



**ACN**

**Anti-Corruption Network for Eastern Europe and Central Asia**

Anti-Corruption Division

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## ISTANBUL ANTI-CORRUPTION ACTION PLAN

### MONGOLIA

#### PROGRESS UPDATE

The review report on Mongolia was adopted by the Istanbul Action Plan monitoring meeting in April 2014. This document contains progress update on the implementation of the recommendations given to Mongolia in April 2014 and the assessment of the progress it has made adopted. This progress update was presented and discussed at the ACN plenary meeting on **8-10 October 2014**.

## SUMMARY

The initial assessment report on Mongolia was adopted by the Istanbul Action Plan monitoring meeting in April 2014. The progress report on implementation of the recommendations given to Mongolia was submitted by the Independent Authority Against Corruption of Mongolia (IAAC), Mongolia's National Coordinator at the ACN. The report was presented by Mr Dansran Munkhjargal from the IAAC's Department for Corruption Prevention and Public Awareness. The report was reviewed by Mr Dmytro Kotlyar (OECD/ACN, team leader for review of Mongolia), Ms Liga Kikute (Corruption Prevention and Combatting Bureau, Latvia) and Mr Dirk Plutz (EBRD).

The progress update report was discussed and adopted by the Istanbul Action Plan monitoring meeting on 10 October 2014. Overall, from 19 recommendations given to Mongolia progress was noted under 8 recommendations, lack of progress – 11 recommendations.

<i>Recommendation</i>	<i>Progress in implementation</i>
Recommendation 1.1.-1.2.	<i>Lack of progress</i>
Recommendation 1.3.	<i>Lack of progress</i>
Recommendation 1.4.-1.5.	<i>Progress</i>
Recommendation 1.6.	<i>Progress</i>
Recommendation 2.1.-2.2.	<i>Progress</i>
Recommendation 2.3.	<i>Progress</i>
Recommendation 2.4.-2.5.	<i>Progress</i>
Recommendation 2.6.	<i>Lack of progress</i>
Recommendation 2.7.	<i>Lack of progress</i>
Recommendation 2.8.	<i>Lack of progress</i>
Recommendation 2.9.	<i>Lack of progress</i>
Recommendation 3.2.	<i>Lack of progress</i>
Recommendation 3.3.	<i>Lack of progress</i>
Recommendation 3.4.	<i>Lack of progress</i>
Recommendation 3.5.	<i>Progress</i>
Recommendation 3.6.	<i>Progress</i>
Recommendation 3.7.	<i>Lack of progress</i>
Recommendation 3.8.	<i>Lack of progress</i>
Recommendation 3.9.	<i>Progress</i>

## PART I: PROGRESS IN IMPLEMENTING RECOMMENDATIONS

### Pillar 1. ANTI-CORRUPTION POLICY

#### 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.**

#### 14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014

##### *Measures taken to implement this recommendation*

- 1) The draft National Anti-Corruption Program (NACP) initiated by the President of Mongolia has been finalized and is under its final review by Mongolian Parliamentarians Against Corruption (MONPAC) in which all representatives from political parties that have a seat in the Parliament are involved. The draft of the NACP was developed by a Working Group established by the Office of the President which has included representatives from the relevant government organizations as well as non-government organizations. Also Mongolian Women Lawyers' Association, the non-government organization organized discussions and meetings across the country in all levels in order to collect comments from various actors, such as public organizations, civil society, general public etc.
- 2) The Anti-Corruption Law of Mongolia stipulates that the Public Council (PC) shall be operational at the Independent Authority Against Corruption (IAAC) of Mongolia however, due to PC's ineffectiveness over the last two years, it has been re-established by 62<sup>nd</sup> Presidential Decree of May 2014. The current PC includes 15 representatives from civil society organizations, media, academic and research institutions which are well known to the general public for their activities towards establishing good governance and strengthening justice. PC comprises of three Sub Councils: Sub-Council for Policy, Communication with the General Public and Actions and Human Rights.
- 3) Strategy for ensuring transparency in mining sector, which is considered as one of the sectors with high risk of corruption, is being implemented successfully within the framework of EITI.

- 4) IAAC is planning to develop and implement sector specific anti-corruption program aimed at health sector which is perceived as the most corrupt and bureaucratic branch of public service in Mongolia. In order to start our initiative towards health sector, IAAC in cooperation with IRIM research Institution, conducted Survey on Corruption Case in Health Sector on June 2014 supported by the Asia Foundation. Based on findings of the Survey, IAAC is cooperating with Health Department of Ulaanbaatar city primarily within the level of the City in order to implement sector specific anti-corruption program. Currently, the action plan in within the framework of the program is under development phase.

#### **Assessment of Progress**

##### **LACK OF PROGRESS**

*No significant progress can be noted with regard to adoption of the new national anti-corruption strategy, although it is welcome that the drafting process has continued and relevant draft document has been discussed in the parliament.*

*With regard to the establishing a high-level policy coordination mechanism no progress was achieved. The reported revision of the Public Council's composition at the Independent Authority Against Corruption in May 2014 is welcome but does not directly concern this part of the recommendation. The coordination council should be set up above the IAAC and should include in its composition representatives of the civil society.*

*Some progress can be noted with regard to sector specific anti-corruption activities – Mongolia conducted survey and started preparation of an anti-corruption programme for the health sector.*

#### **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.**

#### **14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

##### **Measures taken to implement this recommendation**

- 1) Along with disseminating full and abridged report on Mongolian Corruption Index (MCI) of 2013, IAAC developed province specific presentations on corruption cases in Selenge, Zavkhan, Bulgan, Khuvsgul, Darkhan-Uul, Khovd, Sukhbaatar, Orkhon, Arkhangai, Bayan-Ulgii, Uvurkhangai, Tuv and Khentii province and delivered to the government organizations and public officials in those provinces. Seminars and trainings on findings of MCI covered approximately 1100 persons, delivered for officials, high rank managers from central and local government organizations, local self-governing organizations, courts and law enforcement organizations as well as representatives from business entities, non-government organizations, media and the general public of Selenge, Zavkhan, Khovd, Khuvsgul provinces and Ulaanbaatar City. Furthermore, IAAC is cooperating with the World Bank through the Corruption Prevention and Monitoring Project and have hired professionals in order to improve the methodology of MCI.

MCI reflects perceptions of total 6352 persons including 4000 citizens representing residents of 21

aimags, 330 soums and 9 districts of Ulaanbaatar, entrepreneurs; 2000 public servants representing the officials and servants of state administrative agencies, local administrative authorities and municipal authorities; and 352 experts representing government and non government organizations, international organizations and the private sector. IAAC had engaged four experts with the support of the World Bank to assess methodology used for the Corruption Index.

- 2) Mongolia's Corruption Index for 2013 was 0.651 showing positive results with 0.02 point increase compared to 2011 index. That demonstrates that level of corruption in Mongolia has declined by 0.02 points

IAAC also conducts periodically Youth Integrity Survey and Corruption Perception of Law Enforcement Organizations.

- 3) In order to ensure the regular usage of the findings of above mentioned surveys by public organizations for their policy development, IAAC organizes seminars and special events throughout the country and disseminates the publications to public organizations.

#### **Assessment of Progress**

##### **LACK OF PROGRESS**

**Reported information does not concern the recommendation which focused on conducting corruption surveys (no new surveys were reported, the MCI was conducted in 2013 and published in 2014) and ensuring that results of surveys are reflected in the anti-corruption policy-making.**

#### **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.**

#### **14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

##### **Measures taken to implement this recommendation**

- 1) Since its establishment in 2007, IAAC have never assessed its public awareness activities from the side thus the questions regarding the effect of its public awareness activities as well as accurateness of identification of its target groups and the methods and ways to deliver to the target groups were remained unanswered. Thus IAAC invited independent experts in order to evaluate its public awareness activities in particular determine on what extent the context of measures and form of organization of outreach activities comply with demand and requirements and whether the message reaches the target groups; the final result of the evaluation was presented on 1 August 2014. Based on the finding of the evaluation, IAAC identified developing strategic plan for this

specific area of action as top priority thus decided to appoint officials in charge of outreach activities to develop the strategic plan in cooperation with the independent experts.

- 2) The regular evaluation of effectiveness of public awareness activities conducted by IAAC is started gradually. IAAC's one of the routine activities is a delivery of trainings and seminars on anti-corruption legislation for officials of public organizations. First and foremost, IAAC conducts survey among the seminar participants after each training. This activity is adhered to IAAC's trainers during last five months. Based on a result of surveys, it has become possible to modify the content and form of training in order to suit the needs of the audience.
- 3) The Working Group for developing NACP includes four representatives from non-government organizations and the Mongolian Women Lawyers' Association NGO organized discussion for collecting comments on draft NACP in all levels and across the country. Furthermore, the evaluation of anti-corruption activities implemented by the government organizations is currently being carried out by independent non-government organizations and experts. In particular, the "Democratic Education Center" NGO is conducting assessment in service of education and health sector based on Check My Service method. Also the government organizations tend to request to assess their activity by the Check My Service method which is considered by IAAC as positive attitude. For instance, most recently, the mayor of Ulaanbaatar City have signed contract with the above mentioned NGO in the field of evaluation of quality of public services provided to the general public.

#### **Assessment of Progress**

##### **PROGRESS**

***Mongolia conducted its first assessment of the public awareness raising activities which is commendable. Reportedly the assessment was conducted by independent experts and was made public. Civil society representatives have also been involved in the development of the new anti-corruption strategy as was recommended.***

#### **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.***

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

***Measures taken to implement this recommendation***

- 1) Even though draft of proposal on establishing branches of Independent Authority Against Corruption of Mongolia presented to the Parliament of Mongolia in order to ensure independence of IAAC and improve efficiency of activities conducted by IAAC, the draft proposal is delayed to be discussed in the session owing to resolution issued by the Parliament no to increase the number of positions in all public sectors in any manner due to economic instability in the country. IAAC sees that the public watch on IAAC is the best possible way to ensure operational independence of IAAC. In this sense, PC was re-established by 62<sup>nd</sup> Presidential Decree of May 2014 which includes 15 representatives from civil society organizations, media, academic and research institutions which are well known to the general public for their activities towards establishing good governance and strengthening justice. PC comprises of three Sub Councils: Sub-Council for Policy, Communication with the General Public and Actions and Human Rights. Since its establishment, two introductory meetings, one meeting on pressing matters have been organized and have provided conclusion on the related matter which is the demonstration of the independent status of IAAC. Furthermore, in its annual action plan for 2014, PC specified to conduct assessment in all legislations related to IAAC's activity in particular in function related to investigation and enquiry thus this assessment is to be started on 15 September 2014. The findings of the assessment would allow to discover how legal framework complies with requirements to ensure independent status of IAAC and what regulation would allow interference in IAAC's activities.
- 2) An amendment of 18 May 2012 in Anti-Corruption law reads that "Managing and executing officials of Independent Authority Against Corruption shall meet adequate requirements and shall have no administrative, disciplinary or Criminal record on malfeasance crime. No other amendments made to the law regarding the selection of staff of IAAC.
- 3) The development of strategy of IAAC and internal procedure which should regulate the activities implemented by IAAC is nearing the finalization. Under the reform of the internal procedure, the standard and format for developing and monitoring annual and quarterly action plan is finalized. The action plan for 2015 shall be developed in line with the standard.

#### **Assessment of Progress**

##### **PROGRESS**

***Mongolia re-established the Public Council at the IAAC and launched examination of the legislation on the IAAC activities to verify its compliance with the standards of independence and effectiveness. There is also a pending draft law in the Parliament, which provides for public hearings on the candidates for the IAAC's Head (although competitive selection as such is not proposed) The IAAC has been developing its activity plan according to a new format (no details were provided).***

## Pillar 2. CRIMINALISATION OF CORRUPTION

### 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.*

### 14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014

#### *Measures taken to implement this recommendation*

- 1) Criminalization of offer or promise, acceptance of offer/promise request of a bribe and bribery through intermediary is reflected on the draft Law on Crime.
- 2) Non-pecuniary bribe and intangible undue influence is included in the definition of “bribe” in draft of Law on Crime.
- 3) The liability for bribery in the private sector and trafficking in influence is reflected in draft of Law on Crime. However there is a big debate on whether to include the provision in law regarding the 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) The new version of Law on Combating Money Laundering and Financing Terrorism was adopted on 31 May 2013. The law provided definition of money laundering crime as “obtained, converted or transferred the illicit proceed knowingly, or covered, concealed, transferred title for ownership, possession or adoption or changed its nature, form or location in order to make the asset appear justifiable.
- 5) The current draft of Law on Crime includes provisions related to illicit enrichment in line with the Article 20 of UNCAC.
- 6) No provision in current Criminal Code.

#### *Assessment of Progress*

**PROGRESS**

*Mongolia reported that most parts of the Recommendation 2.1.-2.2 were reflected in the draft Law on Crime (which is supposed to replace current Criminal Code) and that the latter has already been submitted to the parliament and was included on the agenda of the Fall session of the Parliament. However, no text of the relevant draft law was provided (nor the description how the new draft takes into account the recommendation).*

**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.*

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

*IAAC has reflected the recommended issues in the draft Law on Crime which is going to be the new version of the current Criminal Code.*

**Assessment of Progress**

**PROGRESS**

*See previous information*

**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.*

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

**Measures taken to implement this recommendation**

*IAAC has reflected the recommended issues in the draft Law on Crime which is going to be the new version of the current Criminal Code.*

**Assessment of Progress**

**PROGRESS**

**See previous information**

**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.**

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

*Measures taken to implement this recommendation*

1) Immunity of public officials is mentioned in many laws including Constitution of Mongolia and Law on Parliament of Mongolia. In order to ensure compliance of laws that included provisions related to immunity of public officials with international standards, the laws shall be amended. Since research was needed in order to amend laws which granted immunity to various public officials, with support from UNDP Country Office the Research Team that comprises of widely recognized scientists has conducted analysis in the Constitution of Mongolia. The analysis was carried out from last quarter of 2013 to first quarter of 2014. The findings of the research have reached to many important conclusions which reads that the immunity is used wider than it used to be, the immunity has become target for those who are willing to avoid prosecution thus encouraged to hold public office and more importantly the Constitution of Mongolia shall comply with UNCAC requirements. The Parliament of Mongolia has established a Working Group in charge of developing amendments to the Constitution of Mongolia and the above mentioned conclusions are delivered to that Working Group. The decision to constitute the Working Group was issued by the Parliament's Standing Committee session on 26 February 2013. The findings of the research requires decision which would affect political life of the country thus needs time to do so. However, IAAC outreaches the general public in order to advocate findings of such researches and recommendations of international organizations.

2) IAAC is working to include the points in draft of the Law on Crime and Law on Offence.

**Assessment of Progress**

**LACK OF PROGRESS**

**No changes in the legislation in terms of immunities were introduced or proposed for consideration. Reported review of legislation was conducted before the April 2014 IAP report on Mongolia and therefore cannot impact the rating. As to the second part of the recommendation, not enough information was provided to note progress (not clear whether relevant amendments were included in the mentioned drafts and what is their substance).**

## 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.*

### 14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014

#### *Measures taken to implement this recommendation*

- 1) Mongolia have 19 MLA agreements in civil and criminal cases: Bulgaria, Vietnam, Kazakhstan, Kyrgyzstan, Cuba, Russia, Poland, Romania, Slovakia, North Korea, South Korea, Turkey, Ukraine, France, Hungary, China, Czech, India, former Yugoslavia. As regards the direct international cooperation, the police agency of Mongolia was joined Interpol in 1994 and since cooperating with other members of Interpol directly. The prosecution office of Mongolia established direct cooperation with two of its neighbours (Russia and China) on criminal matter and MLA.
- 2) The training for staff of Central Authority is conducted regularly. However the resources are limited for investigators and prosecutors due to financial and budgetary problem. IAAC, jointly with the STAR initiative conducted a 7-day long training on MLA.
- 3) The process of collecting and analysing data on application of international co-operation instruments is considered and implemented in IAAC.
- 4) The mutual legal assistance provisions are stated in Criminal Procedure Code Chapter 45, from section 398 to 403 and there is no additional manual or internal procedure for applying mutual legal assistance. Currently, General Prosecutor's Office and Ministry of Justice are cooperating in order to approve first ever manual for MLA request.

#### *Assessment of Progress*

##### **LACK OF PROGRESS**

***Reported information does not contain any indication of implementation of the recommendations – it either concerns activities taken before April 2014 or are not relevant. The only available information concerns training on MLA, but due to lack of additional information it cannot affect the rating.***

**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.**

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

***Measures taken to implement this recommendation***

- 1) No clarification in the Criminal Code and interpretation of corruption offences which eliminates the requirement of direct evidence of intent.
- 2) Trainings on other related topics are conducted regularly for investigators in particular on financial investigation and MLA in cooperation with international organizations. In-house and international consultants are employed for investigation of corruption cases.
- 3) Access to information on bank, financial and commercial records is granted by related laws.
- 4) Mongolian Corruption Index conducted by IAAC every two years includes data and analysis of investigation and prosecution of corruption cases. Furthermore Investigation Department of IAAC carries out statistical report on corruption cases quarterly, half-yearly and annually.

***Assessment of Progress***

***LACK OF PROGRESS***

***No information on new measures taken to implement the recommendation since April 2014 was provided.***

**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.**

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

***Measures taken to implement this recommendation***

- 1) Practically, internal investigation unit is established and operates in government organizations in particular in all law enforcement agencies. For example, Security and Inspection Unit operates in IAAC to conduct review and monitoring within IAAC and on its staff. The most part of the resource of IAAC depends on economic situation in Mongolia, however the current annual budget of IAAC approved by the Parliament without encountering any deduction from the total amount.
- 2) The jurisdictions of various law enforcement organizations are delineated in Criminal Procedure Code, Anti-Corruption Law and Law on Prosecution Office. Ministry of Justice and General Prosecution Office are cooperating to issue first ever Manual on MLA for investigators and prosecutors which would regulate and coordinate relations between law enforcement organizations with regard to MLA.
- 3) The legal framework is formed with regard to initiating criminal case based on reports in mass media and other sources.

***Assessment of Progress***

***LACK OF PROGRESS***

***No information on new measures taken to implement the recommendation since April 2014 was provided. Also no supporting material was provided to substantiate statements in the progress update.***

### Pillar 3. PREVENTION OF CORRUPTION

#### 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.**

#### 14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014

##### *Measures taken to implement this recommendation*

1) The classification and types (political civil service; administrative civil service; special civil service; support civil service) of public posts were regulated by Chapter 2 of Law on Civil Service. Furthermore, Para 14.1.3 of Law on Civil Service read that “the core civil servant (administrative and special) shall have right to submit proposals to their supervising officer, either orally or in writing, relating to increases in remuneration, promotion, improvements in working conditions and guarantees”. As regards the remuneration of public officials, Para 19.2 states that “Results of the evaluation of the performance and qualification level the Core civil servants shall provide a basis for deciding on issues of his promotion, enrolment in training of an appropriate level, granting degrees and ranks, altering his remuneration, providing with rewards and incentives, and demotion”. The chapter 4 of Law on Civil Service regulates the matter related to appointment and promotion of public officials. Furthermore, Para 10.1 (Unless otherwise provided for in law, the general requirements for the civil posts shall be the knowledge, education, experience, skills and qualification to hold the given post) and Para 33.5 (Special requirements for posts in the Core civil service except those specified in paragraph 4 of the Article 33 of this Law shall be established on each of the classifications and grades of the Core civil service posts by the Civil Service Central Body) regulates more detailed issue relating to requirement adhered for employing and promoting candidates for public posts.

2) Chapter 3 of Law on Regulation of Public and Private Interest and Prevention from Conflict of Interest in Public Service provides the 12 restrictions and prohibitions for public officials such as

Prohibition related to the use of official information, Prohibitions and restrictions related to the discharge of official duties, Prohibition on Influencing Decision-Making, Restriction Related to Advertising, Restrictions Related to the Right of Representation, Restriction on Receiving Payments, Restrictions on Accepting Gifts, Restrictions on Acceptance of Donations, Restrictions on Holding Concurrent Offices, Procedures for Compliance with Restrictions on Concurrent Offices, Prohibitions

Related to Economic Activities, Restrictions on Employment After Public Office and Other Restrictions Related to Outside Earned Income.

3) Officials subject to Law on Regulation of Public and Private Interest and Prevention from Conflict of Interest in Public Service are:

- officials in the Political Service and Administrative Service, executive and professional officers in the Special Service categories of the Civil Service;
- executive officers in the Public Services category of the Civil Service;
- executive officers of legal entities wholly or partially owned by the central or local government;
- executive officers of non-governmental organizations which are performing, on a temporary or permanent basis, certain functions of the State as mandated by an ordinance or contracted by the central or local government.

4) Sanctions are specified in Article 33 of Anti-Corruption Law and related Articles of Criminal Code. Sanctions on an individual who has committed a corruption crime shall be imposed by judges whereas administrative penalties on violators shall be imposed by competent authority or competent officials.

5) <http://xaxom.iaac.mn/lenya/iaac/live/index.html> the website which provides information of declarations.

According to Article 13 of Anti-Corruption Law declarers shall have the duty to provide realistic and accurate explanation on the sources of their assets and income.

Furthermore, 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:

- Warning sanctions if the declarer failed to declare income and assets equal to his/her monthly salary or provided false information and if the submission of income and assets declaration later than specified in provisions 10.4. and 10.5. of this Law had justified grounds;
- 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;
- 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 ;
- 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.

6) Article 8 of Anti-Corruption Law obligates the public officials to report corruption offences. However no clear provision on ensuring protection for whistleblowers.

The electronic selection of candidates for public service has reduced the risk of nepotism and employing uncompetitive civil servants to public posts.

### ***Assessment of Progress***

#### ***LACK OF PROGRESS***

***No information on new measures taken to implement the recommendation since April 2014 was provided.***

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

#### **14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

##### ***Measures taken to implement this recommendation***

- 1) PTI (Partnership in Transparency Initiative) is the partnership that consist of over 20 non-government organizations which operates in Mongolia. Initially PTI started its activity with support from the Asia Foundation, however starting from June 2014 it operates on its own name. Currently, PTI initiated and started to carry out assessment in draft laws before its approval by the Parliament of Mongolia. The legal framework for implementing such assessment is established before as the law stipulates that the draft law shall be debated among the general public before its presentation in the Parliament of Mongolia. According to this regulation PTI initiated the draft law assessment and is planning to conduct evaluation 5-6 draft laws before the start of the coming autumn session of the Parliament of Mongolia.
- 2) No adoption of Administrative Procedure Act.
- 3) No action on the matter.

##### ***Assessment of Progress***

##### ***LACK OF PROGRESS***

***Reported examination of draft laws is not mandatory and is conducted by NGOs which cannot substitute official anti-corruption screening of draft legal acts. No information available on implementation of other parts of the recommendation.***

### 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.*

#### **14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

##### ***Measures taken to implement this recommendation***

- 1) The Law on Audit states that auditing activities shall be independent. Besides chartered accountant's practice is reliable and independent, he/she shall foresee and avoid any pressure and domination that may create situations for violating his/her independence. It is prohibited for business entities, organizations, and officers to interfere in the auditor's activities or put pressure upon them.
- 2) N/A
- 3) The new Law on State Budget enacted on 1 January 2013. Every public organization obliged to establish and carry out Internal control and Internal Audit Unit according to the new Law. Even though the Internal Control and Audit Units have established, they are not accustomed to carry out regular activity. IAAC in cooperation with Internal Auditors Association organized training for approximately 100 top managers and officials in charge of internal control of public organizations regarding the differences between internal audit and internal control functions, important notes for authentic internal controlling and effectiveness of internal control in combating corruption.

##### ***Assessment of Progress***

##### ***LACK OF PROGRESS***

***No information on new measures taken to implement the recommendation since April 2014 was provided.***

#### **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.*

#### **14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

##### ***Measures taken to implement this recommendation***

- 1) It is prohibited to splitting procurement object in order to avoid organizing open procurement. Law requires the procedure of open tender as the main rule for implementing procurement activity. Except for direct contract method and comparative price method, the tenders shall be announced openly. The bidding period is set differently based on procurement method, scope and nature of the procurement etc. The invitation of the tender shall be published in daily newspapers and specialized procurement websites. Also legal framework for opening bidding documents and keeping the documents secret until its opening is established by Law.
- 2) The following requirements are set for members of Evaluation Committee: specialized in procurement or related sectors of given goods, services or works; not have family relations with tenderers and their representatives such as parent, parent in law, spouse, sibling, son or daughter; not have a labour contract relationship with a tenderer in last 3 years; not have any violations of civil servant's duties related to planning, preparing, executing procurement activities in last one year. In 2011, the Law on Procurement was amended and now it has the following amendments: the evaluation committee shall have no less than two representatives from non-government organizations, professional association of given sector, private sector; evaluation committee in local areas shall have in its rank a citizen appointed by the given Citizens' Representatives' Hural and an official from Office of the Governor. In 2012 the related procurement procedure was amended in line with the Law.
- 3) According to the Law, the annual budget, procurement plan shall be informed to the general public no later than 10 January of the each year. Also the state central body in charge of economic development shall inform the following information to the public no later than seven days after its approval: items of concession, its amendments, concession contract and its amendments, information on concession holder other than the information related to the holders privacy
- 4) The Government Procurement Agency was established by the Government resolution of August 2012. Later in November 2012, the procedure on "organization, execution and revision in procurement activities" was approved. According to the procedure, the Procurement Agency receives list of procurement items and its technical characteristics from all public organizations no later than 10 days after the approval of related budget by the Central Government.
- 5) The state administrative body for budgetary matters shall keep the register of bodies whose rights to tender were restricted and disclose the register publicly. The following occurrence of circumstances shall be basis for inclusion in the register: critically violated the contract and did not execute contractual obligations; submission of a tender with false information; committing a corruption crime in recent three years which was proven by the court. In line with international standards, the relevant Procedure on registration was approved and the company which was included in the register shall not have any right to participate in any tender. <http://pmmis.e-procurement.mn> operates as an administration and analysis system for procurement managers.

- 6) The MEPS system includes 367 business entities to date and is the main mean of the electronic procurement. Since July 2013, 85 projects and other works are procured in MEPS which is 25.6 per cent of the total procurement activities. Also the invitation to the tender is regularly published in Ministry of Finance's [www.e-procurement.mn](http://www.e-procurement.mn), Procurement Agency's [www.e-tender.mn](http://www.e-tender.mn) and the information on tender results are published in [www.zasag.mn](http://www.zasag.mn), [www.vip76.mn](http://www.vip76.mn), [www.news.mn](http://www.news.mn) and [www.shuud.mn](http://www.shuud.mn).

#### **Assessment of Progress**

##### **PROGRESS**

**Progress can be noted with regard to improving transparency of the public procurement due to the Law on Transparent Accounts that was adopted in July 2014 (see next recommendation for details).**

#### **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.**

#### **14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

##### **Measures taken to implement this recommendation**

The new Law on Transparent Accounts (no translation available) was approved by the Parliament of Mongolia on July 1, 2014. The Law enters into force on 1 January 2015 and comprises 3 chapters and 11 articles. It was initiated and drafted by the President of Mongolia and handed to the Parliament for approval in January 2014.

The purpose of this law is to ensure transparency and accountability of the decisions and activities of respective authorities with regards to allocation of the state and local budget and properties and

constitute the information system where general public can monitor and control.

The law is comprised of three chapters (including General Provisions, Standard of Transparent Account and Monitoring and Responsibility of Transparent account) and 11 articles.

- Chapter one: Purpose of the law, legislations on transparent account, legal framework, terms used in the law, principals of transparent account
- Chapter two: Information concept of transparent account, time framework for disclosing account information, frequency, responsibility to inform, types of disclosing account information
- Chapter three: Monitoring of transparent account, audit of citizens, responsibility, entry into force

The Law covers:

- All types and level of public organizations
- All types of public enterprises including
- Administrative units
- Citizens' Representatives Hural
- Businesses and organizations performing the government functions etc.

As well as any resolution /order, decree/ which allows to receive or gain asset or investment from:

- central and local government budget
- all types of central and local government fund
- procurement activity
- government bond, obligation, other similar financial instrument
- foreign and domestic loan and free grant
- public property and asset, debt, receivable
- public and private partnership, concession.

Penalty:

- If the offence type falls under the jurisdiction of employer the disciplinary action stated in Law on Civil Service shall be imposed to the violator. If offence type fall under the jurisdiction of court or state inspector, a fine equal to 50-100 fold the minimum wage (USD5,281-USD10,563) of public official shall imposed to the violator.

5) No separate mechanism for enforcement of the access to information right, however IAAC monitors the implementation of the Law on Information Transparency and Right to Access to Information regularly and sends recommendations or notices to public organizations in case of violation.

6) No decriminalization of such offences.

7) The new Law on Transparent Account will serve as the main platform for budget transparency.

### ***Assessment of Progress***

#### ***PROGRESS***

***Mongolia adopted a new Law on Transparent Accounts which may address some parts of the recommendation, although to a limited extent because it concerns information about budgetary transactions only. The text of the law was not provided and cannot be assessed. Main part of the***

**recommendation – to revise current general legal framework of access to information – was not implemented.**

**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.**

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

**Measures taken to implement this recommendation**

The Working Groups were organized in the Parliament of Mongolia in order to renew both Law on Political Parties and its financing and Law on Election. The Working Groups were established on 8 February 2013. The Working Group on Law on Election was drafted, however it was delayed to be presented to Standing Committee's session. If the law passes the Standing Committee, it will be presented to the Parliament of Mongolia. The Working Group on Law on Political Parties is finished to study international practice and other necessary materials and working to finalize the draft. Initiative is slowed down due to the political circumstances.

**Assessment of Progress**

**LACK OF PROGRESS**

**The draft law which is supposed to address this recommendation has been prepared but not formally submitted in the parliament.**

**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.**

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

***Measures taken to implement this recommendation***

The reason that there's no substantial information since the previous progress report is related to the insufficient time span for assessment. The new Law on Courts is enacted on 15 April 2014 which, we think is still early stage for assessing and concluding implementation of the Law in practice.

In connection with implementation of the new Law, the one of the first measures which was implemented in order to ensure independence of court is increasing the monthly salary of judges from three to four folds compared to other public officials.

***Assessment of Progress***

***LACK OF PROGRESS***

***No information on new measures taken to implement the recommendation since April 2014 was provided.***

**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.**

**14<sup>th</sup> ACN Istanbul Action Plan Meeting on 8-10 October 2014**

***Measures taken to implement this recommendation***

1) The content of Draft NACP includes a Chapter on "Supporting to reduce corruption risk private sector and ensure integrity of competition" which comprises of 14 provisions. The main aim of the Chapter is implied by the following paragraph which stipulates that "the following measures shall be taken to make private sectors competitive, transparent and open, reduce corruption risk in private sector, support to

ensure integrity and narrowing participation of the Government and improving cooperation between the government organizations and private sector”. Furthermore, IAAC in cooperation with Mongolian Employers’ Association and Mongolian National Chamber of Commerce and Industry is conducting anti-corruption training for private sector. Currently approximately graduated 20 trainers graduated in order to introduce anti-corruption legislation to private sector.

The survey on Corruption Perception of Private Sector is regularly conducted once in a half year by Sant Maral Research Institution funded by the Asia Foundation and the findings of the last survey was introduced publicly on June 2014.

Starting from October 2014, Mongolian National Chamber of Commerce and Industry in cooperation with IAAC is planning to organize a series of meeting in order to share the findings of the Survey with private sector and discuss the points that shall be in consideration.

2) In the draft Law on Crime, which is the new version of the Criminal Code the responsibility for corruption is established on legal persons. The draft Law is planned to be introduced to the Parliament of Mongolia this autumn session and is officially included in the agenda of the session.

#### ***Assessment of Progress***

##### ***PROGRESS***

***Progress can be noted with regard to inclusion in the new anti-corruption strategy of provisions concerning corruption in the private sector and introduction of corporate liability for corruption criminal offences. No progress on the rest of the recommendation.***

## **PART II: OTHER MAJOR ANTI-CORRUPTION DEVELOPMENTS**

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