supposed to prepare a consolidated financial statement after the corresponding organizations have made the financial report. Finances of the party should be audited annually and reports should be published.

The Supreme Court of Mongolia is in charge of controlling internal rules and platform of the party with regard to their compliance with the Constitution and the law. Parties also report to tax authorities but this concerns only taxation issues.

The Mongolian law therefore lacks provisions on any external control of party finances. The law should include detailed requirements as to financial reporting and auditing of party finances, publication of annual reports and their verification by an external independent state authority, e.g. the Anti-Corruption Agency.

Requirements as to financial reporting are too general and insufficient. The Law should require from all parties to submit to the supervisory authority (that has to be determined) annual financial reports according to the standard form to be defined by such authority. The reports should include detailed breakdown of all income and expenses of the party on the consolidated basis (i.e. including all organisations controlled by the party). Such reports should be published on the parties' web-sites and on the web-site of the supervisory authority.

**3) *Improve rules for disclosure of election campaign finances, including submission and publication of financial reports before election day.***

No changes have been introduced in this regard.

The Law on the Election of the President of Mongolia provides that the General Election Commission (GEC) shall set maximum amounts of election expenditures by a candidate and party by March 1 of the election year.<sup>43</sup> Donations to the election campaign are limited to 40 minimum monthly salaries (around EUR 5,000) for a natural person and about EUR 25,000 for a legal person. Donations from a number of sources are prohibited (prohibitions are similar to those established for regular party donations – see above). Any donated amount above the established limit is to be confiscated (plus a small fine is imposed for the violation). Political parties have to provide financial reports 30 days after the election day. The GEC reviews and reports on expenditure statements and names of citizens, who made a donation of MNT 1 million or more, and legal entities, who made donations of MNT 20 million or more, to the public within 45 days after the end of the polling.

The OSCE/ODIHR Election Observation Mission for the latest presidential elections in 2013 reported that the GEC in fact did not audit reports, although the Law empowers the Commission to request a state audit of party's or candidate's finances. The Observation Mission concluded that this may undermine the effectiveness of the control mechanisms introduced by the Presidential Election Law and can potentially decrease the public trust in the way electoral campaigns are financed. The Mission report recommended Mongolia that, in order to enhance transparency and public confidence in the integrity of the campaign

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<sup>42</sup> Guidelines on Political Party Regulation by Venice Commission and OSCE/ODIHR, 2010, page 38, available at [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e).

<sup>43</sup> At the latest Presidential elections (held in June 2013) the GEC set the maximum election expenditure at around EUR 2.7 million per party and around EUR 1.6 million per candidate.

finance, the GEC should publish campaign finance regulations in a timely manner and effectively enforce operable and transparent campaign finance oversight procedures, including in the pre-election period.<sup>44</sup>

The Law on the Election of the State Great Hural (Parliament) also provides that the GEC sets the maximum amount of election expenses by one candidate proposed for a district by each district in consideration of the size and location of the district's territory and its population size and a maximum amount of election expenses by a party or coalition by 1 February of the election year. The GEC reviews and makes expense statement public within 45 days after the end of polling, including making public information on citizens who donated MNT 200,000 or more and legal entities that donated MNT 500,000 or more.

During the on-site visit authorities informed that the GEC only verifies formal compliance with the donation restrictions (allowed limits and source) and did indeed publish financial statements as submitted by the parties/candidates. Only one person in the GEC staff deals with financial reports (out of 40 staff members overall) and this obviously is not enough to conduct any meaningful verification and supervision.

***4) Review the system of independent monitoring and supervision mechanism for party finances and financing of election campaigns in order to ensure clear separation of tasks, availability of adequate resources and powers, in particular to impose proportionate and dissuasive sanctions.***

The Law on the General Election Commission determines that this institution conducts supervision over the amount of donations and spending of donations received by political parties, coalitions and election candidates, as well as reviews their reports on disposition of electoral funds, publishes such reports.

The Law, in fact, assigns the GEC with broad powers with regard to election campaign finances:

- to oversee election financing and expenditure of political parties, coalitions and candidates;
- to review financial reports of election committees;
- to obtain information from parties, coalition, candidates and election committees within its powers.;
- to obtain information on election financing from state and other organs, officials and individuals (including from banks). Relevant individuals should supply requested documents within three days or on election day if less than three days left until such day;
- to conclude and compile documents on election financing and expenditure irregularities.

If considered necessary, the Commission investigative activities can be executed by relevant investigative authorities including the State Audit Organs.

However, as it appears, in practice, the GEC is not using its powers and does not carry out effective supervision of campaign finances. The GEC should significantly step up the level of implementation of the Law. Some interlocutors also stressed that the powers of the GEC may appear broad, but in reality its supervision mandate is quite narrow and limited to compliance with several formal requirements.

The GEC consists of nine members of which only two work full-time (GEC Chairman and Secretary). The parliament appoints all GEC members for a six-year term: five members at the suggestion of the Standing Committee on State Structure, two upon proposal by the President of Mongolia and two at the suggestion of the Supreme Court from among civil servants. The Chairman and the Secretary of the Commission are appointed from the Commission members by the parliament at the suggestion of the parliament's chairman. The President of Mongolia, members of the State Great Hural of Mongolia, Prime Minister of Mongolia, Cabinet members, members of the Constitutional Court, judges, prosecutors, representative of

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<sup>44</sup> Final Report of the OSCE/ODIHR Election Observation Mission of Presidential Elections in 2013, page 14, available at [www.osce.org/odihr/elections/105150](http://www.osce.org/odihr/elections/105150).

any Citizen's Representative Hural, candidates for the President of Mongolia or member of the State Great Hural of Mongolia and members of the Aimag, the Capital city, Soum and District Hurals of Citizen's Representatives are not allowed be members of the Commission.

The appointment of the GEC members appears to be too politicised and depends mainly on the parliament. At the same time the Law on the GEC allows early termination of office of the GEC members only in case of criminal conviction or resignation, which is a positive provision. The GEC has low capacity to deal with political financing issues as only two of its members are full-time employees. It is recommended to make all GEC members full-time employees and select GEC members on their merit, preferably based on an open competition. Mongolia should also significantly strengthen the GEC secretariat in terms of number of staff and dedicate sufficient staff to auditing of election financial statements.

A candidate in violation of election expenses regulation is subject to a fine equal to three to five times the monthly minimum wage (about EUR 375 to 625) and a legal entity to five to eight times the monthly minimum wage (about EUR 625 to 1,000) respectively and confiscation of assets accumulated in the account.

As to the general, non-election related, finances of political parties there is no authority in Mongolia authorised to perform supervision in this regards. This renders all political financing regulations ineffective and should be urgently addressed. Mongolia should designate an agency in charge of reviewing party finances and enforcing the law on financing restrictions. Such an agency should have the necessary level of independence and sufficient resources. In the monitoring team opinion, such functions could be assigned to the IAAC.

## Conclusions

Mongolia's regulations on political party financing are very weak and remain almost not enforced. This situation should be urgently addressed. Lack of effective supervision over political finances promotes political corruption and vested interests controlling government institutions. While there are some basic provisions on party finances they are not enforced and are easily circumvented in practice. There is no public institution in charge of monitoring and supervising party finances. Transparency requirements are not complied with and party finances remain in the shadow. Election campaign financing requirements are also ineffective; the General Election Commission lack capacity to effectively control their enforcement. Overall relevant legislation requires comprehensive overhaul. Therefore development of the law on transparency of the party financing should be welcomed. The drafting of the law, however, should be conducted in a transparent manner with close involvement of the civil society.

Mongolia is **partially compliant** with recommendation 3.7., which remains valid.

## New recommendation 3.7.

- 1) Strengthen the system of regulation of political party financing by establishing limits on membership fees, broadly defining the term "donation" to include in-kind donations, extending donation restrictions to all entities related or controlled by the party, specifying rules on publication of information on donations, prohibiting donations from companies that received funding through public procurement or other public source.*
- 2) Ensure balance between private and public funding of the political parties and implement restrictions on the use of funds received from the state budget. Provide public funding to parties that obtained a certain level of popular support at the national elections even if it is lower than the electoral threshold.*
- 3) Ensure transparency of party finances, by requiring detailed annual consolidated financial reports with all contributions (except for very small ones) and each contributor, as well as all*

*party expenses reported; such reports should be standardised and published on the internet.*

- 4) Improve rules for disclosure of election campaign finances, including submission and publication of detailed financial reports before election day.*
- 5) Establish without delay a system of independent monitoring and supervision for party finances and financing of election campaigns with adequate resources and powers, in particular to impose proportionate and dissuasive sanctions. Consider assigning powers of supervision over political party financing to the Anti-Corruption Agency. Ensure that the General Election Commission is a professional and independent body consisting of employed full-time members selected according to their merit, preferably based on an open competition.*
- 6) Revise the rules on ethics and integrity of members of the parliament, including decision-making procedure for violations, and ensure an effective mechanism of their enforcement.*

### 3.8. Integrity in the judiciary

#### *Recommendation from the Review Report 3.8.*

- 1) Consider excluding political institutions (the President and parliament) from the appointment and dismissal of judges (by replacing them with the Judicial General Council); review procedure for appointment of judges to ensure that it is merit-based and competitive; introduce mandatory initial training of judges (before or after appointment) in the national school of judges.**
- 2) To ensure better guarantees of judicial independence: provide that chief judges be appointed and dismissed by judges of the relevant court; introduce through the law an automatic random distribution of cases among judges and make the decision on case assignment publicly available.**
- 3) Align composition of the Judicial General Council with international standards, in particular by ensuring that it consists of majority of judges representing different levels of the court system and elected by other judges.**
- 4) Fix remuneration rates and all wage increments of judges directly in the law; avoid payment of bonuses to judges.**

#### ***1) Consider excluding political institutions (the President and parliament) from the appointment and dismissal of judges (by replacing them with the Judicial General Council)***

Legislation on the judiciary includes the Law on Courts, Law on Legal Status of Judges, Law on Court Administration, Law on Legal Status of Citizens' Representatives (jurors). The new versions of these laws entered into force in April 2013. According to the Mongolian authorities, there have been no significant changes in the laws on the judiciary since the review report. At the same time a working group has been established to work on amendments in the Constitution of Mongolia concerning the system of governance including the judiciary.

All judges are appointed for permanent tenure, i.e. until retirement. All judges are appointed by the President of Mongolia upon proposal of the Judicial General Council – nominations of the Supreme Court judges are first submitted to the parliament by the Judicial General Council. Before nomination judicial candidates are selected by the Judicial General Council and its Judicial Qualification Commission; vacancies are announced on the Council's web-site. Assessment of candidates is conducted by the Judicial Qualifications Commission; then the General Council conducts interviews with each candidate and votes on nomination; candidates with the most votes are submitted to the President. The President is not bound by the Council's recommendation and may reject the candidate.

Involvement of the political institutions (President, Parliament) in the appointment of judges causes concern. It undermines judicial independence. According to international standards and best practice the optimal institution for appointment of judges is a Judicial Council when it is composed of the majority of judges selected by other judges representing different levels of the judicial system. Currently all members of the General Judicial Council are appointed by the President of Mongolia.

It appears that no consideration was given to excluding political institutions from the judicial appointment and dismissal process. If such institutions cannot be fully removed from the selection process, then it is necessary to formalize as much as possible the procedure for introduction of candidates so that the main decision would be adopted by the Judicial Council (provided that its composition is aligned with the international standards – see below), while the political bodies would only endorse the Council's decision and have no discretionary decision-making powers with regard to appointment/dismissal (as an option



there could be a procedure whereby e.g. the President can once reject submission of the Judicial Council but will have to endorse it if then re-confirmed by the Council).

***review procedure for appointment of judges to ensure that it is merit-based and competitive***

After the reform in 2013 the number of judges in the country increased from 390 to 690 (including Supreme Court judges) and it might increase further to include additional judges in provinces. Around 300 new judges have recently been recruited and about 200 more vacancies need yet to be filled in within 2-3 years.

According to the authorities, the selection process is based on merits of candidates and is competitive. It includes publication of vacancies on the web-site of the GJC, relevant court and in the media. The vacancy note includes information on the selection criteria and documents to be submitted. Applicants apply to the Judicial Qualification Commission (JQC) – a body attached to the General Judicial Council. The JQC reviews and verifies submitted information, conducts examination tests of the candidates and other evaluations. Tests include evaluation of professional skills, ethics, case simulation, knowledge of Mongolian language and writing and public speaking skills, IT skills. A special ethics test includes case simulation on the ethics standards, interview with the candidate and survey of candidate's colleagues. The JQC short-lists the candidates who are then interviewed by the GJC. The association of attorneys is invited to provide their opinion on the candidates as well. The regulations on the selection of judges are approved by the President of Mongolia.

Overall the described procedure for recruitment appears to be in line with the recommendation. Although it needs to be clarified what is the weight of different steps in the candidate's assessment, e.g. how much weight have the tests, interviews and external assessments.

Also, as with the appointment of judges, the political institution should not be the one determining relevant procedure. The main regulations should be specified in the law while the remaining provisions can be included in the bylaws adopted by the Judicial Council.

The main problem with the judicial recruitment lies at the final stage, when the GJC refers its recommendation for appointment to the President. As noted above the final decision-making by the President is problematic from the point of view of international standards, especially because the President can reject nomination by the GJC without any explanation. Although, according to the authorities, in 2015 the President rejected only 3 candidates (this however maybe explained by the early endorsement of the candidates through the GJC who are also appointed by the President).

The Judicial Qualification Commission consists of 9 members, including 4 judges of the Supreme Court, 2 chief judges of the appellate courts and 3 law professors. Composition is determined by the GJC. Members of the JQC work part-time and are remunerated based on hours worked. Recruitment and assessment of judges is a time-consuming activity and the process would benefit of the JQC would be composed of full-time members.

***introduce mandatory initial training of judges (before or after appointment) in the national school of judges.***

The Integrated Program of judicial training is prepared on annual basis and includes 11-12 trainings. In 2014 the Judicial Research and Training Institute under the General Judicial Council organised 7 trainings funded by foreign aid funds. Judicial trainings include: training for new judges (one-week training before the new judge starts his work), law application, skill development and professional development. Programs and plans are available at [www.judoinstitute.mn](http://www.judoinstitute.mn) (in Mongolian). No specific training on anti-corruption issues is provided to judges.

Subordination of the training facility for judges to the Judicial Council in general complies with international standards, but only if the Judicial Council itself is in line with the standards, which it is not.

***2) To ensure better guarantees of judicial independence: provide that chief judges be appointed and***

***dismissed by judges of the relevant court; introduce through the law an automatic random distribution of cases among judges and make the decision on case assignment publicly available.***

No changes have been introduced in this regard.

The chief judge of the Supreme Court is appointed by the President of Mongolia for the term of six years; chief judges of all other courts are appointed by the President upon proposal of the Judicial General Council, as well as judges – presidents of court chambers – upon proposal of the chief judge of the respective court. The GJC organises a test exam for positions of chief judges and submits short-listed candidates to the Presidents who makes a selection.

As noted in the Review Report this vests excessive power in the political office of the President, even with involvement of the Judicial General Council which makes a non-binding proposal. International best practice is to allow judges of the relevant court to choose and recall their chief judge; the latter should also have no direct or hidden powers to interfere with the course of adjudication (by influencing judicial panels, distribution of cases among judges, etc.) or exert influence over judges (by having impact on the allocation of funds, payment of salaries or any other benefits to judges, etc.). The power of the chief judge to launch disciplinary proceedings against a judge is also problematic, it should be revoked.

Automatic distribution of cases is not mandated in the laws. However, according to Mongolian authorities, in practice such system is implemented in courts and cases are distributed independently by software. Councils of court judges are responsible for deciding on the system for distribution of cases. This arrangement, even if used in practice, has to be fixed in the law as a norm, as Mongolia was recommended, and regulated in detail in the bylaws.

This part of the recommendation has not been implemented.

***3) Align composition of the Judicial General Council with international standards, in particular by ensuring that it consists of majority of judges representing different levels of the court system and elected by other judges.***

According to Article 13.1 of the Law on Court Administration, the General Judicial Council consists of the head and four members and those shall be from judge councils of primary court, appellate court and monitoring court, and the Association of Lawyers, and any governmental body in charge of legal affairs. All members of the GJC are appointed by the President of Mongolia. Current members of the General Judicial Council were appointed in May 2013 according to the abovementioned regulation; and their term of office is three years. This in general is in line with international standards with regard to the composition of the Judicial Council.<sup>45</sup> The only issue which should be explored is whether the President has discretion in appointment of the GJC members nominated by judges.

***4) Fix remuneration rates and all wage increments of judges directly in the law; avoid payment of bonuses to judges.***

No new developments were reported in this regard.

As noted in the Review Report, after the reform was implemented the Judicial General Council was given power to determine the amount of judicial remuneration. The Council established the minimum monthly base salary of a judge in amount of MNT 2.7 million (about EUR 1,190) for first instance judges, MNT 2.9 million (about EUR 1,280) for judges of appellate courts and MNT 3.2 million (about EUR 1,400) for

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<sup>45</sup> See, in particular: Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12 regarding the judges: independence, efficiency and responsibility, 17 November 2010 (clause 27); Opinion No. 10 of the Consultative Council of the European Judges “Council for the Judiciary at the service of society” of November 2007 (Section III); *Magna Carta* for judges approved by the Consultative Council of the European Judges in November 2010 (clause 13); The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE/ODIHR (clause 7).

Supreme Court judges. In addition to the base salary a judge can receive bonuses of up to 50% of the base salary depending on seniority and “level of professional activity”. Thus, the total amount of judicial remuneration could reach MNT 5-6 million (about EUR 2,200 to 2,650). As to the calculation of bonuses authorities interviewed during the on-site visit stated that so far only the number of years is taken into account when determining the amount of a bonus (after initial 5 years of judicial service each next year equals 2% increase in salary), while there is no procedure to take into account performance of the judge.

Reportedly the parliament has considered a draft law on fixing salary rates of judges directly in the law, but it has not been adopted to date. This part of the recommendation has not been implemented.

### **Other issues**

According to Mongolian authorities, in order to ensure openness and transparency of judicial operation all information of the court is published at the website of the General Judicial Council ([www.judcouncil.mn](http://www.judcouncil.mn)). Equipment to video record court sessions has been installed in courts. Unless the court session is held *in camera*, the media can openly take part and record the court session.

Mongolia has a good practice of the General Judicial Council having the right to present the judicial budget directly to the parliament. This however so far has not protected judiciary from budgetary cuts. The final decision on the judicial budget rests with the parliament, which usually follows position of the Government and the Ministry of Justice. Representatives of the judiciary presented the following figures: in 2015 the judiciary requested MNT 88 billion but received MNT 54 billion (with MNT 24 billion of capital investment cut). The Supreme Court has a separate budget and its budgetary request was also not satisfied (in 2015 received MNT 3.9 billion from MNT 26 billion requested). The law’s provision that the judicial budget cannot be reduced year on year is not followed in practice. It is understandable that the cuts are explained by the general budgetary saving, but decrease in the judicial budget negatively affects judicial independence.

### **Conclusions**

The Judiciary in Mongolia remains corrupt and susceptible to political influence and nepotism. The reform implemented in 2013 was important but not sufficient. Only constitutional changes can bring about necessary institutional changes, in particular removing or limiting to the minimum role of political entities in the judicial career and establishing a genuinely independent judiciary. The composition of the General Judicial Council should be brought in line with international standards. The President and the Parliament should be removed from the process of appointment and dismissal of judges. Merit-based recruitment of judges is in its initial stage of implementation and should be supported – there is a need to streamline relevant procedures and ensure transparency and fairness of each stage.

Mongolia is **partially compliant** with recommendation 3.8., which remains valid.

### 3.9. Private sector

#### *Recommendation from the Review Report 3.9.*

- 1) Develop specific measures in the new anti-corruption strategy and action plan to promote business integrity; ensure clear allocation of responsibility for coordination of implementation of these measures with the relevant state bodies; ensure that business partners are involved in the development and monitoring of the implementation of these measures.*
- 2) Involve business sector in the process of elaborating of legislation establishing responsibility of legal persons for corruption; consider developing incentives for compliance with this legislation such as the possibility of defence from responsibility for companies with effective anti-corruption compliance programmes.*
- 3) Assist companies and business associations to assess integrity risks, organise awareness raising, provide advice and guidance on prevention of corruption in business operations.*
- 4) Develop and implement joint projects with the business entities such as collective actions against corruption and integrity pacts, especially in the risk areas.*
- 5) Introduce comprehensive measures to strengthen corporate governance, transparency, internal control and corruption prevention systems in state and municipally-owned enterprises.*
- 6) Consider introducing recording and disclosure of beneficiary owners of all legal entities during their state registration.*

*1) Develop specific measures in the new anti-corruption strategy and action plan to promote business integrity, ensure clear allocation of responsibility for coordination of implementation of these measures with the relevant state bodies, ensure that business partners are involved in the development and monitoring of implementation of these measures*

According to a public survey conducted by The Asia Foundation in partnership with the Sant Maral Foundation in April 2015, the most widely cited reasons for grand corruption in Mongolia is the lack of transparency at high levels of government (19.5 per cent) and the merger of political and business interests (19.1 per cent). Another widely cited reason is that “large foreign companies operating in Mongolia frequently use corrupt practices” (18.2 per cent).

As noted above, the Mongolian authorities reported that a working group was set up by the President’s Office to develop a new anti-corruption programme. Among other stakeholders it consists of the IAAC, civil society and business representatives, including the Chamber of Commerce and Industry and the Employers’ Association. The new draft programme lays down that the main reasons for corruption in Mongolia is that civil servants and businesses have a large amount of political influence, that conflict of interest is prevailing and that there is weak enforcement of the law. As noted in the draft anti-corruption programme, according to the business community, corruption exists mainly due to the limited access to public service.

The new draft anti-corruption programme is also based on one of the key principles of partnership between public, private and civil society. In order to address the issue of limited access to public service, a number of transparency measures have been envisaged, including the introduction of electronic services of organisations that are at high risk of corruption and mitigating the risk by monitoring their operations. As to private companies, the new programme lays down that penalties for individuals or legal entities which fail to comply with contractual obligations should be tightened and that legal entities which are on the black list should be banned from participation in the electronic tender processes. In addition, more actions are envisaged targeting corruption in the private sector, to make private enterprises more transparent, to

introduce corruption prevention standards in the private sector developed by the OECD and United Nations, fostering the transfer of certain government rights/powers to private enterprises.

With regard to corruption in the media, the new draft anti-corruption programme specifies that measures should be taken to make the investors in the media and information sector more transparent, and to organise the sector in a way that a single investor or affiliated investors cannot have full control over a [single] media organisation.

Regretfully, the new anti-corruption programme does not provide for any directions or actions to be taken with respect to major corruption risk areas for the private sector or in the private sector itself. For instance, as noted in the draft national anti-corruption programme, companies state that the main obstacles to their business is the high tax rate (52.1%), loan availability (26.2%) and competition (21.5%), and named the tax offices (30.6%), the State Specialised Inspection Authority (18.2%) and the customs offices (11.8%) as the main organisations that impede their businesses.

During the on-site visit the evaluators were told that although risks can occur in any of these sectors, no streamlined actions, apart from research and improvement of methodology, was envisaged to address these problems.

As another example, the evaluators were told on-site that the business community has been frustrated with regard to various special permissions that need to be obtained by businesses in Mongolia. Their number is astronomical, totalling around 956 special 'multi-layer' permissions. The government and the parliament set up working groups to reduce the number by at least 50 per cent, yet the final draft law was rejected by the Parliament. No concrete actions to address the problem have been envisaged in the new anti-corruption programme either.

To conclude with this part of the recommendation, although there are several provisions in the draft anti-corruption programme that can contribute to positive anti-corruption developments with regard to fighting corruption in the private sector and where synergies occur between private and public bodies, it is regrettable that alarming corruption risk areas have not received proper attention. Besides that, the national anti-corruption programme has not been adopted yet. Neither is the action plan that should set out more concrete measures and mechanisms, responsible actors and timeframes.

***2) Involve business sector in the process of elaborating of legislation establishing responsibility of legal persons for corruption, consider developing incentives for compliance with the legislation such as the possibility of defence from responsibility for companies with effective anti-corruption and compliance programme***

According to the answers to the questionnaire, the Chamber of Commerce and Industry as well as the Employers' Association were invited to comment on the amendments to the Criminal Code. However, their approach was not very progressive as they suggested that legal entities should be exempt from any liability for corruption, both active and passive, as in many instances they are forced to engage in corruption as the burden of state bureaucracy is too heavy. As the draft new Criminal Code or any other draft legislation did not provide for establishing corporate liability in a comprehensive manner, no consultations with the private sector have been organised on this issue.

***3) Assist companies and business associations to assess integrity risks, organise awareness raising provide advice and guidance on prevention of corruption in business operations***

During the on-site visit the evaluators were told that there was close co-operation between IAAC, the Chamber of Commerce and Industry and the Employers' Association in the area of public awareness raising and prevention. Memoranda of understanding were signed between those bodies. IAAC's Public Awareness and Prevention Department organised a number of awareness-raising events (see above), inviting representatives of the business community to them.

With the assistance of various donor foundations, for instance, The Asia Foundation, a project on promoting integrity in the private sector was implemented, involving several workshops on corruption.

In addition, the Small and Medium-Sized Section of the Ministry of Industry organised a few workshops on corruption and distributed several handbooks on the issue.

Besides that, the Employers Association told the evaluators that their co-operation with the IAAC's Public and Prevention Department has been strong since 2009. During the previous year they visited 21 aimags and discussed the issues of bureaucracy and corruption for businesses there. In co-operation with the IAAC, a handbook with information on how corruption should be combated was prepared. The plan was to release the handbook in mid 2015. The handbook includes information about all international conventions against corruption, social and private impact of corruption in the country as well as how advice on how private entities can overcome corruption by having a better internal monitoring process.

In 2014 the Bank Association, the Chamber of Commerce and Industry and the Employers' Association formed a union against corruption, the purpose of which is to unite all business entities against corruption.

With the assistance of the IAAC's prevention department 20 trainers were trained that should help companies to develop their capacity building with regard to corporate social responsibility and integrity.

In addition, the IAAC's Public Awareness and Prevention Department signed an MoU with the Mongolian Chapter of Transparency International. One of its aims to have an integrity assessment developed for business entities (although the main focus of the MoU is assessment and improvement of the IAAC itself).

The evaluators learnt on-site about the Mongolian Sustainable Finance Initiative, initiated by the Dutch Development Bank, Trade and Development Bank of Mongolia, International Finance Corporation, Mongolian Bankers Association and the Banking and Finance Academy. The initiative has been joined by 14 Mongolian banks. Under the initiative, the principles of sustainable banking were developed which, among others, include promotion of transparency and accountability and prohibition of providing bank loans to black-listed companies. Under the initiative, sector specific guidelines (mining, agriculture, construction and manufacturing) were developed in early 2014.

***4) Develop and implement joint projects with the business entities such as collective actions against corruption and integrity pacts, especially in the risk areas***

The evaluators were told on site that the Mongolian Chamber of Commerce and Industry has a separate Integrity Policy Department with people working there responsible for combating private sector corruption and increasing corporate social responsibility. Specific activities are targeted at gold and mining associations which are very powerful lobby groups. Without any written evidence presented it was not easy for the evaluators to see how effective such actions are.

***5) Introduce comprehensive measures to strengthen corporate governance, transparency, internal control and corruption prevention system in the state and municipally-owned enterprises***

In 2014 the IAAC conducted an evaluation of 44 SOEs. An NGO was recruited to make the evaluation. The evaluation provided recommendations with regard to corporate transparent accounts and procurement. These recommendations have been included in the SOE's strategic operations plan. No more steps have been undertaken in that respect.

***6) Consider introducing recording and disclosure of beneficiary owners of all legal entities during their state registration***

It appears that no consideration has been given with regard to this issue.

Mongolia is **partially compliant** with recommendation 3.9., which remains valid.

## Summary table

	New recommendation	Previous recommendation	Rating for previous recommendation			
			Fully	Largely	Partially	Not compliant
<b>Pillar I. Anti-corruption policy</b>						
Political will and anti-corruption policy documents	Previous rec. valid	1.1.-1.2. Political will, policy documents				•
Corruption surveys	Previous rec. valid	1.3. Corruption surveys			•	
Public participation	Previous rec. valid	1.4.-1.5. Public participation, awareness raising and public education		•		
Awareness raising and public participation	Previous rec. valid					
Policy and co-ordination institutions	Previous rec. valid	1.6. Specialised anti-corruption policy and co-ordination institution			•	
<b>Pillar II. Criminalisation of corruption</b>						
Offences and elements of offences	Previous rec. valid	2.1. - 2.2. Offences and elements of offence			•	
Definition of public official	Previous rec. valid	2.3. Definition of public officials				•
Sanctions, confiscation	Previous rec. valid	2.4.-2.5. Sanctions and confiscation				•
Immunities, statute of limitations	Previous rec. valid	2.6. Immunities, statute of limitations				•
International cooperation, MLA	Previous rec. valid	2.7. International cooperation, MLA			•	
Application, procedure	Previous rec. valid	2.8. Application, interpretation and procedures			•	
Specialised law-enforcement bodies	<b>New rec.</b>	2.9. Specialised law-enforcement bodies		•		
<b>Pillar III. Prevention of corruption</b>						
Integrity of civil service	Previous rec. valid	3.2. Integrity of civil service			•	
Promoting transparency and reducing discretion	Previous rec. valid	3.3. Promoting transparency and reducing discretion			•	
Public financial control and audit	<b>New rec.</b>	3.4. Public financial control and audit		•		
Public procurement	<b>New rec.</b>	3.5. Public procurement			•	
Access to information	Previous rec. valid	3.6. Access to information			•	
Political corruption	<b>New rec.</b>	3.7. Party financing			•	
Integrity in the judiciary	Previous rec. valid	3.8. Integrity in the judiciary			•	
Private sector	Previous rec. valid	3.9. Private sector			•	

## Annexes

### Criminal Code provisions

#### Criminal Code of Mongolia

##### **Article 8. Principle of Criminal Liability In Person**

8.1. Physical persons only shall be subjected to criminal liability.

8.2. A culprit shall be subject to criminal liability himself/herself only.

8.3. Legal person shall be the subject to criminal penalty if the Special Part of this Law provides so.

...

##### **Article 20. Persons Subject to Criminal Liability**

20.1. Persons who have attained the age set by the Criminal Code, imputable, who's commission of a crime has been established by court shall be subject to criminal liability.

20.2. Legal person shall be the subject to criminal penalty if the Special Part of this Law provides so.

...

##### **Article 32. Attempt of a Crime**

32.1. An attempt of a crime shall be a deliberate action aimed directly at committing a crime if the crime was not accomplished for the reasons beyond control of the culprit.

32.2. If the person concerned started realization of his/her malicious intent but failed to cause the desired harm, which he/she was aware of, it shall be deemed an incomplete attempt.

32.3. If, although the person concerned started realization of his/her malicious intent but failed to cause the desired harm due to the circumstances independent of his/her will it shall be deemed a complete attempt.

##### **Article 33. Voluntary Abandonment of a Crime**

33.1. If the person who has prepared to or attempted a crime voluntarily and completely abandons it he/she shall not be subject to criminal liability.

33.2. If the act (omission) actually perpetrated prior to the voluntary abandoning of bringing the crime to completion contains signs of another crime the person concerned shall be subject to criminal liability imposed for the latter only.

...

##### **Article 39. Relation to Crimes**

39.1. Persons who conceal or fail to report on crimes shall be in relation to crimes.

39.2. Concealment of the criminal as well as of tools and means of the crime, traces of the crime or objects obtained by way of crime, if such concealment has not been promised in advance shall be called concealer.

39.3. Failure to inform the relevant authority or official about a really known prepared or accomplished crime shall be non-reporting on crimes.

39.4. Concealment of or failure to inform about the crimes specified in the Special Part of this Code shall be subject to criminal liability.

...

##### **Article 49. Confiscation of Property**

49.1. Confiscation of property represents a forced free-of-charge withdrawal of the culprit's share property for the benefit of the state in the instances specified in the Special Part of this Code.

49.2. Seizure of items created by way of crime, arms and means used for committing it, or income gained by way of crime and other things incidental thereto shall be mandatory in addition to the confiscation of property.



49.3. When imposing confiscation of property the court shall specify in the judgment what items and property are being confiscated.

...

#### **Article 70. Remission by Elapse of the Limitation Period**

70.1. A culprit who has committed a crime may not be subjected to criminal liability on elapse of the following periods:

70.1.1. one year from committing a minor crime;

70.1.2. five years from committing a less serious crime;

70.1.3. twenty years from committing a serious crime;

70.1.4. thirty years from committing a grave crime.

70.2. Criminal liability may be relieved in the cases where there is no ground specified in paragraph 1 above in the events specified in the Special Part of this Code.

70.3. The period of limitation shall be interrupted if, before the elapse of the term specified in the law the culprit commits a new crime; in this case the period of limitation shall be counted from the date of commission of the last gravest crime.

70.4. The counting of the period of limitation shall be interrupted if the person who committed crime flees during the pre-trial or trial stage from the date of such flight and the counting shall be restored from the date of his/her apprehension or surrendering.

70.5. The court shall decide on application of the period of limitation to a person who committed a crime that is punishable by the death penalty under this Code. If the court does not find it possible to apply the period of limitation, the death penalty may not be imposed and shall be replaced by imprisonment.

70.6. Period of limitation shall not apply to the cases of committing crimes against the security of mankind and peace specified in Chapter 30 of the Special Part of this Code.

...

#### **Article 110. Slander**

110.1. Willful humiliation of an individual's honor or dignity expressed in the means of mass media shall be punishable by a fine equal to 20 to 50 amounts of minimum salary amount or by incarceration for a term of 1 to 3 months.

#### **Article 111. Defamation**

111.1. Spreading of knowingly false fabrications defaming another individual shall be punishable by a fine equal to 20 to 50 amounts of minimum salary amount or by incarceration for a term of 1 to 3 months.

111.2. Spreading of libel to the public by means of mass media or committed by a person who previously was imposed administrative penalty for defamation or insult shall be punishable by a fine equal to 51 to 150 amounts of minimum salary or incarceration for a term of more than 3 to 6 months.

111.3. Defamation connected with accusing of a commission of a serious or grave crime shall be punishable by a fine equal to 151 to 250 amounts of minimum salary or by imprisonment for a term of 2 to 5 years.

...

#### **Article 148. Appropriation of property by fraud**

148.1. Appropriation of a property or acquisition of the right to property by fraudulent breach of trust shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 250 hours of forced labour or incarceration for a term of 1 to 3 months.

148.2. The same crime committed repeatedly, in a group or by using one's official position shall be punishable by a fine equal to 51 to 150 amounts of minimum salary, incarceration for a term of more than 3 to 6 months or imprisonment for a term of 2 to 5 years.

148.3. The same crime committed by a person previously sentenced for theft, taking away of other's property, misappropriation or robbery, by a recidivist, an organized group, a criminal organization or if it has caused damage in an extremely large amount shall be punishable by confiscation of property and a fine equal to 251 to 500 amounts of minimum salary imprisonment for a term of more than 5 to 10 years.

...

**Article 150. Misappropriation or embezzlement of property**

150.1. Misappropriation or embezzlement of a business entity, organization or citizen's property committed by a person to whom such property was entrusted, or by abuse or excess of one's office shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, or by incarceration for a term of 1 to 3 months.

150.2. The same crime committed repeatedly, in a group or if it has caused damage in a large amount shall be punishable by incarceration for a term of 1 to 3 months with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years, or imprisonment for a term of up to 5 years.

150.3. The same crime if it has caused damage in an extremely large amount shall be punishable by imprisonment for a term of more than 5 to 10 years with confiscation of property.

...

**Article 155. Acquisition or sale of property knowingly obtained by way of crime**

155.1. Acquisition, delivery, storage or distribution of the property knowingly obtained by way of crime without an advance promise shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, or by incarceration for a term of 1 to 3 months.

155.2. Knowingly taking with the purpose of selling or actual sale of the property acquired by way of crime shall be punishable by a fine equal to 51 to 100 amounts of minimum salary, or by incarceration for a term of more than 3 to 6 months.

...

**Article 166-1. Money laundering**

166<sup>1</sup>.1. Conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property or of helping any person to evade the legal consequences of his or her action, or the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, or acquisition, possession or use of property knowing that such property is the proceeds of crime shall be punishable by fine of togrogs equal to 50 to 100 times of amount of minimum salary, or incarceration up to 6 months, or imprisonment of up to 5 years.

166<sup>1</sup>.2. The same crime committed by an organized criminal group, or using official position, or if it has caused damage in a large amount shall be punishable by fine of 300 to 500 times of amount of minimum salary or imprisonment for a term of 5 to 12 years.

166<sup>1</sup>.3. The same crime committed by a legal person shall be punishable by restriction of certain types of its business activity and fine of togrogs equal to 300 to 500 times of amount of minimum salary.

...

**Article 170. Obtaining of illegal remuneration**

170.1. Obtaining repeatedly or in a large amount remuneration by way of abusing his/her official duties of performance of work or rendering of services committed by an employee of a competent authority authorized to issue licenses by way of creating impediments which does not constitute a crime of malfeasance shall be punishable by a fine equal to 100 to 150 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, incarceration for a term of more than 3 to 6 months or imprisonment for a term of up to 2 years.

...

**Article 231. Insult of a state official or a public order public inspector**

231.1. Insult of a state official or a public order public inspector in public in connection with performance of their duties shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 150 hours of forced labor or by incarceration for a term of 1 to 3 months.

...

**Article 246. Failure to report a crime**

246.1. Failure to inform a relevant authority or official about a known to be prepared or committed murder (Article 91), intentional infliction of a severe bodily injury (Article 98), kidnapping (Article 108), taking of hostages (Article 112), rape in aggravating circumstances (Article 126, paragraphs 2 and 3),

theft in aggravating circumstances (Article 145, paragraphs 2, 3 and 4), taking away of other's property in aggravating circumstances (Article 146, paragraphs 2, 3 and 4), fraud in aggravating circumstances (Article 148, paragraphs 2, 3 and 4), misappropriation and embezzlement of other's property (Article 150, paragraphs 2 and 3), 147), robbery (Article 147), forgery of banknotes and securities (Article 176), banditry (Article 177), hijacking (Article 225), giving, accepting of a bribe or intermediation in bribery in aggravating circumstances (Article 268, paragraph 2, Article 269, paragraph 2) shall be punishable by a fine equal to 51 to 80 amounts of minimum salary, or by incarceration for a term of 1 to 3 months.

...

**Article 259. Slander of judge, citizens' representative, inquirer, investigator, prosecutor, advocate or court decision executor**

259.1. Slander of a judge, citizens' representative, inquirer, investigator, prosecutor, advocate or court decision executor in connection with consideration of the case in court, conduct of inquiry and investigation or execution of the court decision shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 250 hours of forced labor or by incarceration for a term or 1 to 3 months.

## **CHAPTER TWENTY EIGHT MALFEASANCE CRIMES**

**Article 263. Abuse of power or of office by a state official**

263.1. Abuse of power or of office by a state official, if it has been committed for lucrative or other personal interests and has caused a substantial damage to rights and interests of the citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years or by incarceration for a term of 1 to 3 months.

263.2. The same crime committed repeatedly or if it has caused damage in a large amount shall be punishable by a fine equal to 51 to 100 amounts of minimum salary or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

Note: The state official referred to in this article include officials holding the administrative or executive posts in state organizations"

**Article 264. Excess of authority by a state official**

264.1. Obvious excess by an official of the limits of rights and powers afforded to him/her by law, if it has caused a substantial damage to the rights and interests of a business entity, organization or citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, or by incarceration for a term of 1 to 3 months.

264.2. The same crime committed repeatedly, by use of violence or threat with such, or if it has caused damage in a large or an extremely large amount shall be punishable by a fine equal to 51 to 100 amounts of minimum salary, incarceration for a term of more than 3 to 6 months or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

**Article 265. Abuse of authority by an official of an NGO or a business entity**

265.1. Abuse of power or office afforded to him/her by legislation or charter by an official of an NGO or a business entity with the view of establishing priority to himself/herself or others if committed for lucrative or other personal interests and has caused a substantial damage to the rights and interests of the citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

265.2. The same crime committed repeatedly or it has caused damage in a large amount shall be punishable by imprisonment for a term of 2 to 5 years with or without deprivation of the right to hold certain positions or engage in certain business for a term of up to 3 years.

Note: The official of NGO or business entity referred to in this Article includes officials holding administrative or executive posts in NGOs or business entities.

#### **Article 266. Excess of authority by an official of an NGO or a business entity**

266.1. Obvious excess of authority by an official of an NGO or a business entity of the limits of rights and powers afforded to him/her by the legislation or charter, if it has caused a substantial damage the rights and interests of a business entity, organization or citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 250 hours of forced labor or by incarceration for a term of 1 to 3 months.

266.2. The same crime committed repeatedly, or if it has caused damage in a great amount shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, incarceration for a term of 1 to 3 months with deprivation of the right to hold specified positions or engage in specified business for a term of up to 2 years or by imprisonment for a term of up to 5 years.

#### **Article 267. Using the name of an official**

267.1. Deriving profit in a large or an extremely large amount by acting under the name of an official of a state body, non-governmental organization or a business entity or if it has caused damage in a large or an extremely large amount committed by a non-official that does not constitute the crime of fraud shall be punishable by a fine equal to 201 to 300 amounts of minimum salary or by incarceration for a term of more than 3 to 6 months.

#### **Article 268. Receiving of a bribe**

268.1. Receiving of a bribe by an official exclusively in view of his/her official post for a support or connivance in office, a favorable solution of issues within his/her competence, or for a performance or a failure to perform in the interests of the person giving the bribe of any action which this person should have or could have performed using hi/her official post, with or without an advance promise to do so shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.

268.2. The same crime committed repeatedly or with aggression or by person, who previously sentenced for the crime of bribery or by organized group or a criminal organization or received amount of bribe is large or extremely large shall be punishable by imprisonment for a term of more than 5 to 10 years with confiscation of illicit proceedings.

#### **Article 269. Giving of a bribe**

269.1. Giving of a bribe to an official in person or through an intermediary shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 3 years.

269.2. The same crime committed repeatedly, by a person who previously was sentenced for this crime, by an organized group, or a criminal organization shall be punishable by imprisonment for a term of more than 5 to 8 years.

#### **Article 270. Intermediation in bribery**

270.1. Intermediation in bribery shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

270.2. The same crime committed repeatedly, by a person who has previously sentenced for bribery, as well as by way of using one's official position shall be punishable by a fine equal to 51 to 250 amounts of minimum salary with or without deprivation of the right to hold certain positions or engage in certain business for a term of up to 3 years or by imprisonment for a term of up to 5 years.

Note: A person who engaged in intermediation voluntarily reports to the competent authority about intermediation in bribery shall be released from criminal liability.

**Article 270<sup>1</sup>. Improvement in the financial state by illegal means**

1. If it is established that an official received material and pecuniary income in large amount by illegal means, besides the lawful income, this official shall be punished with the deprivation of the right to hold certain offices for the term of 3 to 5 years and a fine of 51-250 minimum salaries or deprivation of liberty up to 3 years.

2. If it is established that an official received material and pecuniary income in especially large amount by illegal means, besides the lawful income, this official shall be punished with the deprivation of the right to hold certain offices for the term of 5 to 10 years and a fine of 251-500 minimum salaries or deprivation of liberty from 3 to 8 years.

...

**Article 273. Spending of the budget funds contrary to their designation**

273.1. Spending of the state budget funds by a budget governor:

273.1.1. contrary to their designation;

273.1.2. acquisition of inventory at a price higher than the market one;

273.1.3. acquisition of inventory in amounts exceeding the needs under the excuse of stocking, thereby blocking the cash flow;

273.1.4. intentional increase of inventory prices with the view of creating deficit;

273.1.5. sale of property of a state and budget organization for a price lower than the market one;

273.1.6. misappropriation of funds by way of using of under-quality goods and products in construction and building works performed by a state budget or own financing that has caused a substantial damage shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

273.2. The same crime if it has caused damage in a large or extremely large amount shall be punishable by a fine equal to 51 to 250 amounts of minimum salary with or without deprivation of the right to hold specified positions or engage in specified business for a term of 2 years or by imprisonment for a term of 2 to 5 years.

# Law on Anti-Corruption of Mongolia

*Last updated in May 2015*

## LAW OF MONGOLIA ON ANTI-CORRUPTION

July 8, 2006

Ulaanbaatar city

(Turiin medeel #23, 2002)

### CHAPTER ONE

#### GENERAL PROVISIONS

##### **Article 1. Purpose of the Law**

1.1. The purpose of this Law is to define the legal basis for anticorruption activities and the anti-corruption body, and to regulate relations connected to them.

##### **Article 2. Legislation**

2.1. Anti-corruption legislation consists of the Constitution of Mongolia, this Law and other legislative acts adopted in compliance with them.

2.2. Should an international treaty to which Mongolia is a party provide for other than the anti-corruption legislation, the provisions of the international treaty shall prevail.

##### **Article 2<sup>1</sup>. National programme to combat corruption**

2<sup>1</sup>.1. Parliament shall approve the national programme against corruption, and the implementation plan for the same shall be approved for a period specified in the approved programme.

##### **Article 3. Definitions**

3.1. The following terms used in this Law shall be understood as follows:

3.1.1. "corruption" means abuse by a person  $\tau$  specified in Article 4.1. of this Law, of his/her official power in private interests, affording preferences to others, and any violation of law, expressed in action or failure to act, that enables an individual or a legal person to benefit from such preferences;

3.1.2. "benefit" means material or non-material benefits, gained personally or by others, for preferences accorded to others by abusing the official power by a person, specified in Article 4.1. of this Law;

3.1.3. "abuse of official power" means taking undue action or not taking due action to use the delegated official power against official interests or in own personal interests;

3.1.4. "preference" means any material or non-material benefit that accrues to an individual or a legal person, who caused the abuse of official power by a person, specified in Article 4.1. of this Law;

3.1.5. "public awareness and education activities" means a set of activities aimed at making the public aware of the social gravity and the threat posed by corruption, instilling intolerance of corruption, and mobilizing public participation in combating corruption;

3.1.6. "corruption preventive actions" means a set of activities aimed at detecting and identifying the root causes of corruption, and eliminating and bringing them to an end;

3.1.7. “inquiry and investigation” means a criminal procedure, carried out by the anti-corruption agency with regard to cases within its jurisdiction;

3.1.8. “undercover operations” means actions provided for in Article 2 of the Law on Undercover Operations;

3.1.9. “electoral candidate” means a candidate running in the election for the President, the State Great Hural, or for all levels of the Citizens’ Representative Hurals.

#### **Article 4. Persons subject to this Law**

4.1 The following persons are subject to this Law:

4.1.1. Persons who hold executive or managerial position in the political, administrative or special office of the state;

4.1.2. Persons who hold executive or managerial position in the public service, or who is the general or senior accountant at such place

4.1.3. Managers or authorised employees of legal entities in which the state or the local administration has full or partial equity interest;

4.1.4. The National Council Chairperson and the General Director of public radio and television;

4.1.5. Managers and executive officers of non-governmental organizations, temporarily or permanently performing particular state functions in compliance with legislation;

4.1.6. Candidates for President of Mongolia, Parliament or all levels of Citizens' Representative Hural;

4.1.7. Directors and representatives from all levels of Citizens' Representative Hural; and

4.1.8. Public officials who have been included in the list approved by an authorised entity.

## **CHAPTER TWO**

### **ANTI-CORRUPTION PUBLIC AWARENESS AND EDUCATION AND CORRUPTION PREVENTION WORK**

#### **Article 5. Public awareness and education activities**

5.1 Economic entities, organizations and citizens shall assume the following common obligations regarding the implementation of actions stated in Clause 3.1.5 of this law:

5.1.1. Ensure opportunities and conditions for government and non-governmental organizations, and the general public, to comment on draft laws and other decisions that are to be debated at the State Great Hural;

5.1.2 inform citizens on anti-corruption legislation, and ensure free access to this information by citizens and organizations;

5.1.3. involve analytic research and training institutions, and nongovernmental organizations in conducting corruption-related analytic research work, and the production of books, training and promotional materials, training programs and manuals

5.1.4. training and educational institutions that have a curriculum comprising frameworks for legal and ethical subjects shall teach and educate their students about the social harm and dangers of corruption, and actions needed to prevent it, and instill in them in-tolerance for corruption;

5.1.5 informal educational institutions and non-academic training and educational economic entities, organizations and citizens shall, consistent with their activities, explain to their students or

employees the social harm and threats of corruption , and assist them in acquiring of proper knowledge and awareness of corruption and its prevention;

5.1.6 media organizations shall regularly disseminate news and information, pursuing publication and editorial policies to promote an atmosphere of in-tolerance of any form of corruption among the general public.

#### **Article 6. Corruption prevention activities**

6.1 To carry out the activities specified in Article 3.1.6 of this Law, the state bodies shall assume the following common duties:

6.1.1 Common obligations stipulated in Article 7 of the Law on Prevention of Crimes;

6.1.2 Provide public access to information, engage interested parties in policy dialogue, and provide opportunity to propose and comment on specific methods of oversight and monitoring;

6.1.3 Ensure greater transparency and openness of the state monitoring process;

6.1.4 Inform, in a timely manner, the public on budget revenues and expenditures, foreign loans and aid and their allocation;

6.1.5 Unless otherwise provided for by the legislation, procedures of specific government institutions for issuing licenses and permits, registration, monitoring and competitive selection processes consistent with their functions, shall be open to the general public and provide citizens with opportunities for review and comment;

6.1.6 Establish clear job descriptions for all government officials and civil servants, and determine the actions prohibited due to specifics of his/her work, consistent with the Law on Government Service<sup>4</sup> and this Law, and enforce them;

6.1.7 Enhance the participation of non-governmental organizations in the process of monitoring whether state institutions conduct their activities openly in the interest of citizens, and cooperate with them, exchange information, and regularly inform the public;

6.1.8 Conduct training and education and awareness on combating corruption, and establish a responsible unit to obtain accurate and true assets and income declarations in a timely fashion as specified by law, and register, oversee and assess such declarations;

6.1.9 Seek comment from the Anti-Corruption Agency before adopting by a state institution of a code of ethics for officials of its particular sector/;

6.1.10 Decisions made by state institutions should be comprehensible, open and accessible to citizens and other stakeholders;

6.1.11 Reduce red tape in receiving and addressing citizens' complaints and requests, and to implement advices/recommendations received in this regard;

6.1.12 Take measures within its own mandate to detect and eliminate the causes of corruption, and prevent corruption and remove its negative consequences;

6.1.13 Support non-governmental organizations and voluntary movements aimed at corruption prevention; and

6.1.14 Submit report regarding state authorities' and public officials' compliance and implementation of the National Programme to Combat Corruption specified in Article 2<sup>1</sup> herein.

6.2. Officials of all levels of the government shall report to the AntiCorruption Agency acts of corruption, identified in the performance of their official duties, if investigation and resolution of such acts is beyond their mandate.



6.3. Economic entities or organizations, other than those which provide services, are prohibited from occupying office space in buildings that house courts, police, prosecutors, and the Anti-Corruption Agency, and if not specified otherwise in the law, government central administrative offices and government agencies.

6.4. Any political campaigning or religious activities are prohibited in buildings specified in Article 6.3 of this Law.

6.5. Economic entities, organizations and citizens, in addition to exercising the rights and assuming common obligations specified in Articles 9 and 10 of the Law on Prevention of Crimes, shall assume the following obligations:

6.5.1. Adopt a code of ethics for members of non-governmental organizations, and report on it openly in their performance reports and financial statements;

6.5.2. Define and comply with the norms of business ethics in the private sector.

6.6. Organizations, business entities and officials that received lawful demands and/or resolutions of the Anti-Corruption Agency, adopted are obligated to undertake and adopt the relevant actions, and report back in a timely fashion.

6.7. Organizations and officials are obligated to revise, change or invalidate orders, decisions, procedures and rules that cause corruption or conflicts of interest according to the decision of the Anti-Corruption Agency.

6.8. Any official who fails to perform his/her duties with respect to the prevention and combating of corruption shall be subject to a disciplinary penalty by an authorized official.

6.9. A judge shall impose a fine equal to 1-50 monthly salary in MNT on any official who violates provisions specified in Article 6.8 of this.

*/This clause was amended by Law of 19 January 2012/*

### **Article 7. Prohibitions**

7.1. Officials specified in provision 4.1. of this Law shall be prohibited to commit the following corruption-related violations in addition to those specifically stipulated by other laws:

7.1.1. Exert pressure on and interfere with a view to influence state officials who perform their duties in a due form;

7.1.2. Give bribes or promise to give or mediate to other persons;

7.1.3. Provide illegally preferential treatment or promise to provide such treatment to other persons, limit the rights of other persons when performing official duties;

7.1.4. Spend the budget funds, grants and aid resources for other purposes;

7.1.5. Receive or force bribes from other persons when performing or not performing official duties;

7.1.6. Abuse official power and office, exceed own competence;

7.1.7. Obtain property and preferential right through abuse of office;

7.1.8. Enrich in unjustified way.

Explanation: If an official fails to justify that his/her income exceeding his/her half year salary has been gained in a legal way it shall be considered as enrichment in unjustified way.

*/This article is amended by Law of 19 January 2012/*

### **Article 8. Reporting on Corruption**

8.1. The officials mentioned in provision 4.1. of this Law shall have the duty to immediately report to the Anti-Corruption Agency any corruption-related information obtained while performing their official duties.

8.2. The implementation of the reporting duty specified in provision 8.1. of this Law shall not be subject to limitations established by the Law on State, Organization's and Personal Secrecy."

/ This article is amended by Law of 19 January 2012/

#### **Article 9. Submitting application, complaint or information**

9.1. A citizen or legal person may submit corruption-related requests, complaints or information to the Anti-Corruption Agency.

9.2. The Anti-Corruption Agency shall address and consider such requests, complaints or information according to the respective laws.

### **CHAPTER THREE**

#### **SUBMISSION OF ASSETS AND INCOME DECLARATIONS**

##### **Article 10. Income and Assets Declarations**

10.1. Persons specified in provision 4.1. of this Law /further referred to as "declarers" / shall submit income and assets declarations and if required the Legal Standing Committee of the State Great Hural shall approve upon the proposal of the Anti-Corruption Agency the list of officials who must submit income and assets declarations.

10.2. The declarer shall be obliged to provide true and accurate statement/declaration of his/her income and asset, as well as income and assets of his/her family members.

10.3. The declarers shall have the duty to submit to organizations and officials specified in Article 11 of this Law their income and assets declarations within 30 days since appointment or election to office and annually thereafter by 15 February reflecting due changes throughout duration of his/her office.

10.4. If the income and assets provided in the statement/declaration have changed by an amount equal to or exceeding two hundred times the minimum wage after submission within the timeframe specified in Article/provision 10.3 herein the declarer shall notify the changes within 30 days.

10.5. In case income and assets declarations were submitted later than the timeframe specified in provisions 10.3. and 10.4. of this Law without justified reason this shall be considered as non-submission.

10.6. Candidates in the elections of the President of Mongolia shall submit their income and assets declarations to the General Election Commission, candidate in the elections to the State Great Hural to the election district committee, candidates in elections to Hurals of Citizens' Representatives of all levels to their respective aimag, capital city, soum, district election committees within the timeframe specified in the Law on Elections.

10.7. The Legal Standing Committee of the State Great Hural shall approve the format of income and assets declarations and procedures for their registration and storage.

/This article is amended by Law of 19 January 2012/

##### **Article 11. Registration and Storage of Income and Assets Declarations**

11.1. The following organizations and officials shall be responsible for registration and storage of income and assets declarations within the timeframe specified by law:

11.1.1. The Anti-Corruption Agency shall be responsible for income and assets declarations of the President, members of the State Great Hural, Prime-Minister, members of the Government of Mongolia as well as of officials appointed by the State Great Hural, the President and the Government;

11.1.2. The Legal Standing Committee of the State Great Hural shall be responsible for income and assets declarations of senior and executive officials of the Anti-Corruption Agency;

11.1.3. The General Council of Courts shall be responsible for income and assets declarations of members of the Constitutional Court and of judges of all level courts;

11.1.4. Offices of Hurals of Citizens' Representatives of respective level shall be responsible for income and assets declarations of members of aimag, capital city, soum, district Hurals of Citizens' Representatives;

11.1.5. Income and assets declarations of other officials shall be responsibility of senior officials with power to appoint or supervise them.

11.2. Income and assets declarations of candidates in the elections of the President of Mongolia, the State Great Hural and Hurals of Citizens' Representatives of all levels shall be registered and submitted to the General Election Commission as stipulated in the relevant law by the General Election Commission, district election committees and aimag, capital city, soum, district election committees respectively.

11.3. The organizations and officials mentioned in provisions 11.1.4. and 11.1.5. of this Law responsible for the registration of income and assets declarations shall prepare implementation reports upon completion of receiving income and assets declarations in the timeframe specified in provision 10.3. of this Law within 14 days and submit the report to the Anti-Corruption Agency together with the name list of declarers.

11.4. The General Election Commission mentioned in provision 11.2. of this Law after the consolidated results of the given elections were made public shall submit income and assets declarations of elected persons to the Anti-Corruption Agency within 14 days after completion of voting.

11.5. The Anti-Corruption Agency shall submit information on implementation of the legislation concerning income and assets declarations annually by 15 April to the Legal Standing Committee of the State Great Hural “.

*/This article is amended by Law of 19 January 2012/*

## **Article 12. Correspondence confidentiality**

12.1. Letters, requests or queries regarding how to complete the assets and income declarations form are to be sent to the Anti-Corruption Agency by persons specified in Article 4.1. of this Law. Responses to them and recommendations are deemed to be a personal secret, and problems, related to them should be regulated by the Law on Personal Secrets.<sup>5</sup>

12.2 An official responsible for the registration of assets and income declarations is prohibited from disclosing information about the declarer, or any other information stipulated in Article 12.1 of this Law, or to use it for any purpose without the permission of the declarer, except in cases otherwise permitted by law, while the declarer is serving or after ceasing to work in the same position.

12.3. The official who violates Article 12.2 of this Law shall be held accountable under the Law on Personal Secrets.

12.4. In the event that the declarer's mandate expires due to retirement, or leaving his/her position, or dismissal or relief of duties, his/her assets and income declarations after storing them at the Corruption combating agency for 5 years, shall be transferred to him/her, or if passed away - to his/her spouse or children.

## **Article 13. Review of Income and Assets Declarations and Liability Grounds**

13.1. The Anti-Corruption Agency shall review and analyze income and assets declarations of officials other than mentioned in provision 11.1.2. of this Law.

13.2. The Ethics Sub-Committee of the State Great Hural shall review income and assets declarations of members of the State Great Hural and the Legal Standing Committee of the State Great Hural shall review income and assets declarations specified in provision 11.1.2. based on claims and complaints and shall transfer them to the relevant authorities if the violations require criminal offence.

13.3. Officials in charge of registration of income and assets declarations shall have the duty to examine whether the declarations are filled fully and correctly and submitted in due time, to demand preparation of declarations in accordance with the procedures and in case of violations to carry out inspection within their power or transfer to the Anti-Corruption Agency for investigation.

13.4. If members of the State Great Hural are concurrently members of the Government the income and assets declarations shall be reviewed by Independent Authority Against Corruption.

*/This clause was amended by Law of 18 May 2012/*

13.5. The Anti-Corruption Agency may carry out inspection in pursuit of claims, complaints and information or in accordance with its monitoring plan.

13.6. The Anti-Corruption Agency shall inspect income and assets declarations of the persons specified in provision 4.1. of this Law in case they failed to submit income and assets declaration in due time or to indicate the sources of their income and assets or to provide viable explanation as to how they got their income and assets.

13.7. Declarers shall have the duty to provide realistic and accurate explanation on the sources of their assets and income.

13.8. In case if declarers were late to submit their income and assets declarations, or failed to register them, or provided false information, they shall bear the following liabilities:

13.8.1. Warning sanctions if the declarer failed to declare income and assets equal to his/her monthly salary or provided false information and if the submission of income and assets declaration later than specified in provisions 10.4. and 10.5. of this Law had justified grounds;

13.8.2. Reduction of salary by 30 per cent for up to three months, in case if declarer failed to declare income and assets equal to his/her half year salary, or provided false information, or repeatedly submitted income and assets declaration after deadline;

13.8.3. Demotion from the position or reduce salary by 30 per cent for up to three months, in case if declarer failed to declare income and assets higher than his/her half year and up to annual salary, or provided false information ;

13.8.4. Dismissal from the position or firing from job if declarer failed to declare income and assets equal to, or higher than his/her annual salary, or provided false information, or failed to submit or refused to submit income and assets declaration.

13.9. The competent organization or official shall impose disciplinary sanctions, including reduction of salary by 30 percent for up to three months, or demotion in case of repeated infringements, if officials failed to perform their duty related to registration and monitoring of income and assets declarations, or to submit the relevant documents within the timeframe specified in provision 10.3. of this Law.

*/This article was amended by Law of 19 January 2012/*

#### **Article 14. Public disclosure of assets and income declarations**

14.1. Asset and income declarations of officials shall be published regularly in the Government News Magazine within the second quarter of each year, and placed on Internet:

- 14.1.1 The President of Mongolia;
  - 14.1.2. The State Great Hural Speaker, Deputy Speaker and members;
  - 14.1.3. The Prime Minister, Cabinet members, ministers and deputy ministers;
  - 14.1.4. The Chairperson, Deputy Chairperson and members of the Constitutional Court;
  - 14.1.5. The Chief Justice of the Supreme Court, judges of the State Supreme Court, the Executive Secretary of the Court General Court Council;
  - 14.1.6. The Prosecutor General and the Deputy Prosecutor General;
  - 14.1.7. The President, 1<sup>st</sup> Vice President and Vice President of Mongol Bank;
  - 14.1.8. The Secretary of the National Security Council;
  - 14.1.9. The Head of the Prime Minister's Cabinet Secretariat;
  - 14.1.10. The Head of the President's Chancellery;
  - 14.1.11. The General Secretary of the State Great Hural Secretariat;
  - 14.1.12. The Chairperson and the Deputy Chairperson of the Anti-Corruption Agency;
  - 14.1.13. The Chairperson and members of the Financial Coordination Committee, and the Chairperson and members of the Control Council;
  - 14.1.14. The Chairperson and Deputy Chairperson of the National Statistical Bureau;
  - 14.1.15. The Chairperson and members of the National Human Rights Commission;
  - 14.1.16. The Chairperson and Secretary of the General Election Committee;
  - 14.1.17. The Chairperson and members of the Government Service Council;
  - 14.1.18. The Auditor General and Deputy Auditor General;
  - 14.1.19. The Directors of Government agencies;
  - 14.1.20. The Chairperson of aimag and the capital city Citizens' Representatives' Hurals;
  - 14.1.21. The Aimag Governors and the capital city Mayer.
- 14.2. Assets and income declarations of persons, other than those specified in Article 14.1. of this Law, shall be open to the public.
- 14.3. Assets and income declarations filed for the prior five years by persons specified in Article 4.1. of this Law shall be posted on the AntiCorruption Agency's Website to ensure citizens' access to this information.
- 14.4. Citizens may request information in writing, orally, or from Internet, and the Anti-Corruption Agency shall approve the information disclosure procedures.
- 14.5. The Anti-Corruption Agency shall inform the public on an annual and regular basis how officials adhere to the procedures for presenting their assets and income declarations.

## **CHAPTER FOUR**

### **ANTI-CORRUPTION AGENCY MANDATE**

#### **Article 15. Anti-Corruption Agency**

- 15.1. The Anti-Corruption Agency is a special independent government body charged with

functions to raise anti-corruption public awareness and education, and corruption prevention activities, and to carry out under-cover operations, inquiries and investigations in detecting corruption crimes, and to review and inspect the assets and income declarations of those required by this law.

15.2. A structure charged with the duty to conduct anti-corruption surveys and analysis may be formed under the supervision of the Agency specified in Article 15.1 of this Law.

15.3. The State Great Hural shall decide on the establishment, form, and dissolution of the Anti-Corruption Agency based on recommendations of the National Security Council.

15.4. The Anti-Corruption Agency shall have its logo. The design and procedures for the use of the logo shall be approved by the Head of the Anti-Corruption Agency.

15.5. The Anti-Corruption Agency shall use a stamp, seal and an official letterhead developed in accordance with set procedures.

#### **Article 16. Basic principles of operation of the Anti-Corruption Agency**

16.1. The Anti-Corruption Agency, with centralized management, will operate independently abiding by the principles and in respect of the rule of law, being autonomous and transparent, and not divulging the secrets.

16.2. It is prohibited for any legal person, official or individual, to influence or interfere in the operation of the Anti-Corruption Agency.

#### **Article 17. Structure of the Anti-Corruption Agency**

17.1. The State Great Hural shall approve the organizational structure and staff of the Anti-Corruption Agency, which will be composed of basic structural units including units for prevention, survey and analysis, monitoring, inspection, investigation, undercover operations, and administration.

#### **Article 18. Functions and mandate of the Anti-Corruption Agency**

18.1 The Anti-Corruption Agency assumes the following functions to educate and raise public awareness and prevent corruption:

18.1.1. Organize nation-wide the anti-corruption education and corruption prevention, coordinate anti-corruption activities, develop a consolidated program, provide methodological guidance and monitor the implementation of this Law;

18.1.2. Provide directives and guidance to aimag, capital city, soum, district and ad-hoc crime prevention councils regarding anti-corruption education and corruption prevention, and the coordination of activities;

18.1.3. Conduct, at least once every two years, a survey on the scope, forms and causes of corruption, establish a corruption index, and inform the public;

18.1.4. Undertake organizational measures to support and assist anti-corruption actions, initiatives and recommendations of NGOs, communities and individuals, and promote their participation;

18.1.5. Implement public anti-corruption campaigns explaining the gravity and threat posed by corruption on the society, conduct training and prepare materials to enhance public awareness of this problem, and teach methods to combat corruption;

18.1.6. Give recommendations on anti-corruption public education and awareness, and corruption prevention, and upon request, instruct and train individuals and legal entities on how to reduce corruption risks in their activities;

18.1.7. Conduct fairness and integrity rating of government organizations and state bodies based upon a survey conducted once every two years among individuals and legal entities availing government services, and inform the public.

18.2. The Anti-Corruption Agency shall assume the following functions to investigate assets and income declarations:

18.2.1. Conduct training, issue manuals and instructions regarding the correct and accurate declaration of assets and income;

18.2.2. Upon written or oral request, provide guidance on how to complete, amend, register or transfer the declarations, and respond in writing in a manner that protects the confidentiality of answers;

18.3. The Anti-Corruption Agency shall cooperate, within its competence, with managers of state and local self-governing bodies, their officials, NGOs and private business entities in performing their functions.

18.4. The Anti-Corruption Agency shall exercise the following mandate:

18.4.1. Submit to respective authorities proposals on adopting government anti-corruption policy and resolutions, and on further amendments to improve anti-corruption legislation;

18.4.2. If it is determined that conditions conducive to corruption have emerged, and that conflicts of interest exist, the Agency shall insist on revising and invalidating orders, decisions, procedures and rules enacted by state bodies or officials;

18.4.3. Obtain from government bodies information, surveys and reports, regarding their anti-corruption public education and corruption prevention activities;

18.4.4. Obtain necessary information, surveys, explanations, definitions and other documents, free of charge, from businesses and entities, officials and individuals, and review these materials and acquire expert analyses and verifications;

18.4.5. Conduct undercover work and cooperate with other agencies in charge of investigative and intelligence-gathering work to conduct investigations to detect and stop corruption offences;

18.4.6. Accept and inspect corruption related requests and complaints;

18.4.7. Investigate corruption cases under its jurisdiction;

18.4.8. Collect data and information on matters pertaining to its functions and keep the information confidential;

18.4.9. Take measures to ensure the security of the Agency and its staff;

18.4.10. Obtain written guarantees from officials and individuals to maintain the confidentiality of information that they are exposed to in the course of investigations, in case of violation of the guarantee, they shall assume responsibility according to legislation;

18.4.11. Transfer for further investigation of all violations of the Law, irrespective of the specific corruption offence, identified during the course of investigative work, to the competent authority, and to investigate breaches specified in Articles 6.6, 7.1.7 and 7.1.8 of this law and to transfer such breaches to the relevant organisations;

18.4.12. If necessary, place witnesses and other persons who assisted in anti-corruption work under the protection of the police;

18.4.13. Obtain from each respective authority the list of government officials due to declare their assets and income, and review the declarations;

18.4.14. Supervise the competent organizations' and officials' adherence to the procedure for registering, storing, and monitoring declarations of assets and income declarations, and provide them with information;

18.4.15. Oversee and investigate the submission of assets and income declarations by declarers, and

impose the penalties on those persons who fail to submit in a timely fashion, or who deliberately provide false information.

18.4.16. Prepare written guidance and recommendations on matters related to assets and income declarations;

18.4.17. Cooperate with respective foreign and international organizations, and exchange information related to combating corruption;

18.5. The Anti-Corruption Agency may investigate particular cases in collaboration with the Police and intelligence authorities upon approval of the Prosecutor General.

18.6. In exercising its mandate, The Anti-Corruption Agency will adhere to procedures stipulated in the Criminal Procedures Law, the Law on Undercover Operations and this Law.

#### **Article 19. Requirements of the Anti-Corruption Agency staff**

19.1. A citizen who meets professional and certain requirements and has not been investigated for corruption or malfeasance with no disciplinary, administrative and criminal record, shall be appointed for administrative and executive post in Independent Authority Against Corruption.

*/This clause was amended by Law of 18 May 2012/*

19.2. The ethical and disciplinary codes applied to officers of The AntiCorruption Agency shall be approved by the Head of The Anti-Corruption Agency.

19.3. Officers of The Anti-Corruption Agency shall have ranks, and the ranking procedure shall be approved by the State Great Hural.

19.4. The legal status of administrative and support officers of The AntiCorruption Agency shall be governed by the Law on Government Service, the Labor law <sup>7</sup>, and other legislation.

*/This clause was revoked by Law of 18 May 2012/*

#### **Article 20. The Oath of the Officer of the Anti-Corruption Agency**

20.1. An officer of The Anti-Corruption Agency shall swear the following oath to the Constitution of Mongolia immediately upon his/her appointment: "I, the officer of the Anti-corruption Agency, swear to honestly combat corruption, and be solely guided by the rule of law, free from undue influence. Should I violate this oath, I shall be held accountable under the law."

#### **Article 21. Appointment of the Head and Deputy head of the Anti-Corruption Agency and the terms of their mandates**

21.1. The Head and the Deputy head of The Anti-Corruption Agency shall be appointed for 6-year terms by the State Great Hural, based on the nomination by the President of Mongolia.

21.2. The person to be appointed as the Head or Deputy head of The Anti-Corruption Agency shall meet the following criteria, in addition to the requirements specified in Article 19.1. of this Law:

21.2.1. A candidate for the office of the head of the Corruption combating agency shall have at least 15 years of prior government service, shall be at least 45 years of age, shall be a lawyer by profession, and shall possess relevant managerial and professional experience, and shall not have held a political position for at last 5 years ;

21.2.2. A candidate for the office of the Deputy head of The AntiCorruption Agency, shall be a lawyer by profession, and shall have at least 10 years of government service, and shall have experience in undercover and investigative work;

21.3. The Head and Deputy heads of The Anti-Corruption Agency may be re-appointed for only for one additional term.



21.4. Terms of office of the head and deputy heads of the Corruption combating agency shall commence the day of their appointment and expire with the appointment of the next head and deputy head.

21.5. Terms of office of re-appointed head and deputy heads of the Corruption combating agency shall begin from the day of their appointment and last until the expiration of their mandates, specified in Article 21.1. of this Law.

## **Article 22. Suspension from duties and dismissal from office of the Head or Deputy head of the Anti-Corruption Agency**

22.1. The Head and Deputy of The Anti-Corruption Agency shall be relieved from their duties in the following cases:

22.1.1. upon his/her own request;

22.1.2. if the person is unable to fulfill his/her duties for health reasons;

22.1.3. if the term of his/her mandate expires.

22.2. If the Head or Deputy head of the Anti-Corruption Agency commits a crime that is proven, and if a court verdict enters into force, then s/he shall be dismissed from office from the day of the court verdict.

22.3. The Head or the Deputy head of the Anti-Corruption Agency may apply for retirement to the State Great Hural in writing, if such an application is submitted during the State Great Hural session, it shall be considered within 21 days, if it is submitted in the interim between sessions, it shall be considered within 21 days from the date that the sessions reconvenes.

22.4. The decision to suspend or not the mandate of the Head or Deputy head of The Anti-Corruption Agency, in conjunction with the criminal charges, or his/her arrest according to Article 31.2 of this Law, shall be made within 14 days after receiving a proposal to suspend his/her mandate, submitted to the State Great Hural by the Prosecutor General.

22.5. It is prohibited to relieve from duties, or to suspend the mandate, or to dismiss from office the Head or Deputy head of The Anti-Corruption Agency on grounds other than those specified in this Law.

## **Article 23. Mandate of the Head of the Anti-Corruption Agency**

23.1. The Head of The Anti-Corruption Agency shall exercise the following mandate:

23.1.1. Establish the organization, management and operation of The Anti-Corruption Agency;

23.1.2. Represent the Anti-Corruption Agency nationally and internationally;

23.1.3. Collaborate with special agencies and institutions of foreign countries following the principles of equality of rights, mutual respect, and non-involvement in internal matters;

23.1.4. Appoint, relieve from duty, reward, confer ranks and impose disciplinary sanctions on officers of the Anti-Corruption Agency;

23.1.5. Approve and enforce rules, regulations and instructions related to the internal work of The Anti-Corruption Agency;

23.1.6. Enact orders on issues related to human resources, and the organization and administration of The Anti-Corruption Agency;

23.1.7. Review undercover operations, case registration and investigative activities;

23.1.8. Permit the use of secret methods, forces, and instruments as specified in the Law on Undercover Work;

23.1.9. Make decisions on procurement, possession, usage, and disposal of undercover techniques

and equipment;

23.1.10. Ensure internal control of the Agency's operations;

23.1.11. Enforce other mandates specified by law.

23.2. In the absence of the Head of The Anti-Corruption Agency, the Deputy shall assume the mandate of the Head at his/her direction.

**Article 24. Rights of officers of the Anti-Corruption Agency in charge of undercover work, case registration and investigations**

24.1. The Anti-Corruption Agency officers in charge of undercover work, case registration and investigations shall exercise the following mandate as specified by the procedure in the Law:

24.1.1. Exercise the rights and duties of undercover officers specified in the Law on Undercover Operations, and perform undercover work on the basis and according to the procedures specified by law;

24.1.2. Exercise the rights and duties of case registration and intelligence officers specified in the Criminal Procedures Code, conduct case registration and intelligence work on the basis and according to the procedures specified in the law;

24.1.3. Penetrate into premises of business entities and organizations;

24.1.4. Inspect and temporarily freeze, without special permit, bank accounts and transactions of citizens, business entities or organizations;

24.1.5. Seize and seal assets according to the provisions and procedures of the law;

24.1.6. Obtain explanations or testimonies from officials and citizens, and subpoena their presence;

24.1.7. Mobilize and use, in the course of exercising his/her mandate, vehicles and communication equipment, regardless of their ownership status, except for those of diplomatic representatives, high level government officials and officials holding comparable positions, and medical ambulance, firefighters' and emergency service vehicles fulfilling their duties;

24.1.8. Use firearms, special self defense equipment, and other technical devices while on duty;

24.1.9. Use services of public transportation and communication, regardless of the queuing order, while performing his/her official duties;

24.1.10. Exercise other mandates, applicable to performing functions of The Anti-Corruption Agency.

24.2. The procedure for using firearms, special self defense equipment and other technical devices shall be approved jointly by the Prosecutor General and the Head of the Corruption combating agency.

24.3. If a privately owned vehicle was used in circumstances specified in Article 24.1.7 of this Law, relevant fees and incurred expenses shall be compensated.

**Article 25. Prohibitions in the operation of officers of the Anti-Corruption Agency**

25.1. Officers of The Anti-Corruption Agency shall be prohibited to conduct the following actions, in addition to those specified in the Law on Government Service, and Article 7 of this Law:

25.1.1. Join as a member, or be elected or appointed to a leadership position of a political party, trade union, religious organization, or any similar legal person;

25.1.2. Disclose state, organizational or personal secrets exposed to or entrusted to him/her in the course of performing official duties;

25.1.3. Disclose information on his/her official duties to the public and others without special

permission from higher authority;

25.1.4. Travel abroad for official or private purposes without obtaining permission from the head of The Anti-Corruption Agency;

25.1.5. Travel, go on tour or vacation at the expense of domestic or foreign economic entities, organizations or individuals.

25.1.6. Accept from anyone any items as gifts and souvenirs in violation of the set procedures.

25.2. The officers of the Anti-Corruption Agency are prohibited to have family or kinship relations amongst them.

25.3. The officers of The Anti-Corruption Agency are prohibited to use any information exposed to them in the course of their service for any purpose after termination of their service as officers.

#### **Article 26. Supervision of the operation of the Anti-Corruption Agency**

26.1. The State Great Hural shall report annually briefing of Independent Authority Against Corruption on condition of corruption and implementation of legislation on corruption.

*/This article was amended by Law of 29 May 2008/*

26.2. The Special Supervisory Sub-committee of the State Great Hural shall monitor the implementation of the Law on Undercover Operations by The Anti-Corruption Agency.

26.3. The Prosecutor General shall supervise the undercover operations and investigative work, and case registration by The Anti-Corruption Agency according to the bases and procedures specified in the Law on Undercover Operations, the Criminal Procedures Code, and Law on the Prosecutor General<sup>8</sup>.

#### **Article 27. Public council**

27.1. In order to ensure active public involvement in combating corruption, to voice its opinion, to advise on the condition and implementation of the anti-corruption law, an ad hoc Public Council shall be established under the supervision of The Anti-Corruption Agency.

27.2. The Public council shall be composed of 15 members, and the President of Mongolia shall assign for four-year term as members of the Council, people with good reputations, without any criminal past, and representing the civil society.

27.3. Government political and career government officers cannot be candidates for membership on the Public Council.

27.4. Members of the Public Council shall not disclose secrets related to operation of The Anti-Corruption Agency.

27.5. The Procedures for the Public Council operation shall be approved by the President of Mongolia.

### **CHAPTER FIVE**

#### **GUARANTEES FOR THE OPERATION OF THE ANTI-CORRUPTION AGENCY**

##### **Article 28. Political guarantees**

28.1. Political parties, coalitions, movements or clerical organizations are prohibited to conduct political, religious, or other activities within the premises of The Anti-Corruption Agency office.

28.2. In exercising the freedom of expression, speech, and publication, and the right to worship or not to worship, an officer of The Anti-Corruption Agency shall respect his own official duties.

## **Article 29. Economic guarantees**

29.1 Activities of The Anti-Corruption Agency shall be financed from the state budget and the state shall ensure the economic resources for the Agency's operation.

29.2 The budget of The Anti-Corruption Agency shall be reflected separately in the government budget, and the budget shall be sufficient to enable the Agency to operate independently.

29.3. The budget of The Anti-Corruption Agency for a given year may not be less than the body's budget in the previous year.

29.4 The budget for the undercover operations of The Anti-Corruption Agency shall be approved by the State Great Hural as a special item based on the budget review, and upon proposal by the Special Supervisory Sub-Committee.

29.5. Expenses related to the protection of individuals and witnesses, who assisted in the process of conducting anti-corruption activities, and the provision of financial assistance, required equipment, technical devices and premises shall be reflected separately in the budget.

29.6. Remuneration of the Head, Deputy head and officers of The AntiCorruption Agency shall consist of the regular salary for their official position, special conditions allowance, and bonuses for the length of government service, rank and academic degrees. The amount of salaries, allowances and bonuses shall be determined by the State Great Hural.

29.7. The government shall issue a soft loan or, if necessary, a loan guarantee to officers of the Corruption combating agency, who have stable employment history and effectively perform their work, to assist them in building private houses, purchasing basic household necessities, studying themselves or paying tuition fees of their children.

29.8. The Head and the Deputy head of The Anti-Corruption Agency shall have the same level of mandate and protection as Cabinet members.

## **Article 30. Social guarantees**

30.1. Unless otherwise provided by law, it is prohibited to relieve an officer of The Anti-Corruption Agency from his/her duties, dismiss or transfer him/her without his/her own consent to another job or official position.

30.2. In case an officer of The Anti-Corruption Agency temporarily loses his/her ability to work or becomes handicapped in the course of performing his/her official duties, the government shall bear responsibility for the payment of the difference between the amount of salary previously enjoyed by the officer, and the benefits and allowances, as well as the expenses for prostheses if such costs were incurred.

30.3. If an officer of The Anti-Corruption Agency lost his/her life while performing his/her official duties, or was murdered in connection with his/her official duties, one-time compensation equal to his/her salary for the period of 5 years shall be granted to his/her family.

30.4. In case of retirement of an officer of The Anti-Corruption Agency, he/she shall receive a one-time grant equal to 36 months of his/her regular salary, provided that he/she has worked at least 10 years for the anti-corruption body.

30.5. Life and health of officers of The Anti-Corruption Agency shall be insured on an obligatory basis, and the payment of insurance premiums shall be made from the budget of the Agency.

30.6. Annul leave terms of officers of The Anti-Corruption Agency shall be determined according to the Labor Code. An additional 3 working days shall be added to the vacation days for every 5 years of service as an officer in The Anti-Corruption Agency in charge of undercover operations or case registration, or as an investigator.

30.7. Officers of The Anti-Corruption Agency shall enjoy the guarantees provided by this Law in addition to working conditions, additional guarantees, salary, reimbursement, assistance, rewards and benefits provided to government officers by the Law on Government Service.

30.8. In affording the guarantees provided by Article 30.7 of this Law to officers of The Anti-Corruption Agency, similar types of benefits, assistance and bonuses may not be duplicated, and officers themselves shall make own personal choice in selecting the preferred ones.

30.9. Positions of executive/managerial officers, case registrars and detectives/investigators of the Anti-Corruption Agency shall be considered as military positions.

30.10. executive/managerial officers, case registrars and detectives/investigators of the Anti-Corruption Agency shall use organisation's designated uniforms when participating in a special activity, and designs of such uniforms shall be approved by the director of Anti-Corruption Agency.

### **Article 31. Legal guarantees**

31.1. It shall be prohibited to detain, incarcerate, arrest, or search the home, office, vehicle or person of the Head and the Deputy head of the Anti-Corruption Agency, and other officers, without permission of the State Great Hural.

31.2. In the event that an officer of The Anti-Corruption Agency is apprehended in the process of committing a crime, or is arrested at the crime scene with evidence of a criminal act, or if sufficient grounds for criminal charges are established, the officer shall inform the relevant authority. The Head and Deputy head of The Anti-Corruption Agency must notify the State Great Hural, and all other officers must notify the Head of The Anti-Corruption Agency within 48 hours.

31.3. If an officer of The Anti-Corruption Agency has committed a crime, or is arrested according to Article 31.2 of this Law, and the respective competent body has submitted a proposal to suspend his/her mandate, the Head of the Anti-Corruption Agency shall decide within 10 days after receiving the proposal.

31.4. The government shall bear responsibility for damages caused by mistakes made by an officer of the Anti-Corruption Agency in the course of exercising his/her mandate.

### **Article 32. Other Guarantees**

32.1. An officer of the Anti-Corruption Agency may not concurrently engage in work or hold positions unrelated to his/her official duties specified by the law, other than academic work.

32.2. Officers of the Anti-Corruption Agency shall be exempt from mandatory military conscription.

32.3. In case of imminent and real danger to the life, and health of an officer of the Anti-Corruption Agency, or a member of his/her family in connection with performing official duties, the police shall bear the responsibility for ensuring their security.

32.4. Regardless of their jurisdiction, individuals and officials are obligated to execute legitimate orders of officers of the Anti-Corruption Agency within their competence.

32.5. Losses and negative consequences from duly executing orders and tasks by the Anti-Corruption Agency officers, as bestowed by an official in authority, shall be borne by that particular officer.

32.6. The premises of the Anti-Corruption Agency shall be under state protection.

### **Article 32<sup>1</sup>. Bodies in Charge of Monitoring the Law Implementation**

32<sup>1</sup>.1. The following bodies shall monitor the implementation of this Law by relevant organizations and officials:

32<sup>1</sup>.1.1. Legal Standing Committee of the State Great Hural shall monitor the activities of the Anti-Corruption Agency and the General Council of Courts;

32<sup>1</sup>.1.2. Anti-Corruption Agency shall monitor the activities of organizations other than those mentioned in provision 32<sup>1</sup>.1.1. of this Law;

32<sup>1</sup>.1.3. Public Council shall monitor the activities of the Anti-Corruption Agency except those related to case file, investigation and executive work."

/This article was added by Law of 19 January 2012/

## **CHAPTER SIX OTHER PROVISIONS**

### **Article 33. Liabilities for Violation of the Legislation on Anti-Corruption**

33.1. If the persons who violated the legislation on anti-corruption are not subject to criminal liability, the competent organizations and officials shall impose the following sanctions:

33.1.1. Reduce by 30 per cent the salary for up to three months in case if official did not perform the reporting duty as specified in provision 8.1. of this Law;

33.1.2. Demote position in case if official failed to perform reporting duty as specified in provision 8.1. of this Law on multiple occasions or violated provision 7.1. of this Law. If it is not possible to downgrade the position, salary shall be reduced by 30 per cent for up to three months. Decision made in corruption-related conditions shall be invalidated;

33.1.3. Dismiss from public service the person who violated provision 7.1. of this Law on multiple occasions, invalidate the decision if it was taken in corruption-related conditions;

33.2. The judge shall confiscate the assets and income or invalidate the preferential right obtained by the person in violation of provisions 7.1.7. and 7.1.8. of this Law.

/This article was amended by Law of 19 January 2012/

### **Article 34. Eliminating consequences of corruption crimes**

34.1. Compensation of losses incurred due to corruption crime, the restoration of rights that have been violated, and the annulment of any illegal decisions, shall be governed in accordance with the Civil Code and other relevant legislation.

### **Article 35. Entry into force**

35.1. This Law shall enter into force starting from 1 November 2006.

CHAIRMAN OF THE STATE IKH HURAL

# **Law of Mongolia on Regulation of Public and Private Interests and Prevention of Conflict of Interest in Public Service**

*Last updated in March 2015*

## **LAW OF MONGOLIA ON THE REGULATION OF PUBLIC AND PRIVATE INTERESTS AND PREVENTION OF CONFLICT OF INTEREST IN PUBLIC SERVICE**

### **CHAPTER ONE GENERAL**

#### **Article 1. Purpose of the Law**

1.1. The purpose of this Law is to ensure transparency and credibility of the civil service by way of strengthening the alignment of public service activities with public interest through prevention and resolution of conflicts between private interests and official duties of a public official.

#### **Article 2. Legislation on the regulation of public and private interests and prevention of conflict of interest in public service**

2.1. The legislation on the regulation of public and private interests and prevention of conflict of interest in public service shall consist of the Civil Service Law, Law Against Corruption, this law and other legislative acts issued in compliance with this law and for the purpose of implementing the fundamental principles of the activities of the State as laid out in Article 1, Paragraph 1 of the Constitution of Mongolia.

2.2. In the case the International Treaty of Mongolia stipulates otherwise than this law, the provisions of the International Treaty shall prevail.

#### **Article 3. Definitions**

3.1. The following definitions apply in this law:

3.1.1. "public interest " means public trust that a public official will discharge his/her duties mandated by the Constitution and other laws of Mongolia in a fair and unbiased manner, free of conflict of interest.

3.1.2. "private interest " means economic or non-economic interest of a public official or his/her related person that may influence the performance of official duties by the said public official;

3.1.3. "conflict of interest" means a situation where a private interest of a public official contradicts public interest in his/her official capacity and may negatively affect a fair and unbiased discharge of his/her official duties;

3.1.4. "an official" means persons referred to in Article 4.1 of this law;

3.1.5. "related person" means a public official's father, mother, siblings, family members, cohabitant, his/her spouse's father and mother and siblings, partner and/or other persons sharing common interests;

3.1.6. "common interest person" means a natural and/or legal person associated with a public official through for-profit activities;

3.1.7."for-profit activity" means activities conducted by a company, partnership, sole proprietorship and any such business, trade, credit and finance entity;

3.1.8."donation" means a transfer of a source of finance or property or extension of a service to a public official for a specific purpose and without charge or at a discount larger than the discount publicly offered;

3.1.9."gift" means giving of property, transfer of a service or an entitlement, exemption from a duty, ceding of an entitlement for the benefit of a person related to the public official and other forms of financial gain received by a public official free of charge;

3.1.10."creative product" means a work of journalism, literature or art that yield royalties or income.

3.1.11. "a situation suggesting a conflict of interest" means conducting activity relating to person suggesting conflict of interest from the regard of general public such as a person who studied/is studying with the public official in the same class as well as a person who has the same membership with public official in association, foundation, organization of collective decision making or a person who was born and raised in the same place.

#### **Article 4. Persons subject to this Law**

4.1. This Law applies to officials stated in Article 4 of the Anti-Corruption Law.

#### **Article 5. Scope of the Law**

5.1. This Law defines the grounds for prohibitions, restrictions and ethical standards for the activities of a public official (an official hereinafter), conflict of interest prevention measures and conflict of interest disclosure and verification procedures, and establishes the degree of accountability for those in breach of the legislation on the prevention and regulation of conflicts between private and public interests in the public service.

#### **Article 6. Rules of conduct**

6.1. An official shall uphold the principle of rule of law, discharge his/her official duties in a credible, unbiased, fair and responsible manner and abide by professional ethics.

6.2. An official shall take responsibility in discharging his/her duties mandated by law.

6.3. An official shall not use his/her public office for own personal gain or personal gain of a related person and shall avoid relationships that may influence his/her official duties.

6.4. An official shall endure the proposition and/or behaviour of natural and legal persons that express private interest and are in contradiction with the official's public duties, and shall uphold public interest over and above private and/or special interest in the performance of his/her official duties.

6.5. An official shall prevent from being involved in conflict of interest situation by reporting on such circumstances and refusing from it.

## **CHAPTER TWO PREVENTION OF CONFLICT OF INTEREST**

#### **Article 7. Common rules for public bodies in the prevention of conflict of interest**



7.1. A public body shall be prohibited from sharing its premises with an economic entity other than an economic entity providing services to the said public body.

7.2. The management of a public body shall be obligated to take the following measures for prevention of conflict of interest:

7.2.1. establish and enforce a code of ethics on prevention of conflict of interest;

7.2.2. receive, register and verify private interest declarations and statements on non-existence of private interest in accordance with an established procedure;

7.2.3. establish a procedure for receiving reports on conflict of interest, verify the reports and the statements and enforce accountability;

7.2.4. not permit a public official who is in conflict of interest or may be in conflict of interest, from performing his/her official duties;

7.2.5. provide a written guidance on the prevention and resolution of conflict of interest to the official who is or may be in conflict of interest;

7.2.6. if this law and rules adopted by the Government permit, exercise the discretion to make a decision on whether an official employed by the organization, may hold concurrent positions.

7.3. If an examination referred to in clauses 7.2.2, 7.2.3 of this law reveals a violation of the nature of corruption, the case shall be turned over to the Independent Authority Against Corruption for investigation.

## **Article 8. Declaration and explanation of a conflict of interest**

8.1. In line with the procedure set out in clause 23.8 of this law, an official shall declare non-existence of a conflict of interest for each prior to issuing an administrative act, performing the functions of supervision, audit and inquiry, taking punitive measures and participating in the preparation, negotiation and approval of contracts.

8.2. An official shall abstain from performing his/her official duties in a situation where a conflict of interest arises or may arise with regard to his/her official position, and shall file a written declaration to this effect to the relevant competent body or official.

8.3. Other persons who are knowledgeable of a conflict-of-interest situation may report it to the relevant competent body or official.

8.4. A competent body or official in receipt of a report or declaration of a conflict of interest, shall immediately issue a written decision on as to whether the official duties in question are to be performed by another official.

8.5. An official may be allowed to perform his/her official duties in the following circumstances:

8.5.1. an organizational unit or an administrative and territorial unit does not have another officer to perform the duties in question, or a body of higher instance is not in a position to appoint a replacement officer;

8.5.2. the duties in question require highly specialized knowledge and skills and only the officer who has declared conflict of interest can meet these requirements.

8.6. If a situation arises suggesting a conflict of interest, the official concerned shall file a written explanation of the circumstances with the relevant competent body or official.

8.7. Based on the official's explanation and statement on non-existence of a conflict of interest as well as his/her private interest declaration, the relevant competent body or official shall issue a decision in accordance with clause 8.4 of this law and an absence of such a decision shall mean a confirmation of the non-existence of a conflict of interest.

8.8. An official's statement of non-existence of a conflict of interest referred to in clause 8.1 of this law and his/her explanation referred to in clause 8.6 of this law shall be open to the public.

### **Article 9. Reporting a situation affecting impartiality of an official**

9.1. An official shall have the obligation to inform immediately his/her senior officer or a relevant competent body of any pressure or improper influence he/she has been exposed to while discharging his or her official duties, and the Independent Authority Against Corruption if the offence is punishable by law.

9.2. An official who has been offered a gift, service or any other advantage in his/her official capacity, shall:

9.2.1. reject such an offer;

9.2.2. determine the identity of the person making the offer;

9.2.3. if a gift cannot be returned due to specific circumstances, keep the gift and report it immediately to his/her senior officer or a relevant competent body;

9.2.4. if possible, list the witnesses of the event;

9.2.5. within reasonable time, submit a written report on the event to his/her senior officer or a relevant competent body;

9.2.6. if a punishable offence has been involved, report it to the relevant competent body or official.

## **CHAPTER THREE PROHIBITIONS AND RESTRICTIONS FOR PUBLIC OFFICIALS**

### **Article 10. Prohibition related to the use of official information**

10.1. An official shall be prohibited from disclosing unlawfully and/or using for purposes not related to the performance of the duties of office, the information he/she has acquired in his/her official capacity.

### **Article 11. Prohibitions and restrictions related to the discharge of official duties**

11.1. An official shall be prohibited from issuing administrative acts, perform functions of supervision, audit and inquiry, take punitive measures and participate in the preparation, negotiation and approval of contracts with regard to a common interest person for two years after the termination of for-profit activities established with this person.

11.2. An official shall be prohibited from issuing administrative acts, perform functions of supervision, audit and inquiry, take punitive measures and participate in the preparation, negotiation and approval of contracts with regard to a common interest person for two years after the termination of for profit activities established with this person.

11.3. A public official, who prior to his/her election or appointment to a public office, had served as a member of the governing, executive or audit body of an economic entity, may not issue administrative acts in relation to the activities of this economic entity for two years after his/her entry upon duty in the public office and/or the termination of any relationship governed by civil law with this economic entity

11.4. The restriction on the issuance of administrative acts specified in clause 11.3 of this law shall not apply to public officials who have served as members of the governing, executive or audit bodies of economic entities where the central and/or local government holds prevailing shares of the equity capital.

## **Article 12. Prohibition on Influencing Decision-Making**

12.1. A public official shall be prohibited from issuing administrative acts and performing supervision, control, inquiry or punitive functions suiting his/her private interests or those of his/her related persons, and/or influencing in any manner, using his/her official position, the preparation of such actions.

## **Article 13. Restriction Related to Advertising**

13.1. An official is prohibited from using the authority of the public office or his/her position in any kind of advertising except in cases where such is warranted by his/her official duties.

13.2. The restriction specified in clause 13.1 of this law does not apply to the participation of a member of the State Great Hural or Government in the promotion of public benefit activities.

## **Article 14. Restrictions Related to the Right of Representation**

14.1. An official shall be prohibited from representing public service before his/her own private interest.

14.2. An official shall be prohibited from representing before other parties an individual, organization or an economic entity with which he/she is directly or indirectly associated in his/her official capacity.

14.3. An official shall be prohibited from representing a public office before an individual, organization or an economic entity in following circumstances:

14.3.1. if any of the aforementioned entities is related to him/her;

14.3.2. if he/she or his/her related persons derive any type of income from any of the aforementioned entities;

14.3.3. if he/she or his/her related person is a member of the governing, auditing or executive body of the aforementioned organization or economic entity.

## **Article 15. Restriction on Receiving Payments**

15.1. An official shall be prohibited from accepting any payment for the performance of his/her official duties.

15.2. If payment is decreed by law, the Government or a local government authority, an official shall be prohibited from accepting supplementary payment.

## **Article 16. Restrictions on Accepting Gifts**

16.1. An official shall be prohibited from directly or indirectly accepting gifts in the performance of his/her official duties.

16.2. The restriction set forth in clause 16.1 of this law, shall not apply to gifts accepted by an official not in his/her official capacity or gifts accepted pursuant to diplomatic protocol in the performance of his/her official duties.

16.3. The procedure of accepting, reporting and disposing a diplomatic gift by an official shall be established by the Government.

16.4. An official shall have an obligation to report within 30 days in writing to the competent official the cases where the value of a one-off gift or service received from persons other than his/her family members or relatives exceeds the equivalent of his/her monthly salary or where the value of gifts or services received from a single source in the course of one year exceeds the equivalent of his/her three monthly salaries.

16.5. If the value of a gift or service received by an official is in excess of his/her six monthly salaries, the items shall become the property of the State.

16.6. The official may redeem such a gift or service by way of paying the difference in excess of his/her six monthly salaries.

16.7. A gift shall not be considered external to an official's public office if in relation to the donor the said official has discharged his/her official duties such as issuance of an administrative act, performance of supervision, audit, inquiry and/or punitive functions or contract approval in a period of two years prior to the receipt of the gift.

16.8. If an official has accepted a gift from the person referred to in clause 16.4 of this law, he/she shall not discharge official duties such as issuance of administrative acts, performance of supervision, audit, inquiry and/or punitive functions or contract approval in relation to the said person for a period of two years.

16.9. A public official while acting as a representative of the holder of the State or local government capital share in a capital company and for two years after the completion of this assignment may not accept any gifts from such a company and/or members of its governing or executive bodies.

16.10. The Government shall determine the procedures whereby the gifts accepted by an official and turned over to State property, shall be evaluated, stored and utilized.

16.11. Benefits that are expressed in monetary terms shall be managed in accordance with the procedures referred to in clauses 16.11.10 of this law.

## **Article 17. Restrictions on Acceptance of Donations**

17.1. Officials, central, local administrative and local self-governed public bodies shall be prohibited from accepting or soliciting from natural or legal persons gifts or other financial aid for public needs.

17.2. Officials, central or local administrative and local self-governed public bodies may accept donations and other financial aid for public needs such as improvement of staff training, work organization or technical support that do not entail conflict of interest for officials concerned and are not subject to the restriction specified in clause 17.1 of this law, from a third party that is independent of any relationship to the official capacity of the said officials, central or local public bodies.

17.3. An official shall obtain permission from his/her senior management or relevant competent body before accepting a donation or financial aid.

17.4. An official, central or local administrative and local self-governed public body shall be prohibited from passing any decision in relation to the donor for a period of two years following the receipt of the donation or financial aid specified in clause 17.2 of this law, they

17.5. An official shall be prohibited from soliciting or accepting donations or participating in the collection of donations directly or through the intermediation of other persons in the following circumstances:

17.5.1. for personal needs or the needs of related persons except where it is necessary for the treatment of a serious health condition;

17.5.2. for the needs of a natural or legal person with whom the official or his/her related person is in a profit-sharing relationship;

17.5.3. for the needs of a legal person where the official's related person is a member of the governing, auditing or executive body.

#### **Article 18. Restrictions on Holding Concurrent Offices**

18.1. A public official may not hold concurrently any employment or office other than those allowed by this law.

18.2. A member of the State Great Hural or Government of Mongolia may concurrently have or hold the following occupations or offices:

18.2.1. offices allowed by law and/or international treaties;

18.2.2. offices directed at public benefit activities;

18.2.3. occupations of a teacher, researcher or creative work;

18.2.4. if allowed by law, other offices in the State Great Hural or the Government;

18.2.5. if allowed by law, offices in international organizations.

18.3. Members of the Constitutional Court, judges of all levels, prosecutors, investigative officers are prohibited from holding concurrent offices or occupations unless sectoral laws specify otherwise.

18.4. An armed forces official may perform work or exercise authority under a labour or work-performance contract concluded on the basis of a written permission by a senior official.

18.5. Officials other than those referred to in clauses 18.2, 18.3, 18.4 of this law may concurrently hold/perform the following:

18.5.1. offices allowed by law, international treaties and Government regulations;

18.5.2. work of a teacher, researcher and creative work;

18.5.3. other offices, contractual work and obligations if these do not result in conflict of interest and are permitted in writing by senior officials or relevant competent bodies.

18.6. An official who is registered with the Tax Authority as a sole proprietor and whose annual income does not exceed 80 times of minimum monthly salary, or engages in vegetable farming for household consumption or derives income from forestry, bee keeping, fishery, animal farming and tourism or other training may combine his/her official duties with these economic activities.

18.7. Where a member of the State Great Hural concurrently serves as a Cabinet member, he/she may not be part of an inquiry working group formed by the State Great Hural and may not initiate or propose the establishment of such a working group.

#### **Article 19. Procedures for Compliance with Restrictions on Concurrent Offices**

19.1. An official who is holding an office, executing contract, obligation or exercising authority barred by law at the time of his/her entry upon public duty, shall inform his/her senior officer of this situation in writing.

19.2. The senior officer who is in receipt of the report referred to in clause of 19.1 of this law, shall, based on the requirements of the workplace, provide the concerned official with a written directive on the termination within 30 days of the office, employment, obligation, contract or authorization which shall be prohibited to be held concurrently with public office.

#### **Article 20. Prohibitions Related to Economic Activities**

20.1. Unless otherwise stated in law an official shall be prohibited from engaging in the activities of an economic entity or serving on the management of economic entities other than those specified in clause 18.6 of this law.

20.2. President of Mongolia, members of the State Great Hural, Prime Minister, Ministers, Vice Ministers, members of the Constitutional Court, the President of the Supreme Court, judges of the Supreme Court, Prosecutor General, head of organization responsible for directly reporting its activities to State Great Hural, governors of Aimag and capital city, head of Presidium of Citizens' Representative Hural of Aimag and capital city, secretary of ministries, head of government agencies, person who is/was a director of government owned companies or international organizations and related persons of these public officials shall not be shareholders, stockholders or partners of economic entities or sole proprietors that are recipients of the central and/or local government procurement orders, State financial Resources or State-guaranteed credits, except the cases where these have been granted as a result of open competition.

20.3. Officials and their related persons specified in clause 20.2 of this law shall comply with the provision of the same clause also for two years after the said officials have ceased to perform the duties of their public offices.

20.4. Officials serving on the governing, control or executive body of a company with central and/or local government ownership shall not obtain income from vendors executing central or local government procurement orders for the said company.

20.5. An official shall not be, for two years after he/she has ceased to perform public duty, a shareholder, stockholder or a partner in an economic entity in respect of which he/she had, while in public office, taken decisions on government procurement, allocation of central and/or local government resources and performed supervision, control or punitive functions.

#### **Article 21. Restrictions on Employment After Public Office**

21.1. An official shall not, for two years after his/her separation from public office, undertake the following actions fraught with conflict of interest:

21.1.1. take up employment with an economic entity or organization in relation to which he/she had performed his/her official duties;

21.1.2. conclude agreement or contract with his/her former employer or seek a license issued by the former employer;

21.1.3. represent any individual or a legal entity before his/her former employer.

21.2. The restriction specified in clause 21.1.2 of this law shall not apply to an agreement, contract that had been concluded or extended prior to the official's election or appointment to public office, as well as to an agreement, contract that has been awarded through public tender or that has a value with an annual income less than the amount equal to 50 times of minimum monthly salary.

21.3. An official shall be prohibited from entering into official relations with the entities specified in clause 21.1 of this law.

21.4. An official shall be obligated to immediately inform a competent official of the violations of the restrictions specified in clause 21.1 of this law.

### **Article 22. Other Restrictions Related to Outside Earned Income**

22.1. In addition to the income earned for his/her official duties, an official may obtain bonuses from office, work or contract that are not prohibited by this law or other laws, as well as income from economic activities that are not prohibited by this law and other laws.

22.2. A member of the State Great Hural who performs duties of a Cabinet member shall receive the salary of a Cabinet member.

22.3. An official while serving as a representative of the holder of the central or local government capital share in an economic entity, as well as for two years after the termination of this service is prohibited from:

22.3.1. receiving, directly or through a third party intermediation, any kind of financial benefit, including financial resources, not related to the performance of his/her official duties;

22.3.2. accepting gifts from the said central or local government owned economic entity or a member of its governing or executive body;

22.3.3. acquiring capital shares, stocks or property of such an economic entity;

22.3.4. holding other offices in related state owned legal entity.

## **CHAPTER FOUR PRIVATE INTEREST DECLARATION**

### **Article 23. Filing a Private Interest Declaration**

23.1. Officials of public service and persons nominated for offices (hereafter referred to as declarer) specified in clause 4.1 of this law shall file private interest declarations; and if deemed necessary, the Legal Standing Committee of the State Great Hural shall approve the list of officials to submit private interest declaration, based on the proposal of the Independent Authority Against Corruption.

23.2. Persons specified in clause 23.1 of this law shall have a duty to provide a truthful and accurate declaration of private interests.

23.3. An official shall furnish his/her private interest declaration within 30 days after the election or appointment to public office and henceforth update his/her private interest declaration and submit it every 15<sup>th</sup> day of February throughout the duration of his/her public office to the organization and/or official specified in Article 24 of this law.

23.4. Submission by an official of his/her private interest declaration past the date specified in clause 23.3 of this law without reasonable excuse shall be considered a failure to file the declaration.

23.5. The organization or official vested with the power of appointment shall receive the preliminary private interest declaration of the nominee for public office and deliver it to the the Independent Authority Against Corruption.

23.6. The Independent Authority Against Corruption shall examine the preliminary private interest declaration of the candidate for a public office within 10 working days and advise the competent organization or official concerned of the probability of conflict of interest in the case of the candidate.

23.7. The appointing organization or official shall have a duty to abstain from appointing a candidate where it has been established that his/her entry into public office may result in an apparent conflict of interest.

23.8. The Legal Standing Committee of the State Great Hural shall approve the forms for declaration of private interest and statement of non-existence of conflict of interest, as well as procedures for their registration, verification and keeping.

#### **Article 24. Registration and Keeping of Private Interest Declaration**

24.1. Private interest declarations shall be registered within specified time and kept by the following organizations or officials:

24.1.1. private interest declarations of the President of Mongolia, members of the State Great Hural, Prime Minister, Cabinet members as well as officials appointed by the State Great Hural, President or Cabinet by the Independent Authority Against Corruption;

24.1.2. private interest declarations of executive and administrative officers of the Independent Authority Against Corruption by the Legal Standing Committee of the State Great Hural;

24.1.3. private interest declarations of members of the Constitutional Court and judges of all levels by the General Council of Courts;

24.1.4. private interest declarations of members of aimag, capital city, soum and district Hurals of Citizen Representatives by the secretariats of respective Hurals of Citizen Representatives;

24.1.5. private interest declarations of other officials, specified in clauses 24.1.2-24.1.4 by the officials who have appointed or supervise them.

24.2. Organizations, officers in charge of registering private interest declarations referred to in clauses 24.1.4–24.1.5 of this law shall deliver reports on the implementation of the private interest declaration procedure together with the name lists of the persons who have filed their declarations, to the Independent Authority Against Corruption within 14 days after the receipt of private interest declarations by the date specified in clause 23.3 of this law.

24.3. The Independent Authority Against Corruption shall report on the implementation of the legislation on private interest declaration to the Legal Standing Committee of the State Great Hural within the 15<sup>th</sup> day of April of each year.

#### **Article 25. Disclosure of Private Interest Declarations**



25.1. Private interest declarations of officials shall be open to the public.

25.2. Organizations, officials specified in clause 24.1 of this law shall have a duty to provide unhampered access by citizens to private interest declarations of public officials.

25.3. Letters, requests and questions addressed by officials to relevant organizations and officers with regard to seeking help in filling in the declaration forms and its given replies and guidelines shall be considered as privacy matters and related issues shall be dealt with in keeping with the Privacy (Personal Secrecy) Law.

#### **Article 26. Verification of Private Interest Declarations**

26.1. The Independent Authority Against Corruption shall oversee the submission and examination of private interest declarations other than those specified in clauses 24.1.2 of this law.

26.2. Private interest declarations of the members of the State Great Hural shall be examined by the Ethics Sub-committee of the State Great Hural, based on requests or complaints filed by citizens.

26.3. Private interest declarations of members of the State Great Hural of Mongolia who are concurrently holding the posts of members of the Cabinet, shall be furnished and examined by Independent Authority Against Corruption.

26.4. The Independent Authority Against Corruption may conduct examinations on the basis of requests or information received or as a planned monitoring activity.

26.5. The Independent Authority Against Corruption shall undertake the examination of private interest declarations of members of State Great Hural, if these persons failed to comply with the submission date or to ensure completeness of their reports.

26.6. Organizations, officials in charge of the registration of private interest declarations, shall have a duty to ensure that the declarations are filled in without corrections, fully and on time, demand compliance with declaration rules and procedures, conduct inquiries within their jurisdiction in cases of breach of law and refer the cases of offences punishable by law for examination by the Independent Authority Against Corruption.

26.7. Private interest declarations referred to in clause 24.1.2 of this law shall be examined by the Legal Committee of the State Great Hural.

26.8. Person reporting his/her private interests shall have a duty to provide objective and accurate explanation on his/her private interest declaration.

### **CHAPTER FIVE ENFORCEMENT OF THE LAW**

#### **Article 27. Code of Ethics of the Public Service**

27.1. An official shall act in conformity with the code of ethics approved and enforced in the relevant profession, sector or organization.

27.2. An official has a duty to recuse himself/herself from discharging official duties or holding concurrent offices in cases where the impartiality and neutrality of his/her actions may give rise to doubt due to ethical reasons.

## **Article 28. Bodies in Charge of Administering and Enforcing the Law**

28.1. The following entities shall be in charge of ensuring compliance of organizations and officials with this law:

28.1.1. the Independent Authority Against Corruption will monitor the implementation of the legislation on the regulation of public and private interests and prevention of conflict of interest in public service, and the Legal Standing Committee of the Great State Hural will monitor the activities of the General Council of Courts;

28.1.2. the Independent Authority Against Corruption will monitor the activities of organizations and officials other than those specified in clause 28.1.1 of this law.

## **Article 29. Penalties for breach of the legislation on the regulation of public and private interests and prevention of conflict of interest in civil service**

29.1. if the offence of the legislation on the regulation of public and private interests and prevention of conflict of interest in public service is not subject to criminal liability, the judge shall impose on the offender of the legislation the following administrative sanctions:

29.1.1. a fine amounting to one to five minimum monthly wages on the competent official of the organization in breach of provisions in clauses 7.3, 8.3, 19.2, 25.2, 26.6 of this law;

29.1.2. a compensatory payment of the value of illegally accepted gift or service, a fine amounting to one to five minimum monthly wages, dismissal from the public office illegally obtained on an official in breach of the restrictions specified in Article 16, clause 22.3 of this law;

29.1.3. a fine to the amount of one to five minimum monthly wages and nullification of the agreement, contract or license in respect to an official in breach of the restrictions specified in clauses 20.2, 20.3, 20.5, 21.1 of this law;

29.1.4. a fine amounting to one to five minimum monthly wages on a relevant competent official in breach of his/her responsibility for registration and ensuring compliance with private interest declaration rules and regulations or timely submission thereof by the date specified in clause 24.2 of this law.

29.2. if a competent official in breach of the legislation on the regulation of public and private interests and prevention of conflict of interest in public service is not criminally liable, he/she shall be subject to the following disciplinary sanctions:

29.2.1. a warning if there is a justifiable excuse for a belated submission of a private interest declaration in breach of the date set forth in clause 23.3 of this law;

29.2.2. a 30 percent decrease of the monthly pay for a period up to 3 months for violation of the restrictions specified in clause 13, failure to fulfill the responsibilities specified in clauses 8.1, 8.2, 8.3, 9.1, 19.1, 21.3, 21.4 and repeated failure to comply with the submission date specified in clause 23.3 of this law for private interest declaration;

29.2.3. demotion for breach of provisions 10, 14, 17, 18, 20.1, 20.4, failure to take measures as prescribed in clause 9.2, granting of agreement, contract or license to a person subject to restrictions under clause 21.1, appointment of a person in an apparent conflict of interest, submission of false private interest declaration in violation of provision 23.7, repeatedly committing the offences specified in clause 29.2.2 of this law;

29.2.4. dismissal from public service for breach of provisions in Articles 11, 12, 15, 16, failure to provide private interest declaration as per Article 23, repeatedly committing offences specified in clause 29.2.3 of this law.

29.3. Administrative sanction imposed by the court of law shall not impede the application of disciplinary action in respect to the official in question.

29.4. Officials under disciplinary actions specified in clause 29.2 of this law shall inform the entities concerned and the public of their penalization at their own expense.

29.5. The Independent Authority Against Corruption shall establish the procedure for notification by the penalized official of the entities concerned and the public at own expense.

### **Article 30. Entry into Force of the Law**

30.1. This law shall enter into force on the 1<sup>st</sup> day of May of 2012.

## Criminal statistics

### Court sentences imposed on public officials under Criminal Code articles

№	Sentences	Art. 263			Art. 264			Art. 265			Art. 266			Art. 268			Art. 269			Art. 270			Art. 273			Art. 270 <sup>1</sup>		
		2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014
1	Fine	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0
2	Deprivation of the right to hold specified positions	2	0	0	1	0	0	1	0	0	0	0	2	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	Confiscation of property	1	0	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4	Forced labor	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	Incarceration	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>6</b>	<b>Imprisonment</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>9</b>	<b>6</b>	<b>7</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
7	Suspended	0	0	0	0	0	0	0	0	0	0	0	1	4	3	2	1	0	0	0	0	0	0	0	0	0	0	0
8	Acquitted or dismissed	1	0	0	1	3	0	1	0	0	0	0	4	1	3	0	0	0	0	0	0	0	0	0	0	0	0	0
9	Dismissed under the law of Amnesty	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Average amount of fines: N/A in 2012, MNT12.960.0 in 2013, 5-52 amounts of the minimum salary in 2014.

Average period of imprisonment: N/A in 2012, 3.5 years in 2013, 3 years in 2014.

# Organizational structure of the Independent Authority Against Corruption

