



**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**  
**ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA**

# **Anti-Corruption Reforms in** **Mongolia**

**Assessment and recommendations**

**Report**

The report was adopted at the Istanbul Anti-Corruption Action Plan plenary meeting on **18 April 2014** at the OECD Headquarters in Paris.

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Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor coordination via regional meetings and seminars, peer-learning programmes, and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at [www.oecd.org/corruption/acn/](http://www.oecd.org/corruption/acn/).

**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**

### ***Anti-corruption policy***

Combatting corruption is recognised to be a high-priority issue in Mongolia and is mentioned in main political documents and statements of public officials. At the same time, no anti-corruption policy document was approved in Mongolia since the expiration of the previous one which covered period of 2002-2010. The review report welcomes the on-going development of the new anti-corruption strategy, which included extensive public consultations, and recommends adopting the new strategy and action plan as soon as possible. An effective high-level mechanism (e.g. a national council) should be set up for anti-corruption policy co-ordination and implementation; it should be sufficiently independent from the government, represent different branches of power and include a meaningful representation of the civil society, be supported with adequate resources including dedicated staff. The report recommends that reports on anti-corruption strategy and action plan implementation be regularly prepared and made public.

Mongolia should continue conducting regular corruption surveys, including on specific sectors, with focus on public trust, corruption perception and experience. While welcoming numerous awareness-raising activities in the anti-corruption area Mongolia is recommended to regularly assess their results and ensure that civil society organisations 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 campaign.

Mongolia has a strong anti-corruption institution – the Independent Agency Against Corruption that deals with both prevention and investigation of corruption. The report recommends strengthening its capacity, in particular, by guaranteeing institutional, functional and financial independence, putting in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions, introducing competitive and transparent merit-based selection of the agency’s leadership and main staff.

### ***Criminalisation of corruption***

Mongolia has basic provisions criminalising main forms of corruption, but they fall short of international standards – several mandatory elements of bribery offences, offences of corruption in private sector and trafficking in influence, as well as foreign bribery, are not criminalised; definition of “bribe” does not include non-pecuniary and intangible undue advantages. The report welcomes recent criminalisation of “improvement in the financial state by illegal means” but recommends aligning it with the illicit enrichment offence as understood in the UNCAC. There is no liability of legal persons for corruption offences in Mongolia.

The report recommends Mongolia reviewing its criminal sanctions for corruption offences to ensure that they are effective, proportionate and dissuasive. Provisions on confiscation should be revised to enable their mandatory application for all corruption offences, including confiscation of converted or mixed proceeds, benefits derived from proceeds and value-based confiscation.

System of immunities of public officials in Mongolia should be reviewed by narrowing down the scope of immunities and list of relevant officials, making remaining immunities functional, covering only period in office, excluding situations in flagrante, allowing effective investigative measures into persons with immunity, establishing swift and effective procedures for lifting immunity based on clear criteria. Provisions on statute of limitations should be reformed as well.

## ***Prevention of corruption***

**Public service integrity.** Mongolia is recommended to establish clear legislative delineation of political and professional public service, ensure merit-based appointment and promotion for all categories of public officials based on transparent and objective criteria, ensure a fair, transparent and objective system of remuneration. Current legislation does not cover all types of conflict of interests, proper enforcement in this area is lacking as well. Asset declarations system needs revision, in particular by covering all categories of public officials, including political ones, ensuring effective verification mechanism and proactive publication. The report recommends reviewing the sanctioning system for violation of anti-corruption restrictions and requirements, including with regard asset disclosure. Mandatory reporting of corruption offences and effective protection of whistleblowers should be introduced as well.

**Administrative procedures.** Mongolia is recommended to introduce anti-corruption screening of draft legal acts, adopt an administrative procedure act in line with international standards and review procedures and practice of mandatory preliminary administrative complaint.

**Public financial control and audit.** The report recommends Mongolia to 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. Institutional and operational independence of the Mongolian National Audit Office should be strengthened in line with international standards. It is important to ensure publication of audit reports approved by the National Audit Office and to introduce merit-based and competitive selection of the Chief Auditor and Deputy Chief Auditor.

**Public procurement.** The Public Procurement Law of Mongolia contains a number of inconsistencies and excessive exemptions which should be eliminated to close opportunities for abuse and corruption. Transparency of public procurement should be increased, inter alia, by proactive publication of all main procurement-related information, including on the results of the procurement and of procurement contracts. A single-entry government web-portal is recommended for disclosure of procurement information and e-procurement. The report recommends strengthening review mechanisms by ensuring adequate level of independence of relevant bodies, transparency and fairness of their procedures.

**Access to information.** Mongolia's 2011 Law on Information Transparency and Right to Information introduced important instruments for providing information on request and proactively, but is not fully in line with international standards and best practice. This concerns the scope of the law, exemptions from disclosure, formalities for access to information on request, establishing an independent supervisory mechanism. Mongolia is recommended to decriminalise all defamation and insult offences and ensure that civil law provides effective constraints not to stifle freedom of information with unjustified defamation lawsuits. Mongolia should also improve budget transparency, oversight and public engagement.

**Political financing.** The report welcomes the system of direct state financing of political parties in Mongolia but recommends to overhaul regulation of political party financing to establish reasonable restrictions, ensure transparency and independent monitoring and supervision mechanism for party finances and financing of election campaigns.

**Integrity in the judiciary.** Mongolia revised its respective legislation in 2013, but the report recommends further reforms to ensure the independence and integrity of the judiciary in line with international standards. It recommends, in particular, replacement of political institutions in the appointment and dismissal of judges with the Judicial Council, ensuring merit-based and competitive appointment and promotion of judges, election of chief judges by judges of the relevant court,

introduction of automatic random distribution of cases among judges, alignment of the Judicial General Council's composition with international standards.

**Business integrity.** As other countries of the region Mongolia needs to step up its efforts in promoting integrity in the private sector. This should start with specific measures included in the new anti-corruption strategy and action plan, which should be developed and implemented in cooperation with the business community. The Government of Mongolia is recommended to involve business sector in the process of elaborating of legislation establishing responsibility of legal persons for corruption and assist companies and business associations in assessing integrity risks, provide advice and guidance on prevention of corruption in business operations. It is important to develop and implement joint projects with the business, such as collective actions against corruption and integrity pacts, especially in the risk areas. The report also recommends introducing comprehensive measures to strengthen corporate governance, transparency, internal control and corruption prevention systems in state and municipally-owned enterprises. Mongolia should consider introducing recording and disclosure of beneficiary owners of all legal entities during their state registration.

## Review of Mongolia

The Istanbul Anti-Corruption Action Plan 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; other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes systematic and regular peer review of legal and institutional framework for fighting corruption in the covered countries.

Mongolia joined the Istanbul Action Plan in September 2010. This is the initial review of Mongolia. Mongolia provided a self-assessment report, based on the Istanbul Action Plan Second Round of Monitoring questionnaire, during 2013. Review team conducted desk assessment and drafted recommendations in January-March 2014.

The review team was led by Mr Dmytro Kotlyar (OECD/ACN Secretariat) and included Ms Nino Eliashvili (Georgia), Mr Alvis Vilks (Latvia), Mr Peter Koski (USA), Mr Evgeny Smirnov (EBRD) and Ms Olga Savran (OECD/ACN Secretariat).

Ms Bat-Otgon Budjav, Mr Khaliun Panidjunai and Ms Galbadrakh Sonom from the Independent Authority Against Corruption provided co-ordination on behalf of Mongolia.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting on 16-18 April 2014. It includes 19 recommendations to Mongolia. The report will be published at [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn).

The Government of Mongolia will be invited to provide regular updates about steps taken to implement the recommendations at the plenary meetings of the OECD/ACN Istanbul Anti-Corruption Action Plan. Implementation of the recommendations will be further evaluated during joint first and second rounds of monitoring of Mongolia.

# Country background information

## Economic and social situation

Mongolia is a country in Central Asia with population of around 2.83 million people and an area of 1,564,116 square kilometres. It is a landlocked country bordered by Russia and China.

During several past 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 share of mining in GDP of Mongolia in 2014 stood at 20 percent. The mining sector accounts for nearly 90% of the country’s exports and the foreign direct investment it attracts amounted to nearly 50% of government revenues in 2011.

The economic growth rate was estimated at 12.5 per cent in 2013, compared to 6.4 per cent GDP growth in 2010 and peak growth of 17.5 per cent in 2011. GDP is expected to grow at a double-digit rate over the period from 2013 to 2017.<sup>1</sup> GDP per capita (PPP) in 2013 was USD 5,900 (increase from USD 4,900 in 2011). 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>2</sup>

## Political system

Mongolia is a parliamentary republic with a directly elected president and the unicameral national assembly, the State Great Khural, 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 ex-member of the Democratic Party) was re-elected as President of Mongolia on 26 June 2013 for his second term as president. The latest elections to the State Great Khural 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.

## Trends in corruption

Corruption is considered to be widely spread in Mongolia. The rapid transformation of Mongolia led by the exploration of minerals brought with it significant governance and corruption challenges.

### Rating of Mongolia in the Transparency International's Corruption Perception Index (CPI):

2010		2011		2012		2013	
Ranking	Score*	Ranking	Score*	Ranking	Score**	Ranking	Score**
116	2.7	120	2.7	94	36	83	38

\*0 = highly corrupt, 10 = very clean  
 \*\*0 = highly corrupt, 100 = very clean

<sup>1</sup> World Bank, 2014, [www.worldbank.org/en/country/mongolia/overview](http://www.worldbank.org/en/country/mongolia/overview).  
<sup>2</sup> *Idem*.

**Mongolia in Global Corruption Barometer 2013 by Transparency International:**

In the past 2 years, how has the level of corruption in your country changed?			How would you assess your current government's actions in the fight against corruption?		
Decreased	Stayed the same	Increased	Effective or very effective	Neither effective nor ineffective	Ineffective or very ineffective
18%	32%	48%	25%	36%	39%

## Acronyms

<b>ACN</b>	Anti-Corruption Network for Eastern Europe and Central Asia
<b>ADB</b>	Asian Development Bank
<b>CC</b>	Criminal Code
<b>CPC</b>	Criminal Procedure Code
<b>CPI</b>	Corruption Perception Index
<b>CSR</b>	corporate social responsibility
<b>EBRD</b>	European Bank of Reconstruction and Development
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EUR</b>	Euro (EU currency)
<b>FMC</b>	financial management and control
<b>GEC</b>	General Election Commission
<b>IAAC</b>	Independent Agency Against Corruption
<b>IAP</b>	Istanbul Anti-Corruption Action Plan
<b>IFC</b>	International Financial Corporation
<b>INTOSAI</b>	International Organization of Supreme Audit Institutions
<b>MLA</b>	mutual legal assistance
<b>MLAR</b>	mutual legal assistance request
<b>MNAO</b>	Mongolian National Audit Office
<b>MNT</b>	Mongolian tugrik (official currency of Mongolia)
<b>NGO</b>	non-governmental organisation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSCE/ODIHR</b>	Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe
<b>PPAD</b>	Prevention and Public Awareness Department
<b>SAI</b>	Supreme Audit Institution
<b>StAR</b>	Stolen Assets Recovery Initiative
<b>TI</b>	Transparency International
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>US</b>	United States
<b>USD</b>	United States dollars
<b>USAID</b>	United States Agency for International Development
<b>WB</b>	World Bank

# 1. Anti-corruption policy

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

### Assessment

#### *Political will to fight corruption*

According to information provided by authorities of Mongolia the President, Government and other high-ranking officials regularly address anti-corruption issues and fighting corruption is a high policy priority. The President of Mongolia mentioned relevant issues in his annual messages on anti-corruption and integrity; he in particular emphasised the losses caused by corruption.<sup>3</sup> In his speeches President addressed the necessity to combat corruption.<sup>4</sup> Speech of Mr Tsakhiagiin Elbegdorj, President of Mongolia, at the Mongolia Economic Forum contained information on international dimension of anti-corruption efforts and importance of involvement of society.<sup>5</sup> Statement of the President of Mongolia at the general debate of the 68<sup>th</sup> session of the United Nations General Assembly reflected his opinion about importance of transparency in the fight against corruption and the role of society.<sup>6</sup>

The policy and action programme of the President of Mongolia for 2009-2013<sup>7</sup>, among other issues, includes a section “Strengthening Judiciary, Establishing Justice and Eliminating Corruption and Red-Tape” which contains chapters on judiciary, judges and human rights. Chapter 3.4. of the Programme defines the Presidential election platform goals and proposals from the public. It states that: *“Corruption will be combated persistently. A system will be put in place whereby economic damages caused by corruption are recovered. Officials will be made to obey laws. The incidences whereby billionaires are born from the state/government shall be exterminated.”* The corresponding part for this goal – “Form of implementation of the Platform within the President’s term of power” formulates three tasks: *“3.4.1. An accountability system for corruption, whereby damages caused by corruption to the society, and especially economic damages are paid off, shall be legally instituted. 3.4.2. A law will be initiated on procedures to be followed in case private interests and benefits of a public servant contradict with his/her official duties. Conflict of interests shall be regulated by law. 3.4.3. A National Integrity Study will be conducted, and its findings publicized on a regular basis.”* The new Policy and Action Programme of the President of Mongolia for 2013-2017 also includes a chapter on anti-corruption that mentions development of a new anti-corruption strategy (see below) and conducting of regular national integrity system assessments in Mongolia.

The political parties in Mongolia have also set anti-corruption objectives. For example, anti-corruption issues are included in the Democratic Party’s Action Plan of 2012, which was presented to voters during the Parliamentary Elections of 2012.<sup>8</sup> The action plan states: *“In order to tackle corruption, bribery ..., the state procurement shall be operated 100 per cent online and shall be conducted under control of citizens”; “To strengthen the fight against corruption and conflict of interest and to make the government activities transparent, non-discriminative, fair, sufficient and non-bureaucratic”; “To strengthen the anti-corruption measures and to improve dramatically the Corruption Index.”*

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<sup>3</sup> The link to the program: [www.president.mn/president/actions/Bodlogo-Uil-Ajillagaanii-Hutulbur-2009-2013.pdf](http://www.president.mn/president/actions/Bodlogo-Uil-Ajillagaanii-Hutulbur-2009-2013.pdf).

<sup>4</sup> Source: [www.president.mn/eng/newsCenter/viewNews.php?newsId=568](http://www.president.mn/eng/newsCenter/viewNews.php?newsId=568).

<sup>5</sup> Source: [www.president.mn/eng/newsCenter/viewNews.php?newsId=489](http://www.president.mn/eng/newsCenter/viewNews.php?newsId=489).

<sup>6</sup> Source: [www.president.mn/eng/newsCenter/viewNews.php?newsId=971](http://www.president.mn/eng/newsCenter/viewNews.php?newsId=971).

<sup>7</sup> Source: [www.president.mn/eng/president/action-program.php](http://www.president.mn/eng/president/action-program.php).

<sup>8</sup> Democratic Party obtained the largest number of mandates at the 2012 elections. Current President of Mongolia belongs to this party as well.

The anti-corruption issues are also included in the “Government Platform 2012-2016” which is a coalition platform for several parties forming the government. The Chapter Five “A Free Mongolian” in the preamble says: *“The mission in this regard is to make the state and government activities open and transparent to the public, constitute accountability and control as fundamental principles of state affairs, free state services from excessive bureaucracy and corruption, fundamentally change the civil service and its services by re-organizing them as public service and public services respectively, ensure rule of law and enable every single citizen to live an equal and better life in their motherland as well as in their respective aimags and towns.”* To achieve this mission dramatic reforms in the fight against corruption and excessive bureaucracy shall be carried out, in particular: *“Further accelerate measures to curb corruption and conflicts of interests, and transform the public service to conduct its businesses in a transparent, non-discriminatory and fair manner as well as free from red tape attitude. Regulate distinctly cases involving bribes and rewards, and legalize the circumstances to exempt and mitigate criminal liability of the bribe-giver.”* Other parts of the Platform contain goals, planned reforms and activities regarding public procurement, development of economy, exchange of experience with other countries, implementation of reforms in courts and law enforcement agencies which in one way or another are also linked to anti-corruption.<sup>9</sup>

It is clear therefore that anti-corruption agenda has been declared an important issue for the highest officials of Mongolia and for political parties, at the moment it is one of the “top issues” on the list of publicly declared political commitments.

### ***Anti-corruption policy documents***

Anti-Corruption Programme for 2002-2010. According to the information provided by authorities of Mongolia, the National Programme on Combating Corruption was approved by the Parliament of Mongolia in 2002. The program included 2 phases – Phase 1: from 2002 till 2005, Phase 2: from 2006 till 2010 and it was implemented between 2002-2010.<sup>10</sup>

The programme was approved by Resolution of the State Great Hural (Parliament) of Mongolia of 4 July 2002. The programme consisted of several chapters containing: justification of the programme, programme objectives, principles, implementation period and expected results, as well as implementation activities. The 2002-2010 programme therefore included the main points of anti-corruption policy documents. However, a number of provisions of the 2002 Programme fall short of the best international practice.

The programme objectives and expected results in Chapter 2 are too general, without any quantitative and qualitative indicators that can be used to assess the effectiveness of the programme’s implementation. For example, such objectives as “create a new legal environment...”, “enhance the institutional structures...”, “improve social security of civil servants”, etc. can be used only as general goals or main directions. The same is true with regard to expected results – “conform the operational legal environment for combating corruption with the new conditions”, “accelerate the public (administration) sector institutional reforms”, “create a zero-tolerance environment with corruption” are also very general, without possibility of measuring their accomplishment in real terms. Of course, it is possible to clarify the objectives and target results in an action plan, but a more concrete and clear vision of the tasks is recommended for the programme as well. Many of the so called “directions” are also very general (for example, “Consider the measures to combat corruption and prevention thereof in decision making and implementation of any issues”). Lack of clear tasks

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<sup>9</sup> Source: [www.moj.gov.mn/index.php?option=com\\_content&view=article&id=204%3Aaction-plan&catid=87%3Acontentnews&Itemid=191](http://www.moj.gov.mn/index.php?option=com_content&view=article&id=204%3Aaction-plan&catid=87%3Acontentnews&Itemid=191).

<sup>10</sup> The National Program on Combating Corruption (2002-2010) is available at: [www.legalinfo.mn/annex/details/3192?lawid=7014](http://www.legalinfo.mn/annex/details/3192?lawid=7014).

and expected results undermines the effectiveness of any policy document, especially if it were to be implemented in different sectors.

The Programme also contains no in-depth analysis of levels and trends of corruption, assessment of previous anti-corruption efforts, *e.g.* level of implementation of the previous strategy, definition of priorities, responsible persons, terms and costs of activities, system of implementation monitoring and assessment. These are major deficiencies because without setting clear responsibilities and allocating resources to implement and monitor the anti-corruption programme there is a high probability that it would remain on paper.

According to the 2002 Programme organisation of its implementation was vested with the National Council. The latter was chaired by Vice-Speaker of the State Great Hural, the Chairperson of the Parliamentary Standing Committee on Legal Affairs was the Vice-Chairperson of the council; other members were representatives of the Parliament, Justice Ministry, Prosecutor's office, other public authorities, as well as NGOs. This National Council no longer exists. The Government and TI Mongolia acknowledged that there was no effective mechanism to monitor implementation of the previous anti-corruption programme and also that such mechanism should be established for the future new anti-corruption programme.

The 2013 Action Plan of the Independent Authority Against Corruption of Mongolia includes some provisions which may be relevant ("organize the activities to support the approval of National Anti-Corruption Strategy"; "organize the planned activities to implement the Anti-Corruption Strategy nationwide, promote the Anti-Corruption Strategy") but they are not specific enough.

New anti-corruption programme. It is regrettable that after expiration of the 2002-2010 Programme no new policy document was approved immediately to replace it. It resulted in significant time gap in the anti-corruption policy directions and could not but have reflected on the anti-corruption measures taken.

According to the Mongolian authorities, a draft proposal on "National Programme for Combating Corruption and Strengthening Accountability and Integrity in 2013-2016" has been prepared and would be soon introduced to the Parliament. The development of National Program has been organised and financed by the Office of the President, Independent Authority Against Corruption, USAID, The Asia Foundation and Mercy Corp. According to the Roadmap for Development of the National Programme, the Working Group was set up under the Office of the President. The Working Group developed the first draft of the National Program, which was then delivered to the Mongolian Women Lawyers' Association, which was selected to organise debates and discussion among population throughout the country. The Mongolian Women Lawyers' Association developed a plan for organisation of debates and implemented them accordingly (with advice from consultants of the UNODC and World Bank). The debates were organised in 21 provinces and 9 districts of the capital city. The debate participants were divided into three main groups: 1) the government institutions, NGOs, private sector and the media (a total of 237 participants were covered in 13 debates); 2) citizens and public officials in all Provinces and Districts (a total of 2,920 participants, including 1,297 citizens and 1,623 public officials, took part in the debates); and 3) members of Working Group under the Office of the President and international experts (8 persons took part in the debate). The debates were held in November - December 2013. Overall 74 debates for 3,160 participants have been organised. Furthermore, before submission of the final draft document to the Parliament, a National Forum on the Programme was held on 10 January 2014. The final draft Programme was expected to be introduced during the Parliament's Spring Session and has also been sent for international assessment by experts of the UNODC, UNDP, StAR initiative and Asia Foundation.

Due to lack of information it is impossible to assess whether the draft new anti-corruption strategy includes background chapters on levels and trends of corruption, assessment of previous anti-

corruption efforts, objectives and priority areas, substantive chapters on prevention, criminalisation/law-enforcement, public participation/education, as well as monitoring and assessment mechanism and criteria.

No information is also available on sectoral anti-corruption strategies and action plans for areas subject to high corruption risks (for example, construction industry, natural resources management, etc.).

### **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.**

## **1.3. Corruption surveys**

### **Assessment**

The Mongolian authorities reported that the Independent Anti Corruption Agency conducts the following budget-funded surveys in line with the Anti-Corruption Law:

- Survey on Corruption Index of Mongolia (Public Perception Survey, Expert Perception Survey, Document Study, Study on Evaluation of Corruption Risks) every 2 years, the latest ones being in 2009 and 2011 (information on 2013 survey is not available);<sup>11</sup>
- Survey on Evaluation of Integrity Level of Public Organisations every 2 years. The last three surveys were conducted in 2008, 2010 and 2012;
- Survey on Corruption Perception of Political and Law Enforcement Agencies is conducted annually since 2008.

Furthermore in order to evaluate indicators of the Millennium Development Goals, the National Statistical Office of Mongolia conducts quarterly surveys of household income and expenditure, which includes Study on Good Governance.

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<sup>11</sup> See Methodology of the Corruption Survey: [www.iaac.mn/pdf/ssha/FINAL\\_V\\_Eng\\_3\\_MCImethod\\_2009\\_06-Revised%20by%20Ganbat.pdf](http://www.iaac.mn/pdf/ssha/FINAL_V_Eng_3_MCImethod_2009_06-Revised%20by%20Ganbat.pdf).

The official surveys mentioned above are conducted at sector, organisation, aimags and city levels. The survey on corruption perception of political and law enforcement agencies evaluates only corruption perception of political and law enforcement institutions as well as courts. The Survey on Evaluation of Integrity Level of Public Organisations covers only 10 public sectors related to civil service (tax office, customs, police, etc.).

As was mentioned before, the 2002 National Programme on Combating Corruption mentions that surveys and assessments are very important for understanding the level of corruption in society. The programme provides for conducting surveys as one of its tasks. The Policy and Action Programme of the President of Mongolia also determines conducting the National Integrity Study as one of the tasks.

According to Article 15.2 of Anti-Corruption Law of Mongolia, the IAAC should establish a Research and Analysis Service under the Prevention and Public Awareness Department of the IAAC. The surveys are included in the annual action plans of the IAAC. According to the Mongolian authorities, the official surveys should be used as a monitoring tool and indicators for evaluation of results. All official surveys are funded from the state budget according to decisions of the Director General of IAAC. Survey results are published on the IAAC's official web-site and disseminated to general public, public officials, experts, etc.

It is welcome that the importance of anti-corruption surveys and other types of assessments is recognised at the highest level and tasks of conducting surveys and analysis are included in laws, anti-corruption programme and IAAC action plan. It appears that the Survey on Corruption Index of Mongolia is based on strong methodological and scientific basis (see above link to the methodology in English).

The results of the surveys are available only in Mongolian, so their quality cannot be assessed in this report. It is also not clear how the survey results are used in the development and implementation of the anti-corruption policies, whether policy documents reflect their results and whether they are adjusted accordingly. Also no information was provided on priority areas covered by surveys, available financial resources, who conducts the surveys, details of dissemination of surveys and coordination (to avoid the overlapping).

Anti-corruption surveys have also been commissioned and conducted by non-governmental organisations, e.g. the Survey on Perceptions and Experience of Corruption and Business Sector Corruption Survey (both prepared in 2013 under the US-funded Strengthening Transparency and Governance in Mongolia project).

### **Recommendation 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.**

## **1.4.-1.5. Public participation, awareness raising and public education**

### **Assessment**

Like the previous issue this one can also be evaluated only to a limited extent because is based solely on documents provided without verification from on-site visit or sources alternative to official. According to the Mongolian authorities, the public participation, awareness raising and public education play an important role in the government anti-corruption policy. The importance of public participation is stressed almost in all documents – in Policy and Action Program of the President of Mongolia, National Programme for Combating Corruption, the Law on Anti-Corruption, as well as in the action plans of the Independent Authority Against Corruption of Mongolia.

Reportedly the work in this area is conducted in several directions. As regards the involvement of civil society in drafting of anti-corruption programme and action plan the Prevention and Public Awareness Department of the IAAC presented relevant draft documents to NGOs. NGO representatives were included in the task force for drafting a new National Strategy to Combat Corruption. The following NGOs cooperated with the IAAC: “Demo”, Globe International, New Administrative Initiative, Zorig Foundation, Transparency Foundation, Orkhon-XXI Century, Mongolian Youth Federation, Mongolian Association of Local Administration, Confederation of Mongolian Trade Unions, Women Leader Foundation, Mongolian Women’s Fund and National Center for Disabled Women’s Rights. IAAC cooperated with Asia Foundation and Mercy Corp. as well as with local NGOs in all 21 aimags in order to strengthen capacity of local NGOs. The IAAC stated that it also is working on a system to conduct monitoring in the public sector by the NGOs. At the same time Mongolian authorities pointed out that there is no official procedure to select NGOs for co-operation on anti-corruption issues. However, the qualification of NGOs and their network capacity at local level are main requirement for selection.

As regards the awareness raising and public education the authorities of Mongolia informed that the IAAC is implementing various anti-corruption activities for general public in line with the objectives set by the annual action plan. The main target group for IAAC is civil servants. Reportedly the following activities have been carried out:

- 1) In December 2012 in order to celebrate the International Anti-Corruption Day the IAAC carried out competition of essays among students to promote integrity and morality among the youth. The announcement of the competition was delivered through newspapers and internet. Over 100 students participated; a jury from the IAAC selected 3 winners.
- 2) IAAC built a network of NGOs and currently is working with local NGOs in order to monitor quality and efficiency of public services.
- 3) The IAAC is co-operating with the NGO “Globe International” to educate journalists on issues of corruption, integrity, fairness, transparency through seminars and workshops and strengthen their capacity to carry out journalist investigations. The journalists were selected by the Globe International without IAAC involvement. The main responsibility of the IAAC during this joint activity was to provide workshops with its specialised trainers.
- 4) The IAAC organized a contest among journalists throughout the country in order to motivate journalists and reward their efforts aimed against corruption. The contest was held in December 2013 on occasion of the International Anti-Corruption Day. Works submitted by journalists were evaluated by a jury from the IAAC staff. Only published works (on internet, local newspapers, local TVs, etc.) were accepted.
- 5) The IAAC and the Asian Foundation jointly organised in December 2012 a forum on anti-corruption for business sector.
- 6) The IAAC is producing materials for dissemination: brochures, handbooks, instructions, handouts, stickers, buttons and other advocacy materials which are considered as a part of the preventive and public awareness activities of IAAC. The target groups for these materials are: public officials, local government officials, general public, students, youth, business entities and others.

- 7) The IAAC encourages ministries, agencies and other government organizations to join “The Commitment to Stay Clear from Corruption”.
- 8) The IAAC runs “Twitter” and “Facebook” accounts to disseminate anti-corruption information and report on its activities to the general public.
- 9) The IAAC broadcasts monthly documentary films on corruption impact through TV channels.
- 10) The IAAC organizes forums and seminars on a regular basis for various groups on anti-corruption issues.
- 11) The agency runs an anti-corruption hotline (“1969”) and promotes it through posters, stickers; the hotline number is put on official cards of the IAAC employees.
- 12) Starting from 2013 the IAAC is organizing missions to each province in order to study corruption conditions in rural area as well as to advocate and educate general public and local government officials.
- 13) Guidance on “What questions should be asked?” was issued to general public in rural areas in order to monitor financial activities and decision-making process of local government officials.
- 14) In 2011, on request of the IAAC, with co-operation of the World Bank, local NGOs in Sukhbaatar, Uvurkhangai and Darkhan-Uul provinces conducted monitoring in their respective local procurement organisations.

The Progress Report presented by Mongolia at the 12<sup>th</sup> Monitoring Meeting of the OECD Anti-Corruption Network for Eastern Europe and Central Asia in Paris in September 2013 mentioned yet more activities in the area of public participation, awareness raising and public education:

- 1) Prevention and Public Awareness Department (PPAD) of the IAAC, in co-operation with the Asian Foundation, published two books: “Fair Mazaalai” and “A conversation with a friend”. Both books targeted children and pupils of kindergartens and elementary schools and aimed to educate on concepts of justice.
- 2) IAAC initiated the broadcasting of popular documentaries and a short film titled: “Unnatural disaster of China: Tears of Sichuan Province”, “Where’s our money?” and “Psst, don’t tell anyone” which covered anti-corruption issues. The broadcasting was done via major TV channels in the country.
- 3) A website targeted for youth was under construction and was planned to be launched on International Anti-Corruption Day on 9 December 2013.
- 4) IAAC in co-operation with the Asian Foundation published 3,000 copies of a handbook for public officials “Personal interest is like dew on hay, public interest is like the blue sky” that described the Law on Conflict of Interest in an easy for understanding format.
- 5) After the Parliamentary elections in 2012 to raise awareness among newly recruited or transferred officials the PPAD developed and published a handbook that described public official duties called “For A Competent Official”.
- 6) IAAC conducts annual activities dedicated to the International Anti-Corruption Day on 9 December. In 2013 the preparation to the celebration had begun 6 months before. As a part of the preparation, PPAD announced a contest called “Corruption Free Good Governance Practice-2013” among public institutions.

It appears from the information provided that the IAAC conducts an impressive number of awareness-raising and public education activities which target various groups of society. At the same time the Mongolian authorities recognise that no independent study was organized on how effective these activities are. While the IAAC carries out annual and quarterly evaluation of its action plans,

which include awareness-raising and educational activities, no proper assessment of such activities and their impact has been carried out. Also there is no information on number of people participating in activities and their budget.

#### **Recommendation 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.***

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

#### **Assessment**

According to the information provided by Mongolian authorities the institutions responsible for the policy development are the highest authorities, namely the Parliament of Mongolia, the Government and the Prime Minister who are eligible to initiate and develop specialised anti-corruption policy in line with policy goals and legal framework. They could commission it to respective government agencies, or organize specialised Working Group or ask representatives from civil society. For example, the Parliament may assign this role to the Independent Authority Against Corruption as the latter operates under the supervision of the Parliament. Co-ordination of policy development and implementation measures with other state bodies is the task for the Parliament of Mongolia and the Independent Authority Against Corruption. Ministry of Foreign Affairs is responsible for co-ordination with civil society and international partners; the Independent Authority Against Corruption is responsible for expert and analytical support, *e.g.* conducting surveys, research, collecting and analysing statistical data; Government's Secretariat is responsible for development of legislative and regulatory proposals related to the fight against corruption. The explanation provided is confusing and does not give understanding of how different functions are distributed.

The leading institution for anti-corruption activities is the Independent Authority Against Corruption (IAAC). The decision to create agency is taken by the Parliament – according to Article 15.3 of the Law on Ant-Corruption the State Great Khural shall decide on the establishment, form, and dissolution of the Anti-Corruption Agency based on recommendations of the National Security Council. The legal basis for this institution is Chapter 4 of the Law on Anti-Corruption. According to its Article 15, the Anti-Corruption Agency is a special independent government body charged with both preventive and law enforcement functions: raising anti-corruption public awareness and education, corruption prevention activities; carrying out undercover operations, inquiries and investigations of corruption crimes; reviewing and inspecting the assets and income declarations. 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. Therefore the functions of the agency are very broad – from awareness raising and education activities to investigation of crimes and special operations. The basic principles according to Article 16 are that

the Anti-Corruption Agency, with centralized management, should operate independently abiding by the principles of the rule of law, being autonomous and transparent, not divulging secrets; it is prohibited for any legal person, official or individual to influence or interfere in the operation of the Anti-Corruption Agency.

The power of the Parliament goes far beyond establishment of the institution – according to Article 17 of the Anti-Corruption Law the State Great Khural shall approve the organizational and staff structure of the Anti-Corruption Agency, consisting of units for prevention, survey and analysis, monitoring, inspection, investigation, undercover operations, and administration. The Parliament also appoints the leading officers of agency – the Head and the Deputy Head of the Agency are appointed for a 6-year term by the State Great Khural based on the nomination by the President of Mongolia (Article 21.1). The Parliament is also playing the key role in supervision of institution. According to Article 26 the State Great Hural shall hear annual reports of the Agency on situation with corruption and implementation of legislation on corruption. The Special Supervisory Sub-committee of the State Great Khural shall monitor the implementation of the Law on Undercover Operations by the Anti-Corruption Agency. The Prosecutor General supervises the undercover operations and investigative work, and case registration by the Anti-Corruption Agency according to procedures specified in the Law on Undercover Operations, the Criminal Procedures Code and the Law on the Prosecutor General.

As it follows from the IAAC action plans its structure includes the following units: Administrative Department, Prevention and Public Awareness Department, Inspection and Analysis Department, Investigation Department, Investigation Service, Security and Inspection Service, Research and Analysis Service, Registration and Inspection Section, Inspection Section, etc. As regards the profile of staff the Mongolian authorities provided the information in table:

Degree	Proportion (%)
Secondary Education	15
Bachelor	63
Master	20
Doctorate	2

Seniority (years of service)	Proportion (%)
0-5	24
6-10	30
11-15	19
16-20	10
21-25	10
25-	7

Total number of IAAC personnel was 145 in 2013 and increased to 192 employees according to amendment in the Criminal Procedure Code introduced in January 2014. Under this amendment, the General Prosecutor’s Office Investigation Unit, which is responsible for investigating corruption cases related to law enforcement officials, judges and prosecutors, was transferred under the IAAC.

In order to build capacity of the IAAC personnel, the following trainings were held in 2013:

- 14 persons completed the “Training for Procurement Officers” held by Ministry of Finance of Mongolia;
- 9 persons participated in the “Training on capacity building of law enforcement organizations” held by the International Organization for Anti-Money Laundering;

- 2 staff members attended the training on “Conducting investigation in money laundering crime, analysis method and special technology-internet espionage” in Moscow, Russian Federation;
- 1 person attended the 14-day international training for officers of anti-corruption sector in Seoul, Korea;
- 3 staff members attended the 5<sup>th</sup> International Association of Anti-Corruption Authorities seminar in China;
- 40 employees completed the elementary financial course;
- A total of 60 staff members took part in courses on “International Financial Investigations” and “Mutual Legal Assistance and International Co-operation” organized by the StAR Initiative of UNODC and World Bank Group in Ulaanbaatar, Mongolia;
- 20 employees attended the elementary undercover operation course organized by the IAAC jointly with other law enforcement organisations.

The need for training implicitly stems from the tasks included in the IAAC action plans, but just one, very generally described, activity directly addressed issue of staff training – conduct studies and surveys on the educational and professional proficiency of the staff, arrange training and workshops, in accordance with plans, abroad and internally, basing on the study results, monitor the quality and effects of trainings and workshops held within the departments and units (see 2012 and 2013 Action Plans of the IAAC). No specific training plans, specific groups of officials to be trained were provided. The implementation timeframe is “within the year” which is also uncertain.

The information on actual budget resources of the IAAC is also not available. Although the regulation of finances of the Anti-Corruption Agency is very detailed and quite progressive for an anti-corruption institution. Article 29 of the Law on Anti-Corruption states that 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. The budget of the Anti-Corruption Agency shall be reflected separately in the government budget, and it shall be sufficient to enable the Agency to operate independently. The budget of the Anti-Corruption Agency for a given year may not be less than the body’s budget in the previous year. The budget for the undercover operations of the Anti-Corruption Agency shall be approved by the State Great Khural as a special item based on the budget review, and upon proposal by the Special Supervisory Sub-Committee. 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. According to information provided, the IAAC concluded a Memorandum of Understanding with the Asia Foundation and Mercy Corp. to implement a number of activities with the financial support of the latter.

The Law on Anti-Corruption is also explicit regarding public oversight. Article 27 of the law determines that in order to ensure active public involvement in combating corruption, to voice its opinion, to advice on implementation of the anti-corruption law, a Public Council shall be established under the supervision of the Anti-Corruption Agency. The Public council shall be composed of 15 members, and the President of Mongolia shall assign for four-year terms as members of the Council persons with good reputation, without any criminal past and representing the civil society. Government political and career government officials may not be candidates for membership on the Public Council. The procedures for the Public Council operation shall be approved by the President of Mongolia. The fact that members of the Council are appointed by the President may raise concern with regard to political independence of the Public Council and their competence in anti-corruption issues. Therefore it can be reasonable to open discussion and to look for other possible forms of appointment of the members, for example – to select them by independent commission or nominate by particular institutions before

appointment by the President. Such changes will help to ensure independence and impartiality of the members and provide credibility in the eyes of the society.

The Law on Anti-Corruption defines functions, mandate and powers of the Anti-Corruption Agency in detail. The law also defines the requirements for the staff, rights and obligations for officials and other issues.

One of the issues to consider is the structure of agency. As it was mentioned before according to Article 17 of the Anti-Corruption Law the State Great Khural approves the organizational and staff structure of the Anti-Corruption Agency, which is composed of basic structural units including units for prevention, survey and analysis, monitoring, inspection, investigation, undercover operations, and administration. In many countries deciding on the structure and staff is completely within the competence of the agency's management and it is not clear why the Parliament should take part in decisions of such kind. Even more – it is not clear to which extent the Parliament can influence the recruitment of staff. This can raise the issue of political neutrality of agency. Moreover the head of the Agency is not recruited through a transparent competitive selection but proposed and appointed by political bodies. Therefore it is recommended to consider transferring these powers to management of the agency or set very clear limits on how far competence of the Parliament can reach in this regard.

According to Article 18.4.11. of the Law on Anti-Corruption, the Agency can transfer for further investigation all violations of the Law, irrespective of the specific corruption offence, identified during the course of investigative work, to the competent authority. As explained by the Government, “competent authority” can be any authority such as police, professional inspection organisation or Civil Service Council. Agency makes relevant decision by itself. For example, if during the investigation it becomes clear that the case concerns not a corruption crime but an economic crime then the agency transfers the case to the Police.

The Mongolian Anti-Corruption Agency is built as the “central anti-corruption agency” which combines functions of corruption prevention, raising public awareness and education, investigation of assets and income declaration as well as criminal investigation and undercover work. Such a model is known also for other countries and may in principle be effective; however, there is no sufficient information on the functioning of the IAAC to evaluate how effective in practice it is and whether all relevant functions are implemented properly.

The Independent Authority Against Corruption of Mongolia adopts annual action plans which in itself is a good practice. However analysis of the action plans for 2012 and 2013 reveal similar deficiencies as the national anti-corruption programme. There are a great number of different tasks, but most of them are very general, a lot of them are tasks which should be fulfilled on daily basis. Therefore the implementation of these tasks and their effectiveness can be quite difficult to measure. The implementation timeframes are also not precise, covering quite long periods of time (“during the year”, “quarter”, etc.). Taking into account the great number of tasks it is reasonable to split them in different groups by importance or specific priorities.

According to the Government, the IAAC adopts its annual action plan based on proposals from its different departments. Every department also has its own a more detailed annual, as well as quarterly, action plan. Quarterly action plans have more detailed provisions and specific implementation periods, responsible persons and expected outputs stated clearly. Also every department produces report on quarterly implementation of the plan.

No information was provided on the actual level of resources available to the IAAC in terms of funding, technical means, etc.

## Recommendation 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.**

## 1.7. Participation in international anti-corruption conventions

### Assessment

Mongolia became a Party to the United Nations Convention Against Corruption (UNCAC) in 2006. Mongolia was one of the first parties to the UNCAC to submit its self-assessment report to the UNODC. Recommendations on implementation of the UNCAC were released in late 2012. In order to implement recommendations of the country review report on Chapters III and IV of the UNCAC, the IAAC developed a draft action plan for co-operation on the UNCAC implementation with country representative offices of UNODC and UNDP and submitted the said action plan to the concerned organizations for approval. Also the IAAC, in co-operation with the parliament of Mongolia and the UNDP, organized a workshop on "Implementation of UNCAC in Mongolia" in January 2013. Mongolia will prepare its self-assessment report on Chapters II and V of the UNCAC in 2015.

Mongolia took part in the UNCAC Pilot Review Programme. According to expert conclusions Mongolia has fully adopted the measures required in accordance with provisions of UNCAC Article 46 (mutual legal assistance), particularly paragraphs 9 and 13. Mongolia has adopted measures with the view to attaining continued compliance with UNCAC Article 5 (preventive anti-corruption policies and practices). Mongolia has also adopted most of the measures required in accordance with UNCAC Articles 17 (embezzlement, misappropriation or other diversion of property by a public official); and 52 (prevention and detection of transfers of proceeds of crime). Mongolia has adopted only some of the measures required in accordance with UNCAC Articles 15 (bribery of national public officials); 25 (obstruction of justice), and 53 (measures for direct recovery of property), and Mongolia has not adopted the measures required in accordance with UNCAC Article 16 (bribery of foreign public officials and officials of public international organizations)<sup>12</sup>.

Conference of the States Parties to the United Nations Convention against Corruption held in August 2011 in its Executive Summary noted that: *"Since ratifying the United Nations Convention against Corruption (UNCAC) on 11 January 2006, Mongolia has made a significant commitment towards fighting corruption and implementing the requirements of the Convention in its domestic legal and institutional framework. Annex 1 refers to the provisions under review that have been fully, partially and not implemented. Mongolia recently conducted its first national corruption index (the Mongolian Corruption Index 2009) in order to measure the extent of corruption and develop targeted*

<sup>12</sup> Source: [http://iaac.mn/pdf/tailan/Pilot\\_review\\_programme\\_Mongolia\\_Eng.pdf](http://iaac.mn/pdf/tailan/Pilot_review_programme_Mongolia_Eng.pdf).

*interventions for the fight against corruption. The index, which was compiled by IAAC with the assistance of the Statistical Committee of Mongolia and foreign experts, focuses on ministries and agencies in the public sector and the 21 provinces of Mongolia to assess corruption levels and trends. The results are used for planning and policy formulation, and publicly distributed. The index enables benchmarking, comparison and monitoring with future periods (the next index is to be conducted in 2011). An action plan on UNCAC implementation was approved by Parliament in 2009, and an ad hoc working group on UNCAC implementation has been established, which includes representatives of academia and civil society. The level of cooperation between various Government agencies, the private sector and civil society towards the fight against corruption is commendable. A parliamentary resolution further provides for the alignment of Mongolia's anti-corruption legislation with UNCAC and strengthens the punishment for official white collar crimes.”<sup>13</sup>*

The Government also reported that together with the TI Mongolia it started a review of the Mongolian legislation as to its compliance with the UNCAC provisions.

Mongolia is also taking part in other relevant monitoring mechanisms, for example in the Asia/Pacific Group on Money Laundering. Mongolia is also a party to the UN Convention against Transnational Organised Crime since 2008.

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<sup>13</sup> Source: [www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1184854e.pdf](http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1184854e.pdf).

## Pillar 2. Criminalisation of corruption

The Government of Mongolia has taken important steps to criminalise and combat corruption through law enforcement. However, Mongolia must do more to clarify the scope of its criminal law on corruption and align it with international standards, criminalize corruption in the private sector and trafficking in influence, provide a clear definition of “official” and other main terms, establish corporate liability for corruption offences, limit immunities so that corruption statutes have a meaningful effect, bring its sanctions and confiscation measures within international norms, and enhance its international co-operation and mutual legal assistance.

The Government informed that a draft new Criminal Code was prepared and submitted to the parliament in 2014. While welcoming the on-going criminal justice reform in Mongolia it is important to note that the recommendations of this Chapter of the report should be taken into account in the process of the new Criminal Code consideration in the parliament.

### 2.1.-2.2. Offences and elements of offence

#### Assessment

Corruption offences in the Criminal Code of Mongolia (CC) are included in Chapter 28 “Malfeasance Crimes” – see Annex to this report.

The Government of Mongolia has enacted anti-corruption criminal statutes, but their strength is weakened by the lack of clarity in their application and scope. Mongolia’s Criminal Code appears to lack meaningful definitions of key statutory terms that would otherwise make its anti-corruption laws forceful and predictable.

While basic offences of active and passive bribery are criminalised they are not fully in line with international standards, in particular:

- Mere **offer or promise of a bribe, acceptance of offer or promise, solicitation** (a request of bribe, not extortion) of a bribe are not criminalised as complete offences as required by international standards. While Mongolian Criminal Code provides for liability for inchoate offences (preparation and attempt of crime), they have not been recognised as functionally equivalent by international standards and by the IAP monitoring for the following reasons.<sup>14</sup>

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 his request he is exempted from liability. Equally a person will avoid criminal liability if he withdraws his offer or promise of a bribe before receiving an unambiguous refusal from a potential bribe-taker. Secondly, incomplete crimes draw lower sanctions under Mongolian CC - sanction cannot exceed half (for preparation) and 2/3 (for attempted crime) of the most severe sanction envisaged for the offence. As noted in one of the IAP second monitoring round reports, such ‘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>15</sup> Thirdly,

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<sup>14</sup> See ACN/IAP Summary report for 2009-2013, p. 52-53, available at: [www.oecd.org/corruption/acn/istanbulactionplan/anti-corruption-reforms-eastern-europe-central-asia-2013.htm](http://www.oecd.org/corruption/acn/istanbulactionplan/anti-corruption-reforms-eastern-europe-central-asia-2013.htm).

<sup>15</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).

liability for promise or offer of 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. Same concerns request or acceptance of offer/promise of a bribe. Finally, prosecution of promise/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.

Overall lack of liability for offer or promise of a bribe means that potential bribers are incentivised to corrupt officials through the offer of a bribe, since a declined offer does not trigger the application of the criminal statute. The same concerns solicitation of a bribe - officials are incentivised to solicit bribes, since a declined solicitation does not trigger the application of the criminal statute.

- **Directly or indirectly.** Passive bribery offence in the Mongolian Criminal Code does not explicitly cover bribery through an intermediary as required by international standards, while indirect active bribery is explicitly mentioned (“in person or through an intermediary”). There is a separate offence of intermediation in bribery but it concerns liability of the intermediary. There may also be an overlap of the separate intermediation offence with provisions on complicity in the bribery offences and this may result in application of different sanctions; this issue should be further explored during future monitoring of Mongolia. As noted in the IAP Summary report, while a separate intermediation offence may provide a convenient tool to prosecute acts of intermediaries, such approach should not lead to focus being shifted from the main bribery acts.<sup>16</sup>
- **Third party beneficiaries.** Bribery incriminations in Mongolia do not cover bribes promised/offered/given not to the official himself/herself but to a third person; the same concerns passive bribery offence. According to international standards, it should not matter whom the undue advantage (bribe) is intended for, namely for the official himself or another person or entity – as long as it is provided in exchange for the official to act or refrain from acting in the exercise of his official duties. The goal of this requirement is to cover situations when the official solicits an advantage for his relative, a political party, trade union, charity or company, when bribe goes to a third party with whom the official is in debt, etc. Third party beneficiary can be a natural person or an entity; it should also be immaterial whether the third party beneficiary had a criminal intent or participated in the corruption offence.<sup>17</sup>
- **Undue advantage.** The term “bribe” used in the relevant incriminations is not defined in the Criminal Code of Mongolia. It is, however, defined in the Resolution of the Supreme Court of Mongolia “On interpretation of some articles and provisions of Chapter 28 of the Criminal Code” (no. 23 of 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. It is recommended therefore that the term “bribe” is defined directly in the Criminal Code and that the definition explicitly includes 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).<sup>18</sup> The Law on Anti-Corruption contains a broader definition than the one in the

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<sup>16</sup> ACN/IAP Summary report for 2009-2013, cited above, p.53.

<sup>17</sup> *Idem*, p. 54.

<sup>18</sup> See examples of such benefits and practice in the IAP countries in the ACN/IAP Summary report for 2009-2013 cited above (p. 54-55).

Supreme Court's resolution, but still not detailed enough (*"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"*).

- Another element of bribery offences required under international instruments is that such offences be committed in order for the official "to act or refrain from acting **in the exercise of his or her official duties**" (UNCAC).<sup>19</sup> The intention is to encompass situations when an official in exchange for a bribe acts outside his competence (duties, functions). Such acts or omissions are made possible in relation to the official's function (duties), but not necessarily included in his formal scope of authority. Therefore laws which limit bribery to situations when an official is induced to act (or refrain from acting) within the scope of his powers (competence) are considered to be incompliant with the standards.<sup>20</sup> Mongolian offence of passive bribery contains a complex wording which does not explicitly refer to situations when an official in exchange for a bribe acts outside the scope of his authority. Supreme Court Resolution no. 23 does state that the term "not performing his/her official duties" used in Article 268 CC shall be understood in respect of a state official as having performed the undue powers – however, no such words ("not performing his/her official duties") are present in the English translation of Article 268 CC provided by Mongolia to this monitoring. In any case it is recommended to simplify wording of Article 268, preferably using text from international instruments, and to cover official's actions outside his competence. The same concerns Article 269 CC on active bribery.
- Article 263 of the Criminal Code, while criminalizing "**abuse of power**," does not define that term. In order to ensure predictability in application and enforcement, Mongolia should consider defining that term consistent with international norms. 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) since this is also an essential element of the offence. These issues are not clarified by the Supreme Court Resolution no. 23, which defines the terms "power", "office", "abuse", "damage in a large amount" (used in Article 263.2 CC). Definition of "abuse" in the Resolution refers to Article 3.1.1. of the Law on Anti-Corruption; the latter, however, does not resolve the above issues ("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").
- Mongolia's statute criminalizing **money laundering** (Article 166<sup>1</sup> CC) should provide a clear definition of "illegal actions" and "evasion of justice," since these are essential elements of the statute, to ensure predictability and legal certainty in application and enforcement.

Mongolia's Criminal Code also does not appear to criminalise a number of necessary corruption offences: **bribery in the private sector, trafficking in influence.**

**Illicit enrichment.** It is commendable that in 2012 Mongolia introduced an offence of "Improvement in the financial state by illegal means" (Article 270<sup>1</sup> CC), which is close to the illicit enrichment offence. Offence of illicit enrichment may be a powerful tool in prosecuting corrupt officials, as it does not require proving the corruption transaction actually happening but allows to draw inferences from the fact of possession of unexplained wealth by an official, which could not have been gained from lawful sources. However, Article 270<sup>1</sup> CC as it is worded may not be effective in prosecuting

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<sup>19</sup> UNCAC, Articles 15 and 16. CoE Criminal Law Convention – "to act or refrain from acting in the exercise of his or her *functions*"; OECD Anti-Bribery Convention – "act or refrain from acting in relation to the *performance of official duties*".

<sup>20</sup> See references to monitoring reports in ACN/IAP Summary report for 2009-2013 cited above (p. 55-56).

illicit enrichment. The main element of the illicit enrichment offence, as it is found e.g. in Article 20 of the UN Convention against Corruption (“a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income”), is the discrepancy between actual assets of the official and his lawful income. The need to prove that income was “received” by an official by illegal means makes it similar to the bribery offence and goes contrary the whole idea of the illicit enrichment incrimination.

**Liability of legal persons**, which provide a vehicle for corrupt individuals to legally facilitate bribery through a corporate personality, is not established in Mongolia either.

#### **Recommendation 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.**

### **2.3. Definition of a public official**

#### **Assessment**

Mongolia’s replies to the questionnaire state that the Criminal Code covers categories of **national public officials** performing the following functions: legislative; executive; administrative; judicial (including jurors and arbitrators) and prosecutorial; public (state) function in a public agency/enterprise; providing or performing a public service, or any activity in public interest (while national officials holding posts in public international organisation, officials and employees of political parties and candidates for political office are not covered).

This is not, however, confirmed by provisions of the Criminal Code or any explanatory materials provided (including Supreme Court Resolution no. 23 – see above). The only definition present is included in the Note to Article 263 CC «Abuse of power or office by a state official», which mentions that the state official referred to in this article includes officials holding the administrative or executive posts in state organizations. Replies to the questionnaire state that in practice “official” is understood as any person employed in government or non-government organisation in administrative or executive position.

In addition, Mongolia’s Criminal Code uses the terms “state official” and “official.” It is unclear, even from the response to the questionnaire, what the difference is between these two terms. The Criminal Code should use consistent terms and should clarify to whom the corruption incriminations apply.

Even if the definition used in Article 263 CC covers other offences as well 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).

Overall the definition of 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>21</sup>

Mongolia’s Criminal Code also does not criminalise bribery involving a **foreign public official**. As economic transactions become increasingly multilateral, corruption has also grown more international. Declining to criminalize bribery of a foreign public official fails to capture an increasingly profitable opportunity for corruption that harms the state and encourages competitive corruption on a global scale.

It also contradicts international standards, according to which corruption offences should cover officials of foreign states and officials of public international organisations. Definition of a foreign public official is comparable with that of the domestic public official with reference to a foreign state. “Foreign public official” is defined in the UNCAC (Art. 2) as any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise. OECD Anti-Bribery Convention (Art. 1) defines a foreign public official as any person holding a legislative, administrative or judicial office of a foreign country (at all levels and subdivisions of government, from national to local), whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization. Council of Europe Criminal Law Convention refers to public officials of another state, but also specifically mentions members of foreign public assemblies, officials of public international or supranational organization or body, parliamentary assemblies of international or supranational organization of which the Party is a member, judges and officials of international courts. Additional Protocol to the Council of Europe Criminal Law Convention also includes foreign arbitrators and foreign jurors.

International standards allow that bribery of foreign public officials be covered either through separate offences or by extending the definition of persons subject to criminal liability for bribery offences to encompass foreign public officials. All IAP countries which have already criminalised bribery of foreign public officials have chosen the latter approach and extended definition of an official to cover foreign public officials.<sup>22</sup>

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<sup>21</sup> See description in the ACN/IAP Summary report for 2009-2013, cited above, p. 66.

<sup>22</sup> See ACN/IAP Summary report for 2009-2013, cited above, p. 67-68.

### Recommendation 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.*

## 2.4.-2.5. Sanctions and confiscation

### Assessment

**Sanctions.** International conventions require that sanctions for corruption offences, when committed by natural or legal persons, be effective, proportionate and dissuasive. For natural persons, the Council of Europe Criminal Law Convention (Art. 19) and the OECD Anti-Bribery Convention (Art. 3) specifically provide for availability of sanction of a deprivation of liberty sufficient to enable effective mutual legal assistance and extradition. UN Convention against Corruption (Art. 30) also provides for possibility of disqualification of persons convicted of corruption offences from holding a public office or office in a state-owned enterprise. Sanctions against legal persons can be penal, administrative or civil in nature and should include monetary sanctions.

Mongolian Criminal Code provides for bribery offences sanctions of a fine or deprivation of liberty, and short-term incarceration for some other corruption (or related) offences (see the table below).

Sanctions for corruption offences in the Mongolian Criminal Code does not appear to be proportionate and dissuasive, in particular because:

- 1) a possibility of a fine as an alternative sanction is allowed for many offences, including for aggravated offences of bribery, while the amount of fine is clearly not sufficiently dissuasive;
- 2) mandatory confiscation is provided for a very limited number of offences (aggravated passive bribery, aggravated money laundering and embezzlement) – see also below;
- 3) the range of sanctions does not allow imposing proportionate sanctions (*e.g.* the same sanction is provided for bribery in large and especially large amount; 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 intermediation in bribery).

	<b>Fine*</b>	<b>Forced labour</b>	<b>Deprivation of right</b> (main / additional sanction)	<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;	No	No	No	Yes (of illicit proceeds)	No	5-10 years

	<b>Fine*</b>	<b>Forced labour</b>	<b>Deprivation of right</b> (main / additional sanction)	<b>Confiscation</b>	<b>Short-term incarceration</b>	<b>Deprivation of liberty</b>
large or extremely large amount <sup>23</sup> ; repeatedly)						
<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 – 11,000	No	Yes (add.)	No	No	Up to 5 years
<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</b>	USD	Yes	No	No	1-3 months	No

<sup>23</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
<b>property by fraud</b> (Art. 148.1)	550 – 5,500					

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

**Confiscation.** Replies to the questionnaire state that the proceeds of corruption are confiscated and that confiscation of property provided for Article 49.1 CC (see Annex) is related to compensation of damage caused by corrupt action of the culprit. Thus any property that is registered on the name of the culprit is confiscated in order to compensate proceeds of corruption or other losses.

From this provision it appears that all property of the culprit is confiscated when specifically so ordered by the Criminal Code provision and only in this case proceeds of the crime are confiscated as well. As can be seen from the table above, only aggravated offences of money laundering and embezzlement are punished with confiscation; aggravated offence of passive bribery provides for “confiscation of illicit proceeds”.

This is not a satisfactory arrangement according to international standards, which require taking 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.

#### **Recommendation 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.**

## **2.6. Immunities and statute of limitations**

**Assessment**

**Immunities.** Mongolia’s Constitution appears to immunize virtually all high-level government officials (e.g., members of the State Ikh Khural (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. Replies to the questionnaire also mention that 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.

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.

International standards call for limited scope of immunities and efficient procedures for their lifting. UN Convention against Corruption (Art. 30) mandates State Parties to establish “an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting or adjudicating” corruption offences. Council of Europe’s Committee of Ministers Resolution No. (97) 24, recommends to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.

A number of standards were formulated with regard to immunity which should:<sup>24</sup>

1. be functional, that is concern actions (inaction) committed during or in relation to exercise of official’s duty;
2. not cover situation *in flagrante*, when perpetrator is apprehended during commission of a crime or immediately after;
3. not extend to the period after termination of office;
4. allow investigative measures to be carried out against persons with immunity;
5. provide for swift and effective procedures for lifting immunity, clear criteria for lifting of immunity which are based on merits of the request to lift immunity. For persons with absolute immunity (like the President in many countries) there should be an effective procedure allowing his impeachment.

**Statute of limitations.** UN Convention against Corruption (Art. 29) provides that each State Party shall establish a long statute of limitations period in which to commence proceedings for corruption offences and establish a longer period or provide for the suspension of the statute of limitations where the alleged offender has evaded administration of justice. According to the OECD Anti-Bribery Convention (Art. 6) any statute of limitations applicable to the offence of bribery of foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

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 with limitation periods for various corruption or related offences under Mongolian Criminal Code.

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	Serious	20 years

<sup>24</sup> See ACN/IAP Summary report for 2009-2013, cited above, p. 75.

criminal organisation; large or extremely large amount; repeatedly)		
<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

In the IAP Summary report it was noted that limitation period, to provide adequate time for the investigation and prosecution of corruption offences, should be at least 5 years long (and provide for possibility of suspension/interruption in certain situations).<sup>25</sup> It is therefore recommended to increase limitation period for relevant offences.

It is also considered good practice that the limitation period is interrupted when mutual legal assistance has been requested and when the suspect is an official enjoying immunity. It is also recommended to consider introducing interruption (with the following renewal) of limitations period when certain procedural actions are taken: for example, actions taken in order to institute criminal prosecution (*e.g.* decision to prosecute) and actions like the first interrogation of the accused, the notice of the initiation of investigation, a judicial order of search and seizure, an arrest warrant, a public indictment, the institution of trial proceedings, etc.<sup>26</sup>

## Recommendation 2.6.

- 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.**

<sup>25</sup> See ACN/IAP Summary report for 2009-2013, cited above, p. 73.

<sup>26</sup> See examples in the ACN/IAP Summary report for 2009-2013, cited above, p. 74-75.

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

### Assessment

Extradition and MLA in Mongolia are regulated by Articles 398-409 of the Criminal Procedure Code (CPC). These provisions apply to all incoming and outgoing extradition and MLA requests that are made pursuant to applicable treaties. The CPC contains a basic framework for seeking and providing extradition and MLA. The law lists few grounds for denying co-operation and does not prescribe detailed procedures for executing requests. Instead, the CPC stipulates that requests are to be executed in accordance with the applicable international agreement, thereby leaving most of the details to the treaty provisions.<sup>27</sup>

UNCAC offences are extraditable offences in Mongolian law, subject to the concept of dual criminality. Nonetheless, as Mongolia has not criminalized some UNCAC offences, its requirement of dual criminality renders some UNCAC offences not extraditable. Pursuant to its Constitution, Mongolia will not extradite its own nationals. However, where requests for extradition have been denied, Mongolian law provides for domestic prosecution. The law further allows for the collection of evidence from abroad, in particular from interrogations, examinations, searches, experiments, seizure of property or other actions of inquiry, investigation and judicial hearing.<sup>28</sup>

The Government of Mongolia has concluded Mutual Legal Assistance Treaties with only 20 countries. While welcoming Mongolia's initial steps to partner with its global neighbours in the fight against corruption, it should pursue additional Mutual Legal Assistance Treaties.

There is no domestic provision on the requirement of dual criminality for mutual legal assistance. In practice, it was held that mutual legal assistance can be provided in the absence of dual criminality and non-corruption-related examples were referred to.<sup>29</sup>

Mongolia has no provision regarding Mutual Legal Assistance for legal persons and replies to the questionnaire explicitly note that any such request will be denied. In doing so, the Government of Mongolia fails to provide any mechanism for addressing an increasingly popular vehicle for initiating, facilitating, and concealing corruption. Refusing to provide Mutual Legal Assistance for legal persons invites corrupt corporate entities and shell corporations to domicile themselves in Mongolia.

According to the Government replies, legal system of Mongolia allows tracking, seizing, arresting and confiscating property according to the MLA request, however the bilateral treaty shall contain articles that includes such actions. If there is no bilateral treaty or no such regulation in bilateral treaty with a foreign country, request would be denied. If the legal ground of the request is based on UNCAC, requesting country must have acceded to UNCAC. Furthermore request would be executed accordingly on the condition that both the requested and requesting countries accept related provisions of UNCAC regarding tracking, seizing, arresting and confiscating the asset.

Mongolia also reported that the IAAC is co-operating closely with the Stolen Asset Recovery (StAR) Initiative since November of 2011. As a result of bilateral co-operation, mission from StAR Initiative

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<sup>27</sup> Mutual legal assistance, extradition and recovery of proceeds of corruption in Asia and Pacific, ADB/OECD Anti-Corruption Initiative for Asia and Pacific, 2007, p. 219, available at: [www.oecd.org/site/adboecdanti-corruptioninitiative/37900503.pdf](http://www.oecd.org/site/adboecdanti-corruptioninitiative/37900503.pdf).

<sup>28</sup> Executive summary, Review of implementation of UNCAC by Mongolia, September 2011, available at: [www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1184854e.pdf](http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1184854e.pdf).

<sup>29</sup> Idem.

visited IAAC and other law enforcement organisations in January 2013 and studied conditions of the institutions and legal system of Mongolia. Consequently IAAC in cooperation with experts from StAR Initiative, organized a workshop on “International Financial Investigation and Mutual Legal Assistance Request (MLAR)” for inspectors and officials of related agencies and organisations during the second mission in May 2013. Next StAR mission took place in September 2013 in order for StAR Initiative experts to give instructions on MLAR drafting procedure to members of Working Group that consists of representatives from the Ministry of Justice, Prosecutor General’s Office, State Investigation Office and Financial Investigation Unit. The main goal of the Working Group is to draft interagency standard operating procedure manual or guideline for the preparation and circulation of outgoing MLARs.<sup>30</sup> The co-operation with StAR initiative continues and in 2014 the co-operation is mostly directed at strengthening co-ordination among domestic agencies on mutual legal assistance, organising trainings on MLAR and asset recovery.

### **Recommendation 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 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.***

## **2.8. Application, interpretation and procedure**

### **Assessment**

Culpability under Mongolia’s bribery statute is conditioned upon the official who receives the bribe to actually be influenced by the bribe, or the official’s action adversely affecting the public interest. These amorphous elements are almost impossible to prove and are inconsistent with international norms. Moreover, these elements incorrectly focus the crime on the corruption of the result, rather than the corruption of the process, which is an equally grave threat to the integrity of government and public service.

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

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<sup>30</sup> See Mongolia’s Progress report presented at the OECD/ACN 12<sup>th</sup> meeting in September 2013, available at: [www.oecd.org/corruption/acn/ProgressUpdateMongoliaSept2013ENG.pdf](http://www.oecd.org/corruption/acn/ProgressUpdateMongoliaSept2013ENG.pdf).

prevents retroactive corruption investigations. Refusing to permit inferences from circumstantial evidence creates an unnecessary obstacle to securing a meritorious conviction.

There appears to be no effective regret provisions for active bribery in the Mongolia's Criminal Code. Only for intermediation of bribery the Criminal Code provides that if a person engaged in intermediation voluntarily reports to the competent authority about intermediation in bribery he is to released from criminal liability.

The Government of Mongolia should strive to increase the independence of its anti-corruption prosecutors and law enforcement agencies. Specifically, the decisions of a prosecutor should not be subject to the review of an interested political official. Rather, a prosecutor's discretion should be exercised solely on the facts, the law, and the merits of each matter.

Finally, the Government of Mongolia should take steps to improve law enforcement's access to bank, financial, and commercial records. Corruption is increasingly conducted and concealed through transactions that are memorialized in bank, financial, and commercial records, and access to such records is necessary to successfully investigate and prosecute corruption.

### **Recommendation 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 access 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.***

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

### **Assessment**

The Government of Mongolia has taken laudatory steps to establish a specialized anti-corruption agency (Independent Authority Against Corruption) responsible for investigating and prosecuting corruption in the public sector. The Head and the Deputy Head of the Independent Authority Against Corruption are appointed by the State Great Khural, based on the nomination of the President of Mongolia. The head of the Anti-Corruption Agency is responsible for appointment and dismissal of the personnel. The Law on Anti-Corruption allows only for the following grounds to dismiss the Head and Deputy Head of the IAAC: health conditions, expiry of mandate, resignation, court verdict on conviction. They can also be suspended by the parliament upon Prosecutor's General proposal in conjunction with criminal charges.

The Government of Mongolia should increase the independence of prosecutors and law enforcement agencies responsible for investigating and prosecuting corruption so that their

discretion is exercised solely on the facts, the law, and the merits and is not subject to the review of interested political officials. Finally, the Government of Mongolia does not have independent internal investigative units within government agencies. Establishing such independent internal investigative units may enhance Mongolia's ability to prevent, identify, investigate, and prosecute public corruption.

Another specialised unit involved in investigation of criminal cases was Special Investigative Unit under the Prosecutor General of Mongolia but according to recent amendments, in force since January 2014, the unit was transferred to the IAAC. According to information provided by Mongolian authorities this unit receives allegations of corruption, investigates and prosecutes corruption cases, and compiles statistics on corruption. The police are also involved in investigation of criminal cases on corruption. The competence of these institutions is regulated in Articles 26 and 27 of the Criminal Procedure Code of Mongolia. The Special Investigative Unit is regulated by Article 10 of the Law on Prosecution Office. The Prosecutor General decides on its structure, staff and activities. According to Article 10.3 of the Law on Prosecution Office, the Prosecutor General is responsible for appointment and dismissal of the Head and Deputy Head of the Special Investigative Unit. The head of the Special Investigative Unit is responsible for appointment and dismissal of personnel. Article 10.4 of the Law on Prosecution Office states that budget of the Special Investigative Unit shall be autonomous. The Prosecutor General approves the budget.

#### **Recommendation 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.***

## **Pillar 3. Prevention of corruption**

### **3.1. Corruption prevention body**

*Covered under 1.6. "Specialized anti-corruption policy and coordination institutions".*

### **3.2. Integrity of public service**

#### **Assessment**

According to information provided by Mongolian authorities the Law on Government Service defines four categories of civil servants:

- Political Service of the Government;
- Administrative Service of the Government;
- Special Service of the Government;
- Support Service of the Government.

All four types of Government services are regulated by their respective laws and legal acts. For instance, support service of the Government is regulated by the Employment Law, while special and administrative services of the Government fall under the Law on Government Service.

According to provisions of the Law on Government Service, applicants to Government administrative positions are provided with equal opportunity through designated Government service qualification test and a fair opportunity screening process for senior positions. However, vacancy requirements of available positions are used as baseline criteria during the process. When considering applicants for a Government administrative position, the applicant's educational background, work experience, specialization and skills are all considered. These qualifications are then compared against the requirements included in the job description of the vacancy, which, according to provisions described in the Law on Government Service, must specify minimum education, experience and skill levels for the position.

Applicants to Government administrative positions are recruited and monitored by the Government Service Council and its councils. Applicants to Government support service positions, however, shall be recruited, contracted, and managed by their respective agencies. Information on applicant selection and qualification tests is published by the Government Service Council. Job selection committees are established with minimum of 5 members, by order of the chairman of the Government Service Council, or its proxy councils. The committee is responsible for managing selection process and qualification test. The committee reports on selection process and its results to council meetings of the Government Service Council or its proxy councils. The Councils have the power to select the final candidate.

The management of the organization may refuse to accept and appoint the selected candidate, in which case a detailed explanation must be delivered within 7 days after the selection. According to Article 35.1.6 of the Law on Civil Service, the Civil Service Council has the mandate to select, in compliance with procedures established by the State Great Hural, one candidate for a governing post in the administrative and, unless otherwise provided for in law, special civil service, and provide the body competent to appoint him with its conclusions on the candidate. Based on this provision of the Law, the Parliament approved Resolution on Procedure for Selection of an Official for Governing Post in the Administrative Civil Service.

Candidates may lodge a complaint if they don't receive appointment. For instance, in some cases a superior officer may refuse to appoint a candidate for miscellaneous reasons, even when the candidate has been selected by the screening process and his or her qualification test scores. In such

circumstances, the candidate has full rights to submit complaint directly to Civil Service Council (Head of the Civil Service Council).

According to the information provided by Mongolian authorities officials often are more interested in announcing open selection to the public and get new candidates, rather than going with the promotion option. Political influence can also be a factor in appointments. Undue political influence may occasionally occur in the selection of civil service posts. In other words political party, which rules the government, may try to influence the selection process.

For government officials with long experience and service record, there are not many opportunities for promotion based on their merits. Also, frequent changes in members of the Government and its overall organization can weaken employees' determination to keep their job or negatively impact their attitude towards the work.

According to Article 33 of the Law on Civil Service the State Great Hural, the President, the Government, General Court Council and State General Prosecutor shall exercise the general administration of the civil servants within the framework of their mandates. The administration of standards of the civil servants shall be exercised by the Civil Service Central Body, but the operational administration of the civil servants shall be exercised by a competent official of the Office of the public bodies. Article 34 defines the main legal provisions on the Civil Service Central Body. It says that the Council shall be an independent body accountable for its operations to the State Great Hural. At the same time Article 34 defines the compositions of the council and it is absolutely clear that most of them are political appointees. The Council shall operate on principles of collegial management and consist of Chairman and six members. Two of them shall be permanent and four are non-permanent. Secretariat of the State Great Hural and the Cabinet Secretariat of the Government shall nominate each one candidate for the two permanent members. The State Great Hural shall appoint the Chairman of the Council upon presentation of the President for the term of six years. The following officials shall be non-permanent members of the Council: 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, the Secretary of the General Court Council. Of course, it is very good that so high ranking officials are involved in management of civil service and it can be explained with the fact that in Mongolia the civil service includes also so-called political civil service, but on other hand such political leadership results in significant political influence over civil service or at least makes impression of that. Therefore, measures should be taken to ensure political neutrality of civil servants and to split political public service from non-political and at the same time carry out the reform of the Civil Service Central Body.

As regards the **remuneration** the Law on Civil Service defines remuneration policies for 4 levels of civil servants. Reference salaries for Government officials are published based on those policies. Bonuses are governed by legal regulations and Government rules as well. Base salary and additional pay of Government officials are described in detail in Article 28 of the Law on Civil Service.

Remuneration of Government officials consists of: 1) base salary, plus any additional pay for special working conditions and doctorate degree bonus for officials holding political positions; 2) base salary, plus long service bonus, rank, title and doctorate degree bonuses for officials in administrative positions; 3) base salary, plus any additional pay for special working conditions, long service bonus, rank, title, specialization and doctorate degree bonuses for officials holding special service positions; and 4) base salary, plus rank, title, specialization, skill, doctorate degree and other bonuses for officials holding support service positions.

**Legality and impartiality** are defined as principles in the Law on Civil Service (Article 4). The goal of the Government service shall be to ensure democracy, justice, freedom, equality, and national unity, and respect for laws. If otherwise not provided by laws, the government service shall be guided by

the following principles: 1) to administer and to be administered; 2) transparency; 3) service to the public; 4) equal opportunities for all citizens to be employed in government service in conformity with conditions and procedures provided by laws; 5) high qualification and stability for the Government Service; 6) government shall provide guarantees and condition in which the government employees to exercise their rights; 7) government shall compensate damages that are occurred as a result of a wrongful action by a government official in the course of exercising the powers provided by laws.

**Conflict of interests.** According to the Article 15 of Government Service Law of Mongolia, public officials are prohibited: 1) to participate in the capacity of a government officer in the activity of political parties, public and religious organizations in connection with matters not related to their direct official duties; 2) to plan, organize, and participate in strikes and other actions aimed at disrupting the normal activity of government organizations; 3) to use the power given by the official post for religious or non-religious propaganda; 4) to accept the highest state titles, orders, medals and other government awards of foreign countries without the consent of the President of Mongolia; 5) while carrying out their official duties, to travel abroad or within the country at the expense of economic entities and citizens, including foreign organizations and citizens, except in the case of trips on assignment stipulated by international treaties of Mongolia or mutual agreement between Government organizations of Mongolia and a foreign country and with the consent of the relevant competent authority of the Government organization; 7) to use properties, technical facilities, financial resources, information supply and official data of the government organization for purposes other than official ones; 8) to concurrently hold a permanent position in a local self-governed organization, economic entity, political or public organizations.

The Law of Mongolia On the Regulation of Public and Private Interests and Prevention of Conflict of Interest in Public Service (Conflict of Interest Law) of Mongolia also aims to prevent conflicts of interest arising between the official duties and private interests of those in public service roles, and to regulate and monitor conflicts of interest in order to ensure that public service activities accord with the public interest and that transparency and faith in public services is maintained.

According to the Conflict of interest Law of Mongolia, following prohibitions and restrictions are covered:

- Prohibition on the usage of information from official sources for non public interest (Article 10)
- Prohibition on Public Duty (Article 11)
- Prohibition on Decision making process (Article 12)
- Prohibition on Advertisement and Advocacy (Article 13)
- Restrictions related to representation (Article 14)
- Restriction related to fees, gifts and donations (Articles 14, 15 and 16)
- Restrictions related to private businesses and dual employments (Article 18, 19 and 20)
- Restrictions related to post public service employment (Article 21)
- Thresholds for other incomes (Article 22).

It can be concluded that most of different types of prohibitions and restrictions are covered and the definitions of terms “public interest”, “private interest”, “related person” and “common interest person” are broad enough. At the same time Article 11 on “prohibitions and restrictions related to the discharge of official duties” contains prohibitions regarding “common interest person”, but unfortunately such prohibitions are not found on “private interest” and “related persons”.

Definition of “conflict of interests” does not include apparent conflict of interests, i.e. where it appears that a public official’s private interests could improperly influence the performance of their duties but this is not in fact the case, and potential conflict of interests. A potential conflict arises where a public official has private interests which are such that a conflict of interest would arise if

the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.<sup>31</sup>

According to the Conflict of Interest Law of Mongolia, the statutory bodies entitled to review matters related to Conflict of Interest are Sub Committee on Legal Affairs of Parliament of Mongolia, Independent Authority Against Corruption of Mongolia, related state bodies or the Court, depending on the degrees of offence (disciplinary, administrator and criminal).

There are no provisions on **protection of whistleblowers** in the Mongolia's legislation.

The Law on Civil Service defines that civil servant should observe the **code of ethics** of the civil service, the culture and rules of the public bodies for which they work, to respect the prestige of the public body and civil servant. Also according to the Conflict of Interest Law of Mongolia, the state body shall develop and enforce Code of Conduct, which will allow preventing from conflict of interest. Furthermore the state body shall seek comment from the Anti-Corruption Agency (IAAC) before adopting a code of ethics for officials of its particular sector.

**Asset declarations.** The categories of public officials who are obliged to submit declarations are defined in the Law on Anti-Corruption (Article 4.1.), Conflict of interest Law (Article 4.1, Article 23.1) and Annex to the Parliament's Resolution no. 5 of May 2012. These categories are:

- the governing and executive officials from political, administrative and special service;
- the governing officials of support civil service;
- the governing officials of the government or local government business entities or the government or local government participated business entities;
- the governing officials of NGOs, funded by the Government or local government whether permanently or temporarily;
- officials included in the list of officials, of whom the issuance of the Declarations on Conflicts of Interest is mandatory;
- the director general and the director of National Council of Mongolian National Broadcaster;
- candidates at all elections.

In this regard it is worth noticing that the law defines the subjects of anti-corruption law (the public officials to whom these laws can be applicable) through particular positions or posts. It may be a good approach in view of the clarity of legal provisions, but there is a question whether all positions and posts are covered by the list defined by the law. Sometimes the public sector is developing faster than changes in anti-corruption laws, therefore very precise definition of public officials through specific positions or posts sometimes cannot include all persons to whom the anti-corruption and prevention of conflicts of interest regulations should be applied. Therefore many countries define the features (the competence to take decisions, to take an action on state property, etc.) which allow to define particular post as the post of public official or are using a mixed system (by defining several posts as a priori public officials and in addition to this – the definition of public official). This approach is also used in the UNCAC – according to Article 2 “Public official” means: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a „public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as

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<sup>31</sup> See Recommendation of the OECD Council on Guidelines for Managing Conflict of Interest in the Public Service, 2003.

applied in the pertinent area of law of that State Party. Further this issue is linked to the list of officials who are obliged to submit declarations. Therefore, it is recommended to revise these provisions.

The IAAC, the General Council of the Courts, Standing Committee on Legal Affairs of the Parliament, the Secretariat of the Parliament, the Secretariat of the Government, the State Property Committee, the Secretariat of Citizens' Representative Khural of Aimags and the City, Public Administration Department of Governor's office of Aimags or the City, the Secretariat of Citizens' Representative of Soms or Districts or other governing bodies or other state employers collect declarations of respective officials. The declarations are verified by the Standing Committee on Legal Affairs of the Parliament, sub Committee on Ethics of the Parliament and the IAAC.

Officials subject to declaration requirement must submit the declarations to their respective ministries or agencies no later than February 15 of the current year, according to the Anti-Corruption Law. Newly appointed officials submit the declarations within 30 days after the appointment.

According to Article 14.1 of the Anti-Corruption Law, the IAAC publishes declarations of high-ranking officials (President, Prime Minister, members of Parliament, Ministers, etc.) through the weekly newspaper, which is issued by the Parliament. The Declarations are open to any person upon request.

According to information provided by Mongolian authorities the following training is conducted: 1) annual training on registration and storage of declarations for collectors; 2) training for declaration issuers. In January - February 2013, a total of 888 officials and 4,324 declaration issuers from 82 public organizations were covered by training on e-declaration system. IAAC publishes the "Handbook on Declaration" annually for public officials.

In its progress report presented at the ACN meeting in September 2013 in Paris, Mongolia informed on declarations filed by public officials from 110 ministries, agencies and local government organizations in written and e-form. Out of 47,142 declarers registered to file declarations in 2013, 47,127 public officials filed their declarations successfully, of which 47,105 officials filed on time (see table below).<sup>32</sup>

		<b>Income and Asset Declarations in 2009</b>	<b>Income and Asset Declarations in 2010</b>	<b>Income and Asset Declarations in 2011</b>	<b>Private Interest and Income and Asset Declarations in 2011</b>	<b>Private Interest and Income and Asset Declarations in 2012</b>
Total number of public officials obliged to file declarations		54,604	56,832	58,251	45,858	47,142
Total number of public officials who filed declarations		54,468	56,763	58,187	45,762	47,127
Of which	On time	54,453	56,714	58,162	45,755	47,105
	Delayed	15	49	25	7	22
Number of public officials who failed to file declarations		136	69	64	96	15

<sup>32</sup> See Mongolia's Progress report presented at the OECD/ACN 12<sup>th</sup> meeting in September 2013, available at: [www.oecd.org/corruption/acn/ProgressUpdateMongoliaSept2013ENG.pdf](http://www.oecd.org/corruption/acn/ProgressUpdateMongoliaSept2013ENG.pdf).

**Sanctions.** According to Article 29.2 of the Conflict of Interest Law, if an officer in breach of the legislation on the regulation of conflict of interest prevention in public service is not criminally liable, he shall be subject to the following disciplinary sanctions:

- 1) a warning if there is a justifiable excuse for a belated submission of a private interest declaration in breach of the set date;
- 2) a 30% decrease of the monthly pay for a period up to 3 months for violation of restrictions specified in Article 13, failure to fulfil the responsibilities specified in Articles 8.1, 9.1, 19.1, 21.3 and repeated failure to comply with the submission date specified in Article 23.3 of this law for private interest declaration;
- 3) demotion for breach of Articles 10, 14, 17, 18, 20.1, 20.4, failure to take measures as prescribed in Article 9.2, granting of agreement, contract or license to a person subject to restrictions under Article 21.1, appointment of a person in an apparent conflict of interest, submission of false private interest declaration in violation of Article 23.7, repeatedly committing the offences specified in Article 29.2.2 of this law;
- 4) dismissal from public service for breach of Articles 11, 12, 15, 16, failure to provide private interest declaration under Article 23, repeatedly committing offences specified in Article 29.2.3 of this law.

### **Recommendation 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.**

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

#### **Assessment**

**Anti-corruption screening of legal acts.** There is no mandatory systematic screening of legal acts or their drafts with regard to corruption-prone provisions in Mongolia. Article 18.14.1. 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 2013 the IAAC prepared Evaluation Methodology for public organisations’ anti-corruption activities and conducted first evaluation of 123 public organisations. Evaluation was conducted by independent teams that were selected through an open public announcement. Criteria and indicators for evaluation were developed based on legal requirements such as the Anti-Corruption Law, Conflict of Interest Law and Information Transparency and Right to Information Law. Based on the evaluation result, all public organisations were ranked by categories (organisations established by the Parliament, ministries, agencies, provincial and state-owned companies) and announced to the public. In January 2014, the IAAC sent to all public organisations an official letter presenting the evaluation results along with recommendations for improving activities. The IAAC also plans to carry out on-site inspections to 6 aimags and 3 ministries that received poor evaluation results in the first half of 2014 (3 visits to aimags have already been carried out and a number of violations have been detected).

**Administrative procedures.** There is no unified law on administrative procedures in Mongolia, that is a legal act on substantive rules for operation of the public administration. It is a welcome development therefore that, according to the Government, a General Administrative Procedure Law is being drafted and will soon be submitted to the parliament. Rules for consideration of administrative complaints (i.e. appeals against administrative acts and action/inaction by public administration) by administrative bodies and adjudication in administrative case by courts are determined by the Law on Administrative Cases Procedure which was prepared with assistance of German experts and enacted in 2004.<sup>33</sup> 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 are recommended to evaluate how this procedure is implemented in practice to see if mandatory preliminary complaint impedes effective appeal against administrative acts.

### **Recommendation 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**

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<sup>33</sup> Tsogt Tsend, Judicial Procedure for Administrative Case in Mongolia, October 2010. Source: <http://dx.doi.org/10.2139/ssrn.1695283>.

***introduce amendments, if needed, to ensure effective appeal system against public administration.***

### 3.4. Public financial control and audit

#### Assessment

**Supreme Audit Institution.** In January 2003 Parliament adopted the Law on State Audit of Mongolia and established accordingly the Mongolian National Audit Office (MNAO). The MNAO was entrusted to perform financial and performance audits, which cover all State organisations, except for the State Great Khural (Parliament) itself, regardless of the source of funding.

The MNAO is not fully in line with international standards on independence, in particular the Mexico Declaration on SAI Independence. In particular, principles of clear mandate of supreme audit institution stated in the constitution and adequate funding and staffing are not fully implemented. Compliance with other principles of the Mexico Declaration is reflected in the table below.

Principles of independence of SAI according to Mexico declaration	Status of compliance in Mongolia
1. The existence of an appropriate and effective constitutional/statutory/legal framework and the de facto application of provisions of this framework.	Law on State Audit came into force in 2003. There is no provision on State Audit in constitution of Mongolia.
2. The independence of SAI heads and members of collegial institutions, including security of tenure and legal immunity in the normal discharge of their duties	The applicable legislation specifies conditions for appointment, re-appointment, employment, removal and retirement of the Auditor General and deputy Auditor General ( <i>Law on State Audit, Article 13</i> ) There is no provision about legal immunity for the General Auditor and Deputy General Auditor in the normal discharge of their duties
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions.	MNAO has powers to audit the use of public money, resources, assets by their recipient or beneficiary regardless of its legal status, as well as collection of revenues owed to the government or public entities ( <i>Law on State Audit, Article 4</i> )
4. Unrestricted access to information	<i>Law on State Audit, Article 21. Access to Information</i>
5. The rights and obligation to report on their work	<i>Law on State Audit, Article 26. Reporting of the National Audit Office</i>
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them	<i>Law on State Audit, Article 24. Publishing of Report</i>
7. The existence of effective follow-up mechanisms on SAI recommendations	No provision on follow-up in the Law on State Audit
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources	<i>Law on State Audit, Article 8.1</i> states "The budget of the National audit office shall be discussed and approved by the State Great Khural based on the proposal of the National audit office. The budget shall ensure the

	<p>requirement of independent activity of the National audit office”.</p> <p>In practice Ministry of Finance is reviewing and approving the budget of MNAO.</p> <p>According to the Article 14.4, remuneration and bonus system of staff of MNAO are regulated by the legislation on government services; there is lack of administrative autonomy on financial resources.</p>
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In 2012 11 performance audits were conducted upon request of the Standing Committee on Public Administration and Committee on Budget of the parliament, as well Secretariat of President, Minister of Human Development and Social Security, Minister of Construction and Urban Development. When conducting audits the MNAO is following international standards on auditing, financial audit and performance audit handbook, document on procedures for performance audit and as well State Inspection Standards.

The MNAO employs 70 persons in central office and 262 persons on local level. In 2012, 69 staff member took part in local and international trainings. Since 2009 the financial and performance audit departments were separated and at present the structure of the MNAO includes departments of: Financial Audit; Performance Audit; Compliance Audit; Strategic Management; Administration and Support Service.

A revised Law on the State Audit was adopted in December 2013.

**Financial Management and Control.** There is no separate regulation, guidelines, framework for Financial Management and Control (FMC) system or notion in budget law about it. Some elements of the FMC, for instance Risk Management and COSO model, are mentioned and used by the Ministry of Finance and Specialized Inspection Service. Thus there are not clear rules and procedures on how to ensure formation of the FMC system within the public sector. Though there is a link with elements of FMC of the Public Sector Management and Finance Law, Article 1 of which defines purpose of the law as “to regulate relations connected with authorities and responsibilities of state organizations and officials with regard to preparation, approval, spending and reporting of budget, personnel policies and principles of operational management of budgetary bodies, budget control and accountability system”. Topics like strategic business plan and strategic objectives set by Government and the budgetary bodies, reporting by the State Budgetary Body are mentioned in this law. There is a lack of coordination and control of fulfilment of these provisions according to COSO model, which defines five elements of the FMC system:

- Control Environment, which means the whole structure and culture of the entity;
- Risk Management, which should be done by the managers;
- Control Activities, which are set by the managers to mitigate assessed risks;
- Communication and Information, to report and raise awareness;
- Monitoring and evaluation, to assess success of set objectives, activities and outcomes.

**Internal Audit.** Since 1 January 2013 internal audit units have been established in state organisations of Mongolia according to amendments in the Budget Law. Internal audit units are decentralised and operating under respective General Budget Manager. Article 69 of the Budget Law is dedicated to internal audit and inspection function and states that internal auditors have the “powers equal to that of the state financial inspector”.

There is limited information about the work of internal auditors, their qualification and professional background. According to the Budget Law focus of internal audit is more on financial control, compliance, rather than risk-based approach, performance and system audit. Internal audits are

*“to monitor the legislation implementation, conduct financial control and inspection over budget funds, debts, payments, revenues, expenditures, programmes and investments, make assessment and evaluation, submit recommendations, provide risk management”* (Budget Law, Article 69.1). There is no clear difference of the audit function with the inspection and managerial accountability in Mongolia, which runs contrary to international standards. Internal audit is authorised to provide risk management, which is the task of each line manager of the state and budget spending organisation.

Relevant rules and procedures were adopted by the by Mongolian Government on 11 September 2012. Resolution no. 129 defines internal audit rules, internal audit charter and assigns supervision responsibility to the Minister of Finance. The Internal Audit Charter defines goal, scope, principles, organisation of internal audit, as well rights and obligations of internal auditors, etc. Minister of Finance approved Resolution no. 29 on 1 January 2013 on internal audit committees, their activities, rights and obligations. No information was provided on how these audit committees are set and how they are working in practice.

The Ministry of Finance has the role of coordinating internal audit function. *“The state central administrative body in charge of finance and budget shall provide the internal audit units of the General Budget Managers with activity standards and methodological guidance”* (Budget Law, Article 69.2). Budgetary Control and Risk Management Department was set up in the Ministry of Finance and it consists of two divisions: Internal auditing, monitoring and evaluation division; Financial inspection division.

The main focus of the Department is internal audit and inspection activities; developing risk management and provide government's internal audit system with rules, policies, strategies, standards; improving internal audit and financial control rules; delivering professional and technical guidance, advice; policy implementation, as well monitoring, evaluating and providing information to the users. It appears that this unit is coordinating the functions of internal audit, inspection, risk management and budget control, but there is no clear separation between these functions, which is not a good practice.

According to information provided on the web-page of the Ministry of Finance, Budgetary Control and Risk Management Department deals with awareness-raising activities and disseminating the best practices of internal audit, providing training. The Department uploaded on the web-page of the Ministry of Finance, among others, presentations on: monitoring implementation of the recommendations and traceability; quality control; the risk of fraud and the internal auditor; efficient conduct of audits; enterprise risk management, and international principles and trends; IIA – Institute of Internal Auditors.

There is limited information about the strategy and policy vision of the reform related to the financial control and audit. At the same time the Government informed that a Mid-term Strategical Plan for Internal Audit in the State Sector was approved by the resolution of the Ministry of Finance in January 2014.

**Inspection.** Mongolia has a separate Law on State Control and Inspection and a centralised professional inspection organisation, namely the State Professional Inspection Agency, which conducts assessment of the work undertaken by ministries, agencies, professional inspections and local administrative organisations to ensure the implementation of the legislation, President's decrees and the Government's decisions. Inspection means *“comprehensive inspection measures aimed at assessing whether the activities (action, non-action) conducted by citizens and legal parties, including production and sale of goods, output, performance of jobs and services meet the requirements specified by the legislation”* (Law on State Control and Inspection, Article 31.1.1). The Law on State Control and Inspection was approved in January 2003.

Professional Inspection Organization can conduct planned, unplanned and execution inspection activities. In addition, planning of activities is based on risk assessment and risk classification: low, medium, high, according to the potential harm to human life, health, environment, social security and possible consequences (Article 54). According to the classification high risk means assessing every one year, medium - once in 2 years, and low - once in three years. State Professional Inspection Agency on its web-page highlights compliance with the basic principles of the Lima Declaration. During last year the State Professional Inspection Agency issued 2,568 conclusions.

The structure of State Professional Inspection Agency is comprehensive and covers all areas of the focus of inspection (Central Office; Strategic Planning and Policy Division; Monitoring and Evaluation Division; Public and Foreign Relations Department; Finance, Labour and Social Security Inspection Department; Food and Agriculture, manufacturing and service Inspection Department; Health, Education, Culture and Science Control Department; Environment and Tourism, Head of the Geology and Mining Control; Monitoring infrastructure; Border Inspection Department).

State Professional Inspection Agency cooperates with the law enforcement organizations. In 2012 out of 247 inspections 90 detected signs of crime and were forwarded to special anti-corruption agency, police, etc. In addition, there are special provisions to ensure the control and quality of work of professional inspection organisation. The Law on State Control and Inspection gives authority to the inspected organisation to reflect on findings of the inspection. If there are a signs of illegal actions, violation of law during the inspection, inspected organisation can complain to the inspection organization. *“Authorities of the inspection organization shall review the complaint and take measures to resolve it within 30 days since receiving the complaint. If the authorities and officials of the complaining organization or economic entity shall not agree with the decision of the inspection organization they may file their complaint to the court.”* (Article 14.1 and 14.2)

#### **Recommendation 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.**

### 3.5. Public procurement

#### Assessment<sup>34</sup>

The review of the Public Procurement Law of Mongolia suggests that the main issue is a substantial volume of exclusions of public sector contracts from the application of the Law. 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 secure economy, efficiency and transparency of the procurement processes and reduce the grounds and risks of corruption.

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

The provisions of the Law 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.

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

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

Provisions of the Law for soliciting clarifications 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 Law assumes a large flexibility in respect of modification of contract terms by tenderers. If it is a common practice, it shall be eradicated as it distorts competition.

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<sup>34</sup> The analysis of the situation was a bit hampered by provision of incomplete translation of the latest text of the Law, as well as questionable presented statistical data on the volume of public procurement in the country (which can hardly be as low as MNT 1,244,508 and amount to 361 contracts only) and lack of an updated information on the country e-procurement portal.

The criteria for selection of the evaluation committee members seem to have non-mandatory nature, which may lead to a conflict of interest or unprofessional evaluation of tenders. The Law provisions shall be strengthened.

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

The Law 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.

Although e-procurement is encouraged by the Law it shall be further developed to cover broader range of procedures and ensure timely and full presentation of information and disclosure of the results of the tenders. For example, currently on the country e-procurement portal ([www.e-procurement.mn](http://www.e-procurement.mn)) there is no information on award of any contracts, but one in 2013.

The professionalization of procurement as well as overall capacity building for people involved in procurement shall be enhanced.

### **Recommendation 3.5.**

- 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.**

### **3.6. Access to information**

#### **Assessment**

Constitution of Mongolia, in a clause separate from the freedom of expression right (Article 16.17), guarantees the "right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. In order to protect human rights, dignity and reputation of

persons and to defend the state national security and public order, secrets of the state, individuals, or organisations which are not subject to disclosure shall be defined and protected by law.”

The special Law 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>35</sup>

Scope. The Right to Information Law regulates both duties of public institutions to proactively publish information (to ensure information transparency) and to provide information on request. As to the latter, the Law provides for the right of citizens (citizens of Mongolia, foreigners and stateless persons residing in Mongolia) and legal entities to obtain upon request all types of information, documents, agreements and contracts in possession of the organization subject to the Law, information related to the property in possession of the organization, and any other information related to the activities of the organisation. The scope of the Right to Information Law is explicitly (and rightly) separated from dealing with petitions and complaints, which is regulated by a special law.

The Law covers a broad range of organisations subject to the requirement to provide information (proactively and upon request): Secretariat of the State Great Khural (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 Khural 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 has to be clarified whether this exception relates only to the proactive publication or to access to information through requests as well. In any case, 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.

It is also advisable that the Parliament and the President are 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.

Procedure. The Right to Information Law includes unnecessary formalities for information requests. In particular, Article 11.3.1. requires from the requester to state his full name, address, e-mail address, telephone number, number of national ID or its equivalent and signature (state registration number and signature of authorized person in case of a legal entity). According to Article 12.2.3. the requester should also “articulate the required information realistically”. The official of the public entity should check the accuracy of the personal information related to the citizen and legal entity using number of national ID or its equivalent document. There is also a requirement to include digital signature in the electronic request of information (Article 15).

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<sup>35</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.

Identity of the requester matters only when information about himself/herself is requested, in all other cases there is no need to require identification and additional contact details. This violates the principle of maximum disclosure and that formalities for requests shall not exceed what is essential in order to process the request.

The Law stipulates that information may be provided orally, in written and electronically, and citizen and legal entity may examine the information in person. However, this concerns the ways of providing, not requesting information. It would be useful therefore to explicitly state that information requests may be lodged in any form suitable for the person (in writing, orally, by e-mail or other technical means).

The Law (Article 14) provides that an information request shall be resolved and responded to immediately if possible. Unless otherwise provided by laws, information shall be given within 7 business days. If the requested information is not in possession of the organisation, the latter should transfer the request to the relevant organisation within 2 business days and inform the requester about the transfer (Article 13.1.3.). These are commendable provisions, which provide for swift processing of requests and provision of information. Article 14.9., however, stipulates that, “if deemed necessary”, the 7-day period may be extended once for 7 days. This is not a clear provision: wording “if deemed necessary” leaves too much discretion to the requested organisation, it should be replaced by clear indication in what cases the term for processing the request may be extended (*e.g.* if third parties need to be consulted, search within significant amount of data is required).

The Law mentions officials who deal with information requests but does not provide clearly for designating of access to information officers (units) who should deal with processing of information requests.

The Right to Information Law provides for cases when it is “prohibited” to disclose information (Articles 18-21): if there are well-grounded reasons that the public release of information might be detrimental to the national security and public interest of Mongolia; if information is related to matters under review by the Mongol Bank, the Financial Regulatory Commission, state administrative organisations in charge of competition or specialised inspection; if it is necessary to protect the secrets of state, organisation and individual during procedures of inquiry, investigation and prosecution; if information is related to concluding of an international treaty or agreement; intellectual property related information without permission of the owner; disclosure of personal information without consent of the person (except for the person’s first and last name, age, gender, profession, education, official position, work address and telephone number); commercial entity secrets without its written permission; “other cases specified in laws and legislation”.

The above provisions on prohibition to disclose certain categories of information raise a number of concerns:

- 1) Only exemption of information related to “national security and public interest of Mongolia” is formulated with reference to the qualitative conditions – existence of “well-grounded reasons” and “detriment”. This can be seen as constituting a ‘harm test’ – restriction of access is conditional on possible damage caused to protected interests. All other exemptions are formulated categorically in absolute terms – belonging to certain category of information is sufficient to prohibit disclosure. No public interest test (see below) is provided.
- 2) With regard to the first ground (“detrimental to the national security and public interest of Mongolia”) is it not clear what is meant by the “public interest of Mongolia”, this ground is too vague and subject to possible abuse.
- 3) The list of prohibitions from disclosure is open-ended, it can be extended by other laws and even “legislation”, which can mean secondary legislation approved by administrative and other authorities. This allows unlimited and unchecked extension of types of information subject to non-disclosure.

- 4) No requirement of proportionality when restricting access to information is provided, in particular that if only a part of the document is restricted in access, the rest of it should be accessible.
- 1) The Right to Information Law does not seem to cover legal provisions concerning state secrets which include the Law on State Secrets (1995) and the Law on Approval of the State Classified Information List (2004). “Secrets of state” mentioned in Article 18 of the Right to Information Law concern only information related to inquiry, investigation and prosecution procedures. Article 5.1.3. provides for “openness of all information with exception of the state classified information pursuant to the law”. This excludes a large part of the state-held information from the general access to information framework and is unacceptable. Procedures for classification of information as state secrets may be regulated by special laws and regulations but they should be covered by general provisions on access to information, in particular with regard to procedural aspects of lodging and processing information requests, grounds for denial of access, appeal, etc.

Overall, international standards and best practice recommend<sup>36</sup> that restriction (denial) of access to information be carried out on a case-by-case basis and be allowed only when specified in the law, be proportionate and necessary in a democratic society in order to protect legitimate public and private interests<sup>37</sup>, when disclosure would or would likely to cause substantial harm to such interests and when such harm outweighs the public interest in disclosure of the requested information. The above conditions for restriction of access are called the “three-part test” or harm and public interest tests. Any processing of information requests should proceed from the presumption of maximum disclosure and that all information held by public authorities is presumed to be open without exemption for any category (type) of information, including state secrets and personal data; a public entity which received a request for information in order to restrict access should substantiate that all three necessary conditions are met: (i) restriction is required to protect a legitimate interest, (ii) possible harm to the interest from disclosure, and (iii) harm outweighs public interest in disclosure. Such approach allows balancing different interests – e.g. the right to information and the right to privacy, none of which is absolute or superior to another.

International standards require that there be an independent oversight mechanism for enforcement of access to information right. Such mechanism should complement possibilities of administrative and judicial appeal. It can be either in the form of a special institution (commission or commissioner on access to information, sometimes merged with the personal data protection authority), or vested with the general Ombudsman. However, the latter model is recognised to be suboptimal, as Ombudsman has no power to issue binding decisions and order disclosure of information.<sup>38</sup>

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 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

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<sup>36</sup> See, among other sources: Council of Europe Convention on Access to Official Documents, 2009; Model Inter-American Law on Access to Public Information, 2010; Model Law on Access to Information for Africa, 2011; Article 19 Model Freedom of Information Law; Global Principles on National Security and the Right to Information (“The Tshwane Principles”), June 2013; General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights, September 2011, Human Rights Committee.

<sup>37</sup> Such legitimate interests may differ, but international treaties providing for the freedom of expression and information should be used as basis for their formulation (e.g. Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention of Human Rights).

<sup>38</sup> See “Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2009-2013”, OECD, 2013, p. 141, available at: [www.oecd.org/daf/anti-bribery/anti-corruption-reforms-eastern-europe-central-asia-2013.htm](http://www.oecd.org/daf/anti-bribery/anti-corruption-reforms-eastern-europe-central-asia-2013.htm).

rights and freedoms; relevant organization to whom it is addressed is obliged to consider and reply in writing within one week in reaction to demand and within 30 days to 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. It is therefore impossible to assess how effective this mechanism is.

Sanctions. The Right to Information Law provides only 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 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). No information is available on administrative sanctions for non-compliance with the access to information provisions.

Proactive publication. The Mongolian Law on the Right to Information includes extensive provisions on proactive disclosure of certain information in a separate chapter of the law. These are commendable provisions. The Law mandates publication of information in four areas: operational transparency; human resource transparency; budget and financial transparency; transparency in the procurement of goods, works and services by the state and local government. It includes detailed list of information which should be disclosed under each area, including through officials web-sites.

**Defamation.** 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.

All relevant offences provide for harsh sanctions including deprivation of liberty; defamation with accusation in commission of a serious or grave crime attracts especially severe punishment – a hefty fine or imprisonment of minimum 2 years.

Criminalisation of defamation and insult, especially with possibility of imprisonment as a sanction, has significant chilling effect on the media and journalist activity, including investigative journalism which is very important for detecting and exposing corruption in the society. It also adversely affects reporting of corruption and whistle-blowing. This is especially the case when higher sanctions are

provided for insulting or defamation of public officials. It also contradicts international standards under which public officials may be subject to a much higher level of criticism instead of enjoying higher protection.

As was noted in the Summary report for implementation of the Istanbul Action Plan in 2008-2013, existence of criminal defamation laws and their application in practice was found by the IAP monitoring to be a serious obstacle to free activity of the media which cannot exercise their role as a watchdog properly under such conditions. IAP monitoring reports consistently recommend to repeal the general criminal liability for defamation and insult, as well as special crimes related to insult or infringement of honour of certain public officers, and to regulate these relations through civil law only.<sup>39</sup>

It is therefore strongly recommended to Mongolia to revoke criminal and administrative sanctions for insult and defamation in any form. Damages to reputation, honour and dignity of a person should be treated as a civil tort and dealt within civil procedure by civil courts which may award damages to the aggrieved party. At the same civil law instruments should provide for adequate restraints not to stifle freedom of information with unjustified defamation lawsuits or unreasonable demands of damages (for instance by setting court fees in proportion to the sought amount of claims and introducing a short statute of limitation period for such lawsuits, exempting from liability expression of value judgments, requiring malice on behalf of the defamer for ruling in favour of the aggrieved party).

**Extractive industries transparency.** Mongolia is a Compliant country under the EITI since October 2010 (process started in 2005). This means that the country produces EITI reports that disclose revenues from extraction of its natural resources. Companies disclose what they have paid in taxes and other payments and the government discloses what it has received; these two sets of figures are compared and reconciled by independent auditors. Mongolia's EITI National Council, which is responsible for of coordination and monitoring and chaired by the Prime Minister, and Multi-Stakeholders' Working Group, in charge of EITI implementation, were established in January 2006; their composition was renewed in 2009 and 2012; Mongolia's EITI Secretariat was established by the Prime Minister's decision in 2007 and since December 2011 has 3 full-time staff members. EITI Strategy for Mongolia in 2010-2014 was endorsed by the Council in 2010. Government of Mongolia proposed to adopt an Extractive Industries Transparency law in 2014.<sup>40</sup>

EITI reconciliation report for 2012 (prepared by consortium of UK based Moore Stephens and Mongolian company Dalai van) was endorsed in December 2013 by the Council and published. 200 companies' reports have been reconciled with regard to 33% of revenue of the 2012 national budget. Discrepancies were slightly higher than the 2011 reconciliation report and amounted to MNT 360 million (about EUR 155,000).<sup>41</sup>

**Budget transparency.** International Open Budget Index (internationalbudget.org) recorded improvement in the budgetary transparency of Mongolia since 2006 – the score rose from 18% in 2006 to 60% in 2010, but then fell to 51% in 2012 (average worldwide score was 43).<sup>42</sup>

Mongolia's score indicates that the government provides the public with only some information on the national government's budget and financial activities during the course of the budget year. This makes it challenging for citizens to hold the government accountable for its management of the

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<sup>39</sup> "Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2009-2013", OECD, 2013, cited above, p. 143.

<sup>40</sup> Source: <http://english.eitimongolia.mn/content/6313.shtml>.

<sup>41</sup> *Idem*. Reports are available of the Mongolia's EITI web-site at: <http://english.eitimongolia.mn/filelibrary/13.shtml?sel=>.

<sup>42</sup> Source: <http://survey.internationalbudget.org/#profile/MN>.

public's money. The International Budget Partnership, which is responsible for the Index, noted in this context that the government of Mongolia has the potential to greatly expand budget transparency by introducing a number of short-term and medium-term measures, some of which can be achieved at almost no cost to the government. A number of recommendations were made to the government of Mongolia to improve budget transparency and oversight and public engagement in the budgeting.<sup>43</sup>

### **Recommendation 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.***

## **3.7. Political corruption**

### **Assessment**

The Law on Political Parties regulates the establishment of political parties, establishes rules on their activities, organisation and rights of parties and - in Chapter 4 - financing of political parties. This chapter defines rules on capital and income of party, expenditure of the party income, membership fees and donations, subsidies from the state, financial auditing of the party.

Concerning state funding Article 19 of the Law on Political Parties determines that the government shall subsidise the party that has seats in the parliament for one time within three months after the

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<sup>43</sup> See <http://internationalbudget.org/wp-content/uploads/OBI2012-MongoliaCS-English.pdf>.

election result is announced. Each vote shall be valued as 1,000 MNT<sup>44</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 shall also be subsidised quarterly from the state budget during the term of office and for each seat in the parliament shall receive 10 million MNT. 50% of this subsidy shall be spent for the parliamentary election unit areas. There is no information on implementation of these provisions in practice.

The Law on Political Parties does not set the rules on prevention of conflict of interest but many political positions (the President of Mongolia, members of the State Great Hural, member of the Government and many others) fall under regulation of others laws – the Law on Civil Service and the Law on the Regulation of Public and Private Interests and Prevention of Conflict of Interest in Public Service. That means that regarding political public officials the general rules on prevention of conflict of interest are applicable (see relevant section above).

As regards the audit of parties the Law states that controlling organisation of the party shall check the finances of the party. Central organization of the party shall make consolidated statement after the corresponding organisation has made the financial report. Finances of the party should be audited annually and audit results should be published. It is not clear what does “controlling organisation” mean, how deeply it checks the finances of a party, what are the powers of such organisation. The same uncertainty exists regarding consolidated statement – it is not clear when it has to be drawn up, who is responsible, whether it is public or not. It is also not clear who should audit finances of a party, when, to what extent and how results are published.

Directors, chief managers and other equally positioned employees of the party are forbidden to work, keep position related to finances in any political fund, association, organizations and companies. Director of the party is forbidden to participate in the operation of finances and budget of the party. Issues of reporting on financing of Presidential, Parliamentary elections and election of province, capital city, counties, districts civil representative counsel are regulated by the electoral legislation.

State Supreme Court checks if the rules, platform of the party and their amendments are in compliance with the Constitution of Mongolia and the Law on parties. Parties have to register their rules, platform and amendments with the State Supreme Court within 10 days.

For violation of provisions on party funding the main sanction is an administrative fine. For some violations the law prescribes expropriation of profit or donation. The common feature of these provisions (Article 24 “Responsibilities for the law violations”) is that they are silent on what is the procedure and who is investigating these offences, who is applying sanctions. Such uncertainty can lead both to ineffective activities of controlling institutions, as well as to breach of the rights of parties. This is a serious problem, especially regarding rules on party funding, because sanctions against political parties, donors and party leaders are always politically a very sensitive issue.

The law fails to regulate the so-called related persons, *e.g.* the situations when a political party establishes other entities (youth, interest clubs and other institutions to attract people or resources). The practice of other countries shows that if the law defines limits and prohibitions on activities of political parties, they are trying to circumvent the law through different affiliated organisations or persons.

The detailed rules on election campaigning are included in election laws – Law on the State Great Hural (Parliament) Election of Mongolia, Law on Election of the President of Mongolia, Law on Election of Aimag, Soum and Duureg Hurals of Citizen Representatives. These legal acts contain very

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<sup>44</sup> 1,000 MNT equals about USD 0,56.

similar rules on party funding and campaigning: expenses which in the process of elections should be covered by state or municipalities, rules on election campaigning, prohibitions and restrictions and election spending – rules on election expenses account, campaign donations, election expenses statement. The laws also define penalties for violation of electoral legislation and jurisdiction to resolve complaints and disputes arising from violation of electoral legislation.

Article 37.1 of the Law on the State Great Hural (Parliament) Election of Mongolia determines that the General Election Commission (GEC) shall set (by 1 February of the election year) the maximum amount of election expenses for a candidate proposed for a district taking into account the size and location of the district and its population size and maximum amount of election expenses by a party or coalition. Very similar mechanism is included in other laws on elections. It is a positive provision that ceilings for election expenses are established, but it is not clear according to which rules or principles, leaving completely it for decision of the General Election Commission.

Operation of the system of election campaign financing in practice can be seen from the 2013 Presidential elections. According to the OSCE/ODIHR election observation report, the Presidential Elections Law (PEL) provides for private donations as the only financial sources for parties and candidates. In February 2013 the GEC set the maximum election expenditure at MNT 5.1 billion (some EUR 2.7 million at the time of the campaign) per party and MNT 3.1 billion (some EUR 1.6 million) per candidate. According to the PEL, campaign donations can be made only in the election year and are limited to 40 minimum monthly salaries, an equivalent of MNT 10 million (some EUR 5,300), per individual and five times that per legal entity. The law also prohibits donations from a number of sources (foreign countries, organizations or citizens, state or local authorities or legal entities owned by them, people in debt, trade unions, religious organizations and NGOs). Violations are punishable by fines that are rather minor compared to possible excess donations, but any amount above the respective donation limit is to be confiscated. As political parties were to provide final reports 30 days after the election, no financial information was made public by the candidates during the election period. Reporting requirements set by the PEL include full name, address and amount of donation made by a citizen or a legal entity, with the GEC mandated to receive, review, and publish these reports within 45 days after the election.<sup>45</sup>

As regards the financial monitoring of elections, the law determines that General Election Commission exercises the following powers: 1) to oversee election financing and expenditures of political parties, coalitions and candidates; 2) to review financial reports of election committees; 3) to obtain information from parties, coalition, candidates and election committees within its powers; 4) to obtain information on election financing from state and other organs, officials and individuals; 5) to conclude and compile documents on election financing and expenditure irregularities. If necessary, the Commission investigative activities can be executed through relevant investigative authorities, including the State Audit bodies.

In its report on election observation of the latest Presidential elections in June 2013 the OSCE/ODIHR noted that the GEC sees its role only as an intermediary in this process and does not audit the reports, although the PEL empowers the GEC to request a state audit of a party's or candidate's finances and expenditures when the GEC deems it necessary. There was only one person in the GEC assigned to oversee political financing, in addition to accounting for expenses by all election commissions. OSCE/ODIHR report concludes that, taken together, these factors may undermine the effectiveness of the control mechanisms introduced by the PEL and can potentially decrease the public trust in the way electoral campaigns are financed, as highlighted by a number of OSCE/ODIHR election observation mission interlocutors from civil society.<sup>46</sup>

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<sup>45</sup> Presidential Election on 26 June 2013, OSCE/ODIHR Election Observation Mission, Final Report, September 2013, p. 13, available at: [www.osce.org/odihr/elections/105150](http://www.osce.org/odihr/elections/105150).

<sup>46</sup> *Idem*, p. 14.

The Commission has to establish non-staff independent media council during the elections. Professional media institutions, non-governmental organizations as well as political parties, electoral coalitions participating in the election shall have equal representation in Independent Media Council. The Media Council monitors equality in advertisements and information run by political party, coalition and candidates, review complaints and applications filed by political party, coalition, candidates, legal entities and citizens on such issue and introduce conclusion and motions to the Commission. The Commission determines the composition and procedure for operation of an independent Media council.

One of the issues which are not clear is the delineation of competences between the Central Election Body (General Election Commission) and the State Audit Office. According to the amendments in the Law on State Audit of 15 December 2011 (Article 15), the State Audit Office is in charge of auditing and issuing conclusions on expenditures from state budget related to elections organisation, in particular funding and election expenditures of candidates, parties or coalitions. The State Audit Office is authorised to review and validate donations from legal persons and citizens for political parties and parties incorporated in coalitions that plan to participate in elections one year before the Parliamentary election. State Audit Office sends its conclusions to the General Election Committee.

The Law on the Central Election Body 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 to review their reports on disposition of electoral funds, to publish such reports.

Unfortunately no statistics was available in English or Russian regarding results of activities of both institutions.

In 2013 the President of Mongolia, after his re-election, proposed to review legislation on political party and election campaign financing, and relevant task force has been established in the parliament.

### **Recommendation 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.**

## **3.8. Integrity in the judiciary**

### **Assessment**

According to the Constitution of Mongolia, the court system of Mongolia consists of: the Supreme Court acting as the court of cassation (25 justices; criminal, civil and administrative chambers); Aimag (provincial) and capital city courts which are courts of appeal; Soum (county), intersoum and district courts – first instance courts. Specialised courts such as criminal, civil and administrative courts may be formed. System of specialised administrative courts was set up in 2004 with 21 administrative courts in Aimag and capital city, Administrative Court of Appeals (set up in 2011) and Supreme Court; general first instance courts act as administrative courts for complaints against local administration/officials.

Under the Constitution, judges should be independent and subject only to law. It is prohibited for a private person or any public official (including the president, prime minister, members of the parliament or the government or an official of a political party or other public organisation) to interfere with the exercise by judges of their duties. A Judicial General Council functions for the purpose of ensuring the independence of the judiciary. It deals with selection of judges from among lawyers, protection of their rights and other matters pertaining to ensuring the independence of the judiciary.

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 on 15 April 2013.

Guarantees of independence. In addition to provisions of the Constitution, the Law on Courts also explicitly guarantees independence of the judiciary. It provides that the judiciary is independent from the legislative and executive powers, exercises the judicial power impartially and independently from any entity and person. It is prohibited to enact any legislation or issue any administrative act that would either downgrade or encroach upon the independence of judiciary. A Chief Judge of any instance court is prohibited from interfering in adjudication process by any judge and from issuing directives, guidelines, or from assignment of a case to a particular judge, or in any other manner. The State should ensure the political, legal, economic and other guarantees and conditions for fulfilling the independence of judiciary. The judiciary shall have its own administration to be performed by the Judicial General Council and court secretariats, the relations concerning their operations shall be regulated by law. These and other guarantees of independence included in the law are commendable and should be strictly respected in practice. Prohibition for the chief judge to interfere with adjudication is especially notable, as in other countries of the IAP it is often the source of undue influence on judges.

Also important are guarantees of financial independence. The Law on Courts states that the judiciary should have an independent budget, and the government shall provide the conditions for its continuous operation (Article 6); judiciary should have an independent budget, and the budget for courts of Mongolia shall be an integral part of the State budget; the Judicial General Council plans and drafts an operational budget and capital investment budget for the courts of all instances, and submits it directly to the State Great Hural (Parliament); it is prohibited to downsize the budget for judicial operations from a previous year; courts are prohibited from receiving the donations or financial assistance in any form from foreign and domestic private individuals and/or legal entities, with exception to the international, humanitarian aid projects and programs for loan or assets procured through the international treaties or agreements of Mongolia (Article 28). Direct participation of the Judicial General Council in the formulation of the draft judicial budget and its submission to the parliament independently from the executive are welcome provisions, which are missing in many other countries.

Appointment. There is no probationary period for judges in Mongolia; 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. There is no indication as to basis (grounds) for assessment, in particular, that it should be merit based; no objective evaluation (e.g. tests, standard exams) is provided either.

Chief judges. 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 chief judge of the respective court. 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.

Mongolia's Law on Courts already provides for functioning of the consultative conference of judges in each court, which, among others, have the following powers: to determine court's internal organisation and regulations in collaboration with a court secretariat, with exception to adjudicating specific cases or disputes; to determine the order list, in which the chairs should be appointed for court sessions; to determine the bench composition of judges that will participate in court sessions; to nominate a candidate to the Judicial General Council; to nominate a candidate for position of a Chief Judge of respective court; to nominate a candidate as its member to the Judicial Ethics Committee; to approve the regulations for case distribution. These powers of the judges' council should be further developed and extended.

Dismissal. In addition to retirement, resignation and objective grounds for termination of judicial office (death, illness, etc.), the Law on Legal Status of Judges provides for the following grounds: engagement in activities incompatible with judge's position; judge under disciplinary punishment committed another offence within one year; court decision on convicting judge of a criminal offence came into force; invalidation of the license to conduct professional activity of a lawyer.<sup>47</sup> Decision on forced medical treatment came into force; misuse of official position that affected judicial independence, getting the court to serve or exerting pressure to serve in favour of one side.

The ground for dismissal based on misuse of official position requires clarification; it appears to be too broadly formulated and vulnerable to abuse. It is even more so the case since if abuse of powers or a corruption offence is meant under such "misuse" then they are already covered by such dismissal ground as the conviction for a crime.

Judicial council. Mongolia has set up a Judicial General Council which is an important institution for guaranteeing judicial independence under the Constitution of Mongolia. The new Law on Judicial Administration provides that the Council consists of 5 members, including three persons nominated respectively by the conferences (consultative assemblies) of judges representing the courts of first instance, appeal and cassation/review, one person representing the Mongolian Lawyers (Bar)

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<sup>47</sup> "A license for carrying out professional activity of lawyer" is an official document that certifies the right to practise law according to requirements determined in the Law on Legal Status of Lawyers.

Association and one person representing the Ministry of Justice. The President of Mongolia appoints members of the Council based on the nominations. It should be noted in this regard that according to international standards a judicial council should be composed of majority of judges elected by their peers, i.e. by other judges. Therefore the new law is still not fully in line with the international standards.

Remuneration of judges. According to information by the Mongolian authorities, in order to ensure judicial independence the Judicial General Council was assigned the power to determine amount of judicial remuneration. The Council established the minimum monthly base salary of a judge in amount of MNT 3.7 million (about EUR 1,600). In addition to the base salary a judge would receive bonuses up to 50% from the base salary depending on seniority and “level of professional activity”. Thus total amount of judicial remuneration would reach MNT 5-6 million (about EUR 2,100 to 2,600). This decision of the Judicial General Council came into force on 2 January 2014. No information on the calculation and assignment of bonuses to judges was provided.

The fact that the judicial council and not the Government was put in charge of the judicial remuneration is a laudable development. It also appears that the level of the remuneration is sufficiently high to be commensurate with the judicial duties. At the same time, according to international best practice it is recommended that the level of judicial remuneration is set directly in the law to ensure transparency, certainty and judicial independence; the law should determine the calculation of the main salary and any additional payments which should be objective (e.g. additional payments for number of years in judicial service, for holding an administrative position, etc.) and not linked to any kind of performance evaluation which is open to subjective opinion and misuse.

Publication of court decisions. According to information provided by the Mongolian authorities, the Judicial General Council introduced in 2012 publication of final court decisions of all instances on-line ([www.shuukh.mn](http://www.shuukh.mn)). Decisions are publicly available and the system is maintained by the Judicial General Council. More than 97,000 decisions in 77,000 cases have been published on the web-site site as of beginning of January 2014; decisions date back to 2011. This is a very welcome development.

### **Recommendation 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.**

### 3.9. Private sector

#### Assessment

In 2014 Mongolia improved its positions in the World Bank Doing Business survey, moving from 80<sup>th</sup> to 76<sup>th</sup> out of 189 economies. Improvements were made in several areas; for example, the country jumped 25 positions in dealing with construction permits. The government efforts leading to this improved ranking focused on reducing red tape and improving taxation, customs, permits and business registration procedures. For example, in April 2013, Mongolia officially initiated the development of the first Online Company Registration System with assistance from the USAID.

However, many integrity risks still remain in the business operations in Mongolia. Licences and permits, public procurement, tax and customs, privatisation of state property and the management of recently discovered natural resources present considerable risks of corruption involving the private sector.

Political leadership of Mongolia recognises the important role that business can play in fighting corruption. The President of Mongolia in his speech at the Mongolian Economic Forum of 2011 stated that Mongolia joined the Partnering against Corruption Initiative of the World Economic Forum and that this initiative launched by business “had a meaning to become an example for governments by making private sector open and pure one with right leadership.”

The National Programme for Combatting Corruption adopted in 2002 contains section 5.2.c of Chapter 3 on implementation activities which calls the executive authorities to prevent the creation of conditions for corruption involving the business sector. The strategy also contains section 6 of Chapter 3 on economic liberalisation which proposes measures to reduce corruption risks in licences and permits, public procurement, tax, customs and privatisation. The Chamber of Commerce and Industry is the member of the National Council which was established to supervise the implementation of the Strategy. It is not known what specific measures were implemented to address these sections of the Programme, and what impact they had on corruption in the business sector.

The Anti-Corruption Law of Mongolia includes the general obligation of economic entities and organisations to define and comply with the rules of business ethics in the private sector (Article 6.5.2.). Another provision states that the Anti-Corruption Agency should give recommendations on anti-corruption public education and awareness, on corruption prevention, and upon request, instruct and train individuals and legal entities on how to reduce corruption risks in their activities (although it is not clear if this provision extends to private entities).

According to the answers to the questionnaire by the Mongolian authorities, the private sector was involved in the development of the new Programme for Combatting Corruption through one of the working groups. However, it is not known how many business representatives took part in this group, how active they were, and how many proposals suggested by business representative were included in the draft Programme.

The 2013 Action Plan of the Independent Authority against Corruption of Mongolia contains a section dedicated to business integrity: point 54 of the plan provides for the organisation of discussions about private sector corruption and development of guidelines in this area. No further information was provided about how many discussions were organised and what guidelines were developed.

According to the answers to the questionnaire, there were no awareness raising programmes about risks of corruption and solutions provided for the private sector organised by the government, by private sector associations or other actors.

The anti-corruption legislation of Mongolia does not establish responsibility of legal persons for corruption. It is not clear if the legislation establishes responsibility for private-to-private corruption. It is not known if law-enforcement efforts and sanctions imposed in practice for corrupt behaviour are sufficiently strong and dissuasive to discourage business people from engaging in corrupt behaviour.

Public procurement legislation of Mongolia provides that tender participants that breached the law, including those who were convicted for corruption, should be excluded from tender and put on the blacklist. The State Procurement Inspector has the right to issue suggestion to include business entities in the blacklist. The blacklist is maintained by the Division of Procurement Policy of Ministry of Finance. As of April 2014 there were 27 entities in the blacklist (included on the list since 2011). In accordance with the Regulations on registration of entities, approved by the Ministry of Finance, if an entity was registered in the blacklist it is prohibited from participation in any Government procurement during three years. List of such entities is posted on [www.e-procurement.mn](http://www.e-procurement.mn) also for duration of three years.

Law of Mongolia on Accounting requires that the financial statement of a business entity shall conform to the international accounting standards and that it shall be based on the correct and fair material documents, figures and information. While the Law generally prohibits misconduct, it does not provide for explicit prohibition and sanctions for business entities for the establishment of off-the-books accounts; the making of off-the-books or inadequately identified transactions; the recording of non-existent expenditures; the entry of liabilities with incorrect identification of their object; the use of false documents. The Law does not provide for a list of expenditures that cannot be included in the tax base, such as payments related to bribery. The Law does establish prohibitions for accountants, including the prohibition to prepare and use false documents; accountants violating this prohibition can be sanctioned by a fine in the amount of 5 minimal wages (about USD 550).

The Law on Accounting provides that the responsibility for accounting stays with the management of the business entity and the management establishes internal control procedures by its internal decisions. The Law also provides that entities funded from the state budget should establish internal audit and that the Ministry of Finance establishes further procedure in this area; it is not clear if state owned enterprises are covered by this provision.

The Law on Auditing of Mongolia provides for the application of international auditing standards. It is not known if there is a State or Mongolian audit organisation that have developed national standards on the basis of the international standards, and which monitors the application of these standards by the auditors. The independence of the auditors is provided by the provisions of the Law on Auditing, Code of ethics, and professional standards. There are no clear reporting provisions in the Law on Auditing that will guide an auditor in case he/she discover indicators of possible illegal acts, including corruption, during the audit. On the other hand, the Law provides very strong confidentiality provisions, including the following obligation "Maintain information confidentiality in auditing activities. The auditor shall not share with others and reveal to third party or personally use any information of client obtained in the course of his professional service unless otherwise provided for the laws." No information was provided on the actions an auditor can take if the management of a company did not react to his/her report about possible illegal acts, including corruption.

According to the IFC Corporate Governance Scoreboard 2011, the Mongolian Government and several NGOs have also focused on developing better corporate governance in Mongolian companies. The Law on Companies enacted in October 2011 introduced stronger corporate

governance regulations such as asking companies to define the composition and the role of the board of directors, protect shareholders' rights and ensure corporate transparency. No information was provided as to whether Mongolian corporate governance regulations require companies to create internal monitoring bodies, independent of management, such as audit committees under boards of directors or of supervisory boards. According to the IFC, the corporate governance is still in its infancy in Mongolia, and improvements are needed, especially in areas which permit a voluntary approach, such as the responsibilities of the board, including for enforcement of legal and regulatory requirements and establishment of internal audit functions, and disclosure and transparency, including about independent audit. According to the IFC, the application of the Mongolian Code of Corporate Governance (2007) is not mandatory for listed companies. According to the answers to the questionnaire, companies make statements about their internal control mechanisms in their annual reports. According to the answers, the Mongolian Employers Federation is implementing the project regarding the independent revision.

Regarding corporate ethics, the Mongolian National Chamber of Commerce and Industry and the Mongolian Employers Federation demand business entities to develop and adhere to the Code of Conduct. Such requirement is included in criteria of the annual Top-100 award for business entities presented by the Mongolian National Chamber of Commerce and Industry. One of the requirements for the Top-100 award is engaging in corporate social responsibility (CSR) activities, which should be conducted according to international CSR standard (ISO-26000). This standard includes some business integrity requirements such as integrity, transparency and strengthening of corporate governance and internal controls. No information was provided regarding measures that governmental institutions take to encourage the development and adoption of standards of conduct.

In Mongolia, there are no regulations regarding whistleblower protection in the private sector. Any measures to provide channels for employees to report suspicions of corruption and protection from unjustified sanctions are in the discretion of the administration of companies.

No information was provided about any government-business joint actions to promote business integrity. It is not known if the state entities and private and state owned companies are engaged in any collective actions against corruption.

**Recommendation 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.***

## **Annex 1. Legal acts of Mongolia**

### **1. Criminal Code (excerpts)**

#### ***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.

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#### ***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.

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#### ***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.

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#### ***Article 166<sup>1</sup>. Money laundering***

1. A person who, in order to conceal illegal actions or assist someone in evasion of justice for commission of less grave, grave and especially grave crimes, except for the one mentioned in Article 166, knowingly received, stored, used and transferred money, property, shall be punished with a fine of 51-250 minimum salaries or deprivation of liberty up to 5 years.

2. If the same offence is committed repeatedly, by a group of persons or with the use one's office, as well as if benefit in large amount was received, the person shall be punished with confiscation and deprivation of liberty from 5 to 10 years.

3. If the same offence is committed by an organised group, criminal group or if benefit in especially large amount was received, the person shall be punished with confiscation and deprivation of liberty from 10 to 15 years.

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#### ***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.

...

### **Chapter 28. 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<sup>48</sup> to rights and interests of the citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary<sup>49</sup> 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

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<sup>48</sup> According to Article 29 of the Criminal Code, the amount of damages shall be determined as follows: the amount of 1 to 50 amounts of minimum salary (about USD 110 to 5,500) current at the time of committing the crime is deemed 'considerable', the amount of 50 to 125 amounts of minimum salary (about USD 5,500 to 13,750) is 'substantial', the amount of 125 to 200 amounts of minimum salary (about USD 13,750 to 22,000) is 'large', and the amount more than 200 amounts of minimum salary and wages as extremely large.

<sup>49</sup> Minimum salary in 2013 was equal to about USD 110.

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 labour 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 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 favourable 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 his/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 extortion or by person, who previously sentenced for the crime of bribery, or by organized group or a criminal organization or if the 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<sup>50</sup>***

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.

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<sup>50</sup> Article 270<sup>1</sup> of the Criminal Code of Mongolia entered into force together with the Law on the regulation of public and private interests and prevention of conflict of interest in public service on 1 May 2012.

## 2. Law on Anti-Corruption

### LAW OF MONGOLIA ON ANTI-CORRUPTION

July 8, 2006

#### 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 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  $T$  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 Khural, or for all levels of the Citizens' Representative Khurals.

##### Article 4. Persons subject to this Law

1.1. The Following persons are subject to this Law:

1.1.1. Officials holding political, administrative or special office of the state, whether appointed or elected, whether permanently or temporarily;

- 1.1.2. Managers and administrative officials of state or locally- owned legal persons, or legal persons with state or local equity;
- 1.1.3. The National Council Chairperson and the General Director of public radio and television;
- 1.1.4. Managers and executive officers of non-governmental organizations, temporarily or permanently performing particular state functions in compliance with legislation;
- 1.1.5. Electoral candidates, stipulated in Article 3.1.9. of this Law;
- 1.1.6. Official stated in Article 10.1 of this law, who is responsible for submitting Asset and Income Declaration. /This provision was added by Amendment law of 18 May 2012/

## **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 Article 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 Khural;
  - 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;
- 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.
- 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 and business entities that receive 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 salaries in MNT on any official who violates provisions specified in Article 6.8 of this Law.

## **Article 7. Prohibitions**

7.1. Officials specified in Article 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 was revised by Amendment Law of 19 January 2012/

#### **Article 8. Reporting on Corruption**

8.1. The officials mentioned in Article 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 Article 8.1. of this Law shall not be subject to limitations established by the Law on State, Organization's and Personal Secrecy.

/This article was revised by Amendment 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 Article 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 declarers shall be obliged to provide accurate declarations on their income and assets.

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 after submission of declarations within the timeframe specified in Article 10.3. of this Law, his/her income and assets have undergone substantial changes equal to or exceeding his/her salary for six months, the declarers shall notify the changes within 30 days.

10.5. In case income and assets declarations were submitted later than the timeframe specified in Articles 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 was revised by Amendment 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 Articles 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 Article 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 Article 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 was revised by Amendment 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 analyse income and assets declarations of officials other than mentioned in Article 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 Article 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 their income and assets declarations shall be reviewed by Independent Authority Against Corruption. /As 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 Article 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 Articles 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, 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 Article 10.3. of this Law.

/This article was revised by Amendment 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 Khural 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 Khural 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' Khurals;

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 Anti-Corruption 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 Khural 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 Khural 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 all violations of the Law, irrespective of the specific corruption offence, identified during the courts of investigative work, to the competent authority;

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 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. /As amended by Law of 18 May 2012/

19.2. The ethical and disciplinary codes applied to officers of the Anti-Corruption 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 Khural.

19.4. The legal status of administrative and support officers of the Anti-Corruption Agency shall be governed by the Law on Government Service, the Labor law <sup>7</sup>, and other legislation.

19.5. /This provision was revoked by Amendment 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 Khural, 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 55 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 Anti-Corruption 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 fulfil 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 Khural in writing, if such an application is submitted during the State Great Khural 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 Khural 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. /As amended Law of 29 May 2008/
- 26.2. The Special Supervisory Sub-committee of the State Great Khural 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.

#### **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 Khural 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 Anti-Corruption 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 Khural.

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. Annual 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.

### **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 Khural.
- 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 Khural, 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 Article 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 Amendment 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 Article 8.1. of this Law;

33.1.2. Demote position in case if official failed to perform reporting duty as specified in Article 8.1. of this Law on multiple occasions or violated Article 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 Article 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 Articles 7.1.7. and 7.1.8. of this Law.

*/This article was revised by Amendment 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.

## Annex 2. Law enforcement statistics on corruption offences

**Table 1. Number of convictions for corruption or related offences**

<b>Criminal Code article</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Article 263. Abuse of power of official or of office by state official	58	41	43
Article 264. Excess of authority by a state official	8	18	24
Article 265. Abuse of authority by an official of an NGO or a business entity	5	7	13
Article 266. Excess of authority by an official of an NGO or a business entity	3	6	3
Article 268. Receiving of a bribe	31	33	24
Article 269. Giving of a bribe	3	5	19
Article 270. Intermediation in bribery	-	4	4
Article 273. Spending of the budget funds contrary to their designation	7	-	10
Others	17	28	64

**Table 2. Communications related to corruption offences and conflict of interest received by the Independent Authority Against Corruption, results of corruption investigations and prosecutions**

	<b>2010</b>	<b>2011</b>	<b>2012</b>
Number of communications	890	666	797
Number corruption investigations initiated based on the communications and reports	46	54	53
Total number corruption investigations initiated	132	142	164
Number of corruption investigations that were terminated due to insufficient evidence or other reasons	213	214	126
Number of cases investigated and submitted to court with indictment	16	21	12
Number of corruption prosecutions that resulted in convictions	40	36	32
Number of corruption prosecutions that resulted in acquittals, number of the people acquitted	3	2	1

**Table 3. Communications related to corruption offences and conflict of interest received by the Independent Authority Against Corruption in relation to different sectors**

	<b>2010</b>	<b>2011</b>	<b>2012</b>
Local government or local self-governing organisations	19.4%	20%	27.0%
Law enforcement organisations	27.6%	22.1%	14.5%
Education, health and public service	15.4%	15.8%	13.6%

Ministries	0%	4.1%	4.3%
Mining sector	4.6%	5.6%	6.7%
State owned or local government owned business entities	3.7%	5.9%	7.8%
Business entities and elections	7.6%	4.1%	9.8%
Members of the State Great Hural (The Parliament)	0.7%	1.8%	2.3%
Others	21%	20.6%	14.0%

**Table 4. Percentage of convicted persons related to particular area**

Area	Percentage	Area	Percentage	Area	Percentage
	<b>2010</b>		<b>2011</b>		<b>2012*</b>
Labour and welfare	12.5%	Labour and Welfare	4.2%	The government organization	16*
Tax	4.2%	Social insurance	8.3%	NGO and Private Company	13*
Inspection	8.3%	Inspection	4.2%		
Police	25%	Police	4.2%		
Health	4.2%	Health	16.7%		
The government owned company	4.2%	NGO	8.3%		
Correctional service	16.7%	Local government	4.2%		
Private business	8.3%	Private business	8.3%		
Senior officials	8.3%	Senior officials	8.3%		
Others	8.3%	Customs	4.2%		
		Others	29.1%		

\*The 2013 Report on corruption crime did not include the detailed information on particular areas.

**Table 5. Statistics on sanctions applied for corruption crimes**

	<b>2010</b>	<b>2011</b>	<b>2012</b>
Imprisonment	18	23	26
Provisional punishment	9	14	13
Fine	7	6	2
Other types of sanction	17	4	21