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OECD Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

Uzbekistan

Assessment and recommendations

Adopted at the 9th Monitoring Meeting of the Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on 7 December 2010 at the OECD Headquarters in Paris.

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Executive Summary

Uzbekistan joined the Istanbul Anti-Corruption Action Plan in March 2010. This is the first review report on Uzbekistan. This report provides an assessment of anti-corruption legal and institutional framework and a set of recommendations to support anti-corruption reforms efforts in Uzbekistan in three areas: anti-corruption policies; criminalisation of corruption; and prevention of corruption.

Anti-Corruption Policy

Political will to fight corruption is expressed by Uzbekistan's leadership in public statements and publications. The fight against corruption is indirectly included among objectives in different state programmes, such as the Programme on democratisation and renewal of society, reforming and modernizing of the state, which was adopted in 2004. In 2008 Uzbekistan acceded to the UNCAC and established a working group to develop anti-corruption measures.

A draft National Plan for Fighting Corruption was finalised in September 2010 by the working group, but it has not yet been adopted, and the text was not studied by the monitoring team. According to the Uzbek authorities, this comprehensive anti-corruption policy document sets out objectives, main areas of work and various measures to be taken in the areas of prevention of corruption, criminalisation and law enforcement and public participation and awareness. Some civil society organisations were consulted in its development. Uzbekistan is encouraged to adopt the National Plan for Fighting Corruption and to ensure its effective implementation. It is recommended that Uzbekistan takes measures to disseminate the adopted plan, to establish a mechanism for its implementation, and a body in charge of coordinating its implementation. It is further recommended to provide regular public reports about progress made in implementing anti-corruption actions.

In March 2010 the centre "Public Opinion" carried out a special survey of public opinion on corruption. This survey was commissioned by the government, and covered level and causes of corruption, attitude of public to law enforcement bodies and most effective means to fight corruption. According to the Uzbek authorities, the results of the survey were used in the development of the draft National Plan for Fighting Corruption; however, they were not made public. Further research into corruption by government, non-governmental and independent institutions would be useful and their results should continue to be used in development and monitoring of implementation of anti-corruption policies.

Main accent in the area of awareness raising and education is on general information on legal framework and raising legal awareness of the population. Various trainings and conferences are conducted; reports in mass media, posters, leaflets and booklets are disseminated to raise legal awareness. Recently more awareness raising and education activities specifically addressing fight against corruption took place. In 2009 – 2010 anti-corruption seminars were organised by the government together with *Konrad-Adenauer-Stiftung*, *Friedrich-Ebert-Stiftung*, United Nations Office on Drugs and Crime, Association of Business Women in Andizhan region. Tashkent State Law Institute is developing education materials for students specifically on bribery and corruption. Broader and more practical anti-corruption awareness raising and education activities targeting selected risk groups in public service, non-governmental and business sectors are needed.

Currently, Uzbekistan does not have a specialised agency responsible for, coordination of public anti-corruption policy and preventive measures, as required by the UNCAC; these functions are shared among

different public organisations. The draft National Plan for Fighting Corruption foresees the establishment of a collegial body– an inter-ministerial commission with participation of NGOs – that will be responsible for the coordination of the Plan and other measures to prevent corruption. It is also foreseen that the Office of Prosecutor General will provide the secretariat for this commission. It is recommended that Uzbekistan ensures a specialised body or a unit within existing institution responsible for corruption prevention, as required by the UNCAC.

Criminalisation of Corruption

The Criminal Code in Uzbekistan establishes the offences of active and passive bribery in public and private sectors. It also criminalises embezzlement, misuse of office and other corruption-related offences. Meanwhile, the elements of corruption offences do not fully meet the requirements of international anti-corruption standards. Criminal Code needs to be amended to ensure that the subjects of bribery include both material and non-material benefits, that not only undue advantages for a public official, but also for “another person or entity” are included. Promise and offer of a bribe, both in public and private sector, as well as solicitation of a bribe by public official should be criminalised. Besides, civil, administrative or criminal liability of legal persons for participation in the corruption offences should be introduced. Uzbekistan is also invited to consider criminalising “concealment”, “abuse of functions”, trading in influence and “illicit enrichment”.

While there are certain provisions in the Criminal Procedure Code of Uzbekistan allowing confiscation, the confiscation regime does not fully meet international standards. It is recommended that Uzbekistan establishes legal provisions enabling confiscation of profits gained from corruption crimes that have been transformed into other property, proceeds of crime intermingled with property acquired from legitimate sources and income from proceeds of crime. Uzbekistan is encouraged to improve its regime of immunities from detention and prosecution, by limiting categories of public officials to whom such immunities are accorded, restricting immunities to acts committed in the performance of official duties and adopting rules for lifting them.

In the area of law enforcement, Uzbekistan remains the only country of the former Soviet Union without a law regulating undercover operations. Uzbekistan is encouraged to adopt such law and also improve mechanisms of coordination among law enforcement agencies investigating and prosecuting corruption, as well as improve rules for recruitment of personnel in law enforcement anti-corruption units.

Prevention of Corruption

Legal framework for the civil service in Uzbekistan is provided in several legislative acts. For example, rules for the recruitment of civil servants are provided in the Labour Code, remuneration for public sector employees is regulated by a Cabinet of Ministers regulation. However, there are no unified competitive recruitment rules for the civil service. Uzbekistan is encouraged to develop a unified legal act on civil service that would define “public servant”, clarify criteria and rules for merit-based competitive recruitment and for the promotion in the civil service.

In the area of audit and financial control, there is an independent supreme institution in Uzbekistan - the Accounts Chamber. Public financial management and control are centralized in the Ministry of Finance. The Main Control and Revision Division of the Ministry of Finance is the main inspection body. The Accounts Chamber of Uzbekistan and internal audit personnel should get anti-corruption training; rules on mandatory publication of information on budget expenditures should be introduced; internal audit should be developed.

Public procurement in Uzbekistan is regulated by several legal acts and under a certain threshold competitive procedures should be used. Main concerns in this area are related to transparency in different stages of procurement process and high threshold to use competitive procedures. Establishing an independent public procurement review body is recommended. Anti-corruption training is necessary to the staff of the bodies responsible for public procurement.

Legislation on free access to information should limit the discretion of officials in refusing to provide information. A unified electronic system of public information should be created accessible to general public. Citizens' awareness about their rights and responsibilities in accessing information should be raised.

While the law provides for a procedure for recruiting judges and there are provisions in the Constitution and Law on Courts on independence of the judiciary, more efforts can be taken to promote transparency and integrity of the judiciary. Transparency of the judiciary should be improved, including by establishing and publicising criteria for selection and promotion and reasons for dismissal of judges. It needs to be ensured that high-profile corruption and human rights cases are transparently tried. A Code of Conduct for judges, in line with the Bangalore Principles of Judicial Conduct, should be adopted.

Business sector entities should be encouraged to adopt adequate internal controls and develop various self-regulation measures (code of conduct, anti-corruption compliance measures).

Review of Uzbekistan

The Istanbul Anti-Corruption Action Plan is a sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). It targets Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. Its implementation involves review and monitoring of legal and institutional framework to fight corruption.

Uzbekistan joined the Istanbul Action Plan in March 2010. This is the first review of Uzbekistan. Uzbekistan provided a self-assessment report, based on Istanbul Action Plan Second Round of Monitoring questionnaire, on 15 September 2010. Monitoring team conducted a desk assessment and drafted recommendations in October – November 2010.

The monitoring team was led by Mr. Daniel Thelesklaf (Switzerland) and included Ms. Zorana Markovic (Republic of Serbia), Ms. Olga Zudova (UNODC) and Ms. Anna Margaryan (Armenia).

Mr. Evgenyi Kolenko, Deputy Head of Department of Fight against Economic Crime and Corruption, General Prosecutor's Office of the Republic of Uzbekistan, provided coordination on behalf of Uzbekistan. Ms. Inese Gaika and Ms. Olga Savran provided coordination on behalf of the OECD/ACN Secretariat.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting on 5-8 December 2010. It includes 21 recommendations to Uzbekistan. The report is published after the meeting at <http://www.oecd.org/corruption/acn>.

To support the implementation of the recommendations the ACN Secretariat will undertake a return mission to Uzbekistan to present the report to the public institutions, civil society, business and international community. The Government of Uzbekistan 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.

Country Background Information

Economic and social situation

Uzbekistan is a country in Central Asia with a population of 27,5 million inhabitants and an area of 447 thousand m². It is a landlocked country that borders on Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan and Turkmenistan.

Uzbekistan is the world's sixth-largest producer and second-largest exporter of cotton, which is its main source of export revenues. Uzbekistan also relies on export of natural gas, oil, gold, and uranium.

Market oriented structural reforms and market liberalisation are in progress. Uzbekistan has experienced steady economic growth over the past decade, largely due to favourable external environment and macroeconomic policies. Economic growth in Uzbekistan has accelerated to 9% in 2007 – 08. Despite global crisis, Uzbekistan's economy continued to growth by about 8% in 2009 and 2010.¹

While poverty declined from 27,5 percent in 2001 to 25,8 percent in 2005, the GDP per capita still remains low - around 1100 USD in 2009 – and there is still potential for fighting the poverty. President Karimov issued a decree announcing a 20% increase in minimum state-sector wages, pensions, student grants and social benefits as of 1 August 2010.

Political structure

Uzbekistan is a presidential republic. Islam Karimov was elected president of Uzbekistan for his third term with 88% vote on December 2007. The political power is concentrated in the executive branch. The President forms the Cabinet of Ministers, appoints *khokims* (heads of regional administrations) and part of senators, as well as approves selection of judges.

Uzbekistan has a bicameral parliament (Oli Majlis). The lower house is composed of 150 deputies elected in territorial electoral districts. Currently it includes four political parties that are considered pro-presidential. The 100-member upper house, the Senate, is made up of 84 senators elected by deputies of local *kengash* or local councils and 16 senators appointed by the president.

While there are constitutional guarantees for freedom of speech and press, some reports and public statements express concerns in this regard. A recent OSCE statement expressed concerns over harassment of journalists and stated that there has been no improvement in Uzbekistan's press freedom situation. Reports indicate, freedom of association is limited too, and unregistered NGOs face difficulties and harassment.²

¹ IMF, Republic of Uzbekistan: 2008 Article IV Consultation—Staff Report; IMF Country Report No. 08/235, 2008; Economist Intelligence Unit, Uzbekistan, Country Reports in 2010, World Bank, Country Brief 2010

² Freedom House, Freedom in the World, 2010 Edition; U.S. State Department, 2009 Human Rights Report. Uzbekistan; U.S. Statement on Media Freedom in Uzbekistan, 23 September 2010; OSCE media freedom representative concerned about persecution of journalists in Uzbekistan, OSCE Press Release, 20 February 2010

Trends in corruption

Corruption is perceived as pervasive in Uzbekistan. In 2010 Uzbekistan was ranked 172nd among 178 countries in the Transparency International's Corruption Perception Index (CPI), and its rating has decreased over the past years.

Rating of Uzbekistan in Transparency International's CPI:

2007		2008		2009		2010	
Ranking	Score	Ranking	Score	Ranking	Score	Ranking	Score
175	1,7	166	1,8	174	1,7	172	1,6

1. Anti-Corruption Policy

1.1–1.2–1.3 Political will to fight corruption, anti-corruption policy documents and corruption surveys

Political Will to Fight Corruption

Uzbekistan's self-assessment report stresses that country's leadership pays significant attention to countering corruption with both the President and the Government of the Republic of Uzbekistan having it high on their agenda. President of the Republic uses many of the public and state events to highlight the problems of corruption and also elaborates on it in his papers and books.

The leadership of Uzbekistan believes that corruption can be effectively tackled indirectly through such measures as strengthening legal and judicial system, increasing legal awareness, increasing role of non-governmental organisations, ensuring defence of rights and freedoms and creating system of social control over public sector.

Uzbekistan indicates that fight against corruption is covered in different state programmes and decisions. A number of such measures were introduced by the President's Decree Nr. PP-24 adopted on 10 March 2005. The Programme on democratisation and renewal of society, reforming and modernizing the state, which was adopted by this Decree, according to information provided by Uzbekistan, includes measures tackling corruption. Further information was provided that as part of this Programme many legal acts were adopted (simplification of taxation, simplification of forms and procedures for obtaining permits, reducing controls, accelerating of market-oriented economic reforms, creation of fund to support independent media, etc.), one of the aims of which is also the fight against corruption. For example, the Programme led to the adoption of the concept of reforms to liberalization of the judiciary and legal system. Reportedly, it includes measures against corruption in the judiciary and legal system. Specific anti-corruption measures in these laws and the degree of their effectiveness and implementation were not studied in this report.

Other state programmes in such areas as mass media, foreign policy, foreign trade and similar all also tackle fight against corruption to some degree.

A certain expression of political will is the fact that in 2008 Uzbekistan has acceded to the UNCAC, and with this impetus a working group was created to develop anti-corruption legislation, in compliance with the UNCAC, and a national anti-corruption strategy. As a result, recently a draft National Plan to Counter Corruption was drafted (see for more information "Anti-Corruption Policy Documents").

It is also noted that all political parties in Uzbekistan address corruption issues in their election programs and suggest ways and means to counter this phenomenon. It seems that areas mostly affected by corruption, as indicated by these programmes, are law enforcement and controlling bodies. One of the political parties has adopted an Action plan for 2006-2009 highlighting its strive to conducting an uncompromising fight against and development of concrete measures on rooting out such phenomena as bribery, corruption, extortion in different spheres. Others have either committed to supporting draft laws that put forward legislative initiatives aimed at fighting the said phenomenon or have also set in their programs the political task to rooting out corruption, cronyism, ignoring of citizens needs and similar.

Authorities of Uzbekistan are to be commended for efforts and programs adopted so far containing ways to suppress corruption and related problems through institutional rebuilding and legislation reform together with the adoption of Resolution on the Republic of Uzbekistan joining the UNCAC in 2008, but are encouraged to ensure effective implementation of the said documents. Although established high in the country leadership agenda, the will to fight against corruption remains mostly a declarative goal, widely elaborated in the relevant documents. Rare or no examples of actually implemented measures, their practical consequences or progress were reported.

Anti-Corruption Policy Documents

A draft National Plan for Fighting Corruption has been recently developed. The draft National Plan for Fighting Corruption was developed by the working group set up in September 2008 to develop measures and bring the national legislation in consistency with requirements stipulated in the UNCAC. This working group consists of 12 ministries and public institutions and is headed by deputy prosecutor general.

The draft National Plan for Fighting Corruption was sent to several other, also non-governmental organisations, including National Centre of Human Rights, Ombudsman, Chamber of Defense Lawyers, Institute of Studies of Civil Society, and various specialists from ministries and public institutions. These organisations provided comments and suggestions. It was reported by Uzbekistan that these comments and suggestions were analysed and most of them were taken into account in the final draft.

The National Plan for Fighting Corruption is envisaged to provide a detailed basis of the anti-corruption policy and to identify strategic priorities, methods and mechanisms together with concrete measures for their implementation. As of 15 September 2010, the draft National Plan for Fighting Corruption was finalized and sent for comments to relevant ministries and public institutions.

However, there is no special national document at present defining anti-corruption policy in the Republic of Uzbekistan. The policy in this area is reported to be maintained by means of enactment of respective legislation and other normative acts that regulate certain directions of the combat against corruption and other state programmes.

According to the UNCAC, each State Party has to develop and implement effective, coordinated anti-corruption policies that promote participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. The Uzbek authorities are to be commended for this timely and concrete effort coming after joining the UNCAC to develop the National Plan for Fighting Corruption and are especially encouraged to continue in effective and efficient way its adoption procedure and further ensure its efficient implementation.

Recommendation 1.1-1.2

Adopt a comprehensive National Plan on Countering Corruption, agreed by all key national players, including ensuring wide consultation with non-governmental organisations and academia, and widely disseminate it. Ensure that the National Plan on Countering Corruption includes clear priorities, concrete and effective measures and a mechanism for implementation, including clear division of tasks, precise guidelines and time frame; designate a body in charge of coordinating the implementation and include in the plan provision of regular public reports about its implementation.

Corruption Surveys

According to Uzbekistan's self-assessment report, a specialised non-governmental research centre "Public Opinion" was established by the President's Decree Nr. UP-1791 on 25 June 1997, which is entrusted to

conduct public surveys and studies on public opinion. The centre works on various issues, notably surveys on business sector, barriers to entrepreneurship, respect of human rights, effectiveness of legislation, judicial sector, bodies of internal affairs, university teaching personnel.

In March 2010 the centre “Public Opinion” carried out a special study on public opinion on corruption, which was based on a nationwide social survey. The study covered level and causes of corruption, attitude of public to law enforcement bodies and most effective means to fight corruption. This study was commissioned by the government and it was funded by state budget. It was reported that results of this study were used in the development of the draft National Plan on Countering Corruption and further sent to some state institutions and non-governmental institutions, but were not published.

According to the self-assessment report, public institutions regularly commission surveys on spheres falling under their competence. Examples of surveys in higher education institutions on attitude to teaching personnel, on public attitude to police and a survey on public attitude to legal and courts reform of legal and courts system were provided.

Uzbekistan reports that institution or sector-specific studies on corruption are run on a regular basis by the Prosecutor General’s Office of the Republic of Uzbekistan. The Prosecutor General’s Office collects, compiles and analyzes statistical data on criminal cases related to corruption crimes.

It is also reported that the process of preparation and adoption of laws envisages that entities vested with the right to legislative initiative are authorised to disseminate draft laws to public agencies, NGOs and research institutes for comments and opinions.

While it is positive that regular and broad research is being conducted and budget is allocated to research and educational institutions, it is not clear how these reported research activities in different areas are or could be effectively used for anti-corruption efforts. These activities are also limited to governmental institutions and funded from the state budget. Limited information was provided on other, independent surveys on corruption conducted by NGOs and associations. The self-assessment report mentions surveys by some of the non-governmental organisations involved in the development of the anti-corruption legislation and that allegedly contained important data on extent of corruption that was taken into account. However, these surveys were not presented to the review team.

It is important for the Government to continue to use broad based surveys and studies in development of anti-corruption policies. In this respect, however, it should be said that no sufficient information is available at this stage to assess to what extent different reported research efforts were already practically used, in particular in the development of national anti-corruption policy.

Recommendation 1.3

Encourage further research into corruption by government, non-governmental and independent institutions. Ensure regular, specific and evidence-based studies and surveys of public opinion on the extent and patterns of corruption, experience with corruption and attitude towards government anti-corruption efforts. Use statistical data on corruption crimes to ensure that anti-corruption surveys are reliable and evidence-based. Ensure that results of research studies are used in development of anti-corruption policy and identification of corruption risk areas.

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

Public Participation

The Government of Uzbekistan has reached out to some non-governmental and academic organisations on issues related to tackling corruption. Such cooperation, as reported, is mostly visible through workshops and seminars, as well as through consultations on legal and policy documents, including in case of drafting of the National Plan on Countering Corruption, but also in development of other measures in the context of implementation of the UNCAC.

The Government should be commended on taking into account opinions and civil society reports in the process of development of the draft package of anti-corruption documents and encouraged to use a wider group of NGOs or mechanisms to consult the public in general. Effective systematic involvement of public is necessary and for consultation with the public it is important to involve departments and officers in ministries and public institutions responsible for public relations that exist since 2006.

Raising Awareness and Public Education

The Government of Uzbekistan reports that main accent in this area is on providing information on legal framework and raising legal awareness of the population, where some activities are indirectly tackling fight against corruption. Lately there are also events specifically addressing the fight against corruption.

More comprehensive efforts to raise public awareness of their rights and increase legal literacy started with the adoption of the National programme for enhancement of the legal culture in the society on 29 August 1997. The Centre of research and studies of public opinion "Public Opinion" was established at the same time. This Centre produces specialized journals, surveys and research. There is also the Centre for propaganda of legal education established under the Tashkent State Law University and the Ministry of Justice. They all assist, organize and develop different educational and promotional activities and programs aimed at all strata of the population. Furthermore, there is the Centre for advanced training of lawyers established under the Ministry of Justice that runs advance, on the job training programs for Ministry staff, lawyers from the state agencies, attorneys-at-law and similar. Uzbekistan confirmed that this training includes anti-corruption issues.

Apart training events, conferences and roundtables, awareness raising activities are conducted through mass media and printing and disseminating of posters, leaflets, booklets and stickers. It is noted that the Ministry of Interior, Prosecutor General's office, Ministry of Justice, the Chamber of Lawyers broadly practice these methods where materials in question highlight fundamental provisions of the national law, contain hot line numbers for reporting of illegal actions by public officials, which helps fight corruption in the country.

All awareness raising and public education activities are mainly administered and funded by the state. A mechanism in that regard is created by the Parliament – Public Foundation to support non-governmental organisations, non-profit organizations and other civil society institutions through a parliamentary committee, which manages these funds. In 2010 part of the budget is reserved for NGOs providing legal awareness raising activities.

Meanwhile, besides state institutions, some NGOs, both national and international, conduct events aimed at raising legal awareness and discussing issues related to legal reforms and lately also specifically addressing corruption and teaching the public how to counter it.

In 2010, for example, a series of seminars for journalists, NGOs and lawyers on liberalisation of court system and cooperation with law enforcement authorities was organised with support of the German foundation *Friedrich-Ebert-Stiftung*. Similar topics were dealt at cycle of seminars organised in co-operation with the German foundation *Konrad-Adenauer-Stiftung*.

In 2009 – 2010 several activities specifically addressing fight against corruption took place. The government together with Association of Business Women in Andizhan region organised a series of seminars and round tables “Development of Mechanisms to Counter Corruption” in 2009. Two seminars on implementation of the UNCAC were co-organised with the UNODC in May 2009 and in July 2010. In October 2009 a seminar “Problems in fighting corruption: national and international experience” was held with the support of German foundation IRZ, and the Office of the Prosecutor General issued a book with the similar title. Tashkent State Law Institute issued a book for students “Criminal Law and Criminological aspects of bribery” and is developing a study “Corruption: Theory and Practice” in 2010 – 2011.

There is comparatively limited number of awareness raising activities and educative materials focused specifically on the fight against corruption. These activities seem to be fragmented and mainly supported and funded by the international organizations. Some of them were timely and practical and formed a useful contribution for the preparation of the national anti-corruption action plan and anti-corruption package, following ratification of the UNCAC. Awareness and education is one of the three pillars in a comprehensive approach to fight corruption: prevention, law enforcement and awareness of corruption. Therefore, a more systemic and targeted approach to anti-corruption awareness and education is needed. The government of Uzbekistan could develop more specific activities for main risk groups of population or public servants and reach out to them with practical activities, informing of their rights and duties specifically in this area and how they can tackle corruption in practice.

Recommendation 1.4 – 1.5

Develop and conduct awareness raising and education events for general public, selected risk groups of public officials, addressing also civil society associations and business sector. Make awareness raising events useful and focus on specific and practical aspects, such as rights and duties of each specific audience, practical ways to prevent corruption, right of citizens to interact with public institutions, etc. In providing awareness raising and education events, use already developed and established methods and channels of cooperation notably between the governmental agencies and institutions and civil associations and allocate adequate funds from the state budget for these purposes.

1.6. Specialised anti-corruption policy and coordination institutions

There is no specialized government institution responsible for development of the government anti corruption policy, coordination of respective measures, cooperation with the civil society, evaluation of implementation of the anti corruption strategy and action plan, development of the legislative and regulatory proposal in the area of combating corruption. The aforementioned matters fall under mandates of various government agencies and bodies. Besides the President, Legislative chamber of the national parliament, Constitutional court, Supreme Court and Supreme Economic court. Anti-corruption

policy is also developed by the Government through adoption of decrees and resolutions, which are binding for all public institutions, enterprises, organizations, public officials and citizens.

Cooperation with civil society and citizens in the process of development of policies and drafting or amending of the legislation is determined by the governmental agency responsible for drafting of a law. NGOs and citizens can also submit proposals and draft laws to the respective agency which may also establish a working group with representatives of academia, NGOs and citizens for further development of the law.

As mentioned earlier in this report, a working group created in 2008 bringing together 12 institutions, headed by deputy Prosecutor General, developed the draft national anti-corruption policy. Information was provided by Uzbekistan that, according to the draft anti-corruption policy document, for its coordination it is envisaged to set up a collegial body – an interministerial commission with participation of NGOs. It is foreseen that functions of its Secretariat will be entrusted to the Office of Prosecutor General.

It is evident that so far a comprehensive mechanism for coordination of anti-corruption policy was not put in place as required by the UNCAC. Now that a draft national anti-corruption policy is developed, and once it will be adopted, for its effective implementation, it would be necessary to have useful a state agency or organization in place that would coordinate respective activities and measures, would regularly cooperate with civil society, evaluate implementation of the anti-corruption strategy and action plan, and could be also responsible for issues of prevention of corruption and training in the anti-corruption sphere, as well as development of legislative and regulatory proposals in the area of combating corruption.

Recommendation 1.6.

Ensure a specialized agency or unit within an existing public institution that would be responsible for development and coordination of the national anti-corruption policy, would monitor and supervise its implementation and would disseminate knowledge about prevention of corruption and regularly cooperate with civil society. Authorities should ensure such body is granted effective independence, necessary material resources and specialized staff with regular training in order to enable them to carry out their functions.

1.7 International anti-corruption conventions

Republic of Uzbekistan is a participant in the UN Convention against Corruption (UNCAC) through its law of 2008. The UNCAC came into force in the Republic of Uzbekistan on 28 August 2008. The Republic of Uzbekistan made a reservation at ratification. Uzbekistan declared itself not bound by paragraph 2 of the Article 66 on settlement of disputes through arbitration and International Court of Justice.

National legislation has to be brought in compliance with requirements of the UNCAC in order to have internationally comparable and common approach in the fight against corruption. As mentioned earlier in this report, a working group on UNCAC implementation was created and is operating since 2008 in Uzbekistan.

Recommendation 1.7.

Republic of Uzbekistan should ensure the necessary anti-corruption legislation is in place to enhance compliance with the UN Convention against Corruption and continue monitoring of its implementation and awareness raising on its provisions.

2. Criminalisation of Corruption

2.1–2.2 Offences and Elements of Offence

Offences

The Criminal Code of Uzbekistan has provisions that criminalize active bribery (“giving bribes”) and passive bribery (“taking bribes”) in both public and private sector (Articles 210, 211, 213, 214). Other corruption-related conduct is also criminalised including embezzlement or misappropriation (Article 167), abuse of power or official functions (Article 205), excess of power or official functions (article 206), administrative dereliction (Article 208), forgery in public office (Article 209), bribe taking (Article 210), bribe giving (Article 211), bribery intermediation (Article 212), bribing an officer (Article 213), reward extortion (Article 214), interference in the investigation or resolution of cases at law (article 236), legalization of crime proceeds (Article 243), acquiring or disposing of property gained by criminal methods (Article 171), and others.

However, the scope of the criminalized conduct does not fully meet the requirements of international anti-corruption standards set out in the UNCAC that are also stipulated in the Council of Europe Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Bribe giving and bribe taking: *The promise and offering a bribe* is not criminalized, although this type of a conduct under some circumstances can be qualified as an attempt of or preparation for bribe giving. *Solicitation* is mentioned in the Article 210 Bribe Taking as element rendering commission of this offence graver. Solicitation of a material benefit or property benefit by a person who is not a public official is criminalized in Article 214 of the Criminal Code.

The Article 210 of the Criminal Code defines a “*bribe*” as material benefits or property advantage gained for taking or absence of taking an action in interest of bribe giver by misusing public office. Thus the subject of the bribe is limited to *material benefits* and would not extend to non-pecuniary and non-tangible benefits as types of *undue advantages* provided by the UNCAC.

Only bribe taking/giving directly or indirectly of by/to the official is covered by the Criminal Code, while undue advantages for “*another person or entity*”, as it is required by the UNCAC, are not criminalized. The Criminal Code limits a bribe taking/giving to the acts/refraining from act of public officials “in the interests of a briber”, while the UNCAC indicates that the official acts or refrain from acting “in the exercise of his or her official duty” regardless the interests of a briber (Articles 15 and 16).

Trading in influence (Article 18, UNCAC) is not criminalized by a separate offence. Only some forms are criminalised as part of provisions on active and passive bribery, as well as by article 206 “Excess of power or official functions” that establishes a criminal liability for commission by a public official of actions that exceed the powers granted to him/her by law, “which caused the damage or significant violation of rights and legitimate interests of citizens or organizations or the interests of the society and the state protected by law. Also, the Plenum of Supreme Court in its Guidance No. 19 of 24 September 1999 On the Legal Practice in Cases of Bribery gave the interpretation of the relevant articles of the Criminal Code having explained that *Bribe Taking* covers “officials who were not in a position to take certain actions in favour of the bribe giver, but due to their official status could take measures, in exchange for a bribe, so that those actions would be taken by other officials”.

Abuse of function (Article 19, UNCAC). Article 205 of the Criminal Code criminalizes abuse of power or official functions, i.e. intentional use of official functions by an official entailing major damage or considerable harm to the rights or legally protected interests of individuals, or state or public interests. The elements of “abuse of power or official function” differs from the elements of ‘abuse of functions’ as provided by article 19 of the UNCAC that defines the abuse of functions or position as the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Concealment (Article 24, UNCAC). The concealment or continued retention of property, when committed intentionally after the commission of offences without having participated in such offences, when the person involved knows that such property is the result of the offences, seem not to be criminalized. Article 171 of the Criminal Code establishes as a criminal offence only “in advance non-promised acquiring or disposing of property knowingly obtained by criminal means”.

Liability of legal persons (Article 20, UNCAC). The legislation in Uzbekistan does not envisage criminal or administrative liability of legal persons for participation in any offences. In accordance with the Criminal Code and Code on Administrative Liability, only natural person can be liable for the commitment of the offences.

As it was mentioned in the self-assessment report, the liability of legal persons is foreseen in customs and tax legislation. Besides, Article 53 of the Civil Code foresees liquidation of legal persons on the basis of a court decision in cases where they are carrying out activities forbidden by law. Meanwhile, national legislation does not foresee specifically liability of legal persons for committing corruption crimes.

Illicit enrichment (Article 20, UNCAC). While this provision is not mandatory, it should be noted that illicit enrichment is not criminalized.

Recommendation 2.1-2.2.

Amend the Criminal Code to ensure the following:

- ***subject of a bribery, both in public and private sector, covers undue advantages which include both material and non-material benefits.***
- ***definition of a bribery includes undue advantages not only for the official himself/herself, but also “for another person or entity” regardless the interests of a briber as required by articles 15 and 16 of the UNCAC;***
- ***promise and offer of a bribe, both in public and private sector, and solicitation of bribe by public official are criminalized, according to the UN Convention against Corruption;***
- ***introduce efficient and effective civil, administrative or criminal liability of legal persons for participation in the corruption offences, in line with the UNCAC.***

Consider amending the Criminal Code to ensure the following:

- ***“concealment”, “abuse of functions”, trading in influence, “illicit enrichment”, as defined by the UNCAC, are criminalized.***

2.3. Definition of Public Official

Section VIII (Legal Definitions) of the Criminal Code defines “an official” as “a person vested with organizational, management, or administrative powers without the qualifying elements of an executive official”. Also, it defines “an executive official” as: “(1) representatives of the authorities; (2) persons

temporarily or permanently holding elected or appointed positions at a state enterprise, institution or organization involving the performance of organizational, management or administrative functions and authorized to take legally significant actions; (3) heads of an enterprise, institution or organization of other forms of ownership, a representative of the public vested with government power authorizations in the prescribed manner; (4) persons occupying positions involving the fulfilment of duties in citizens' self-governments".

The definitions do not distinguish among national public official, foreign public officials and officials of public international organizations. According to the self-assessment report, the definitions cover both national and foreign public officials as articles 11 and 12 of the Criminal Code established jurisdiction over foreign citizens who committed offences in the territory of Uzbekistan unless otherwise is provided by the international treaties or agreements. However, the language that is used in these definitions relate to the national officials only. Moreover, officials of public international organizations seem not to fall into this definition either. As the definitions are very vague, they require clarification to avoid different interpretation. The Guidance of the Supreme Court does not provide for this clarification either. The international standard requires that foreign and international public officials are covered clearly, either by explicitly expanding the definition of a public official or by introducing a separate offence that covers both categories.

Article 15 of the Code on Administrative Liability that establishes grounds for administrative liability of officials (both in private and public sectors) gives a definition of an official that does not correspond to the definition provided by the Criminal Code: "such person is considered official, which holds an office in enterprise, public institution or organisation, irrespective of its form of property and if he has managerial, organizational, decision-taking, control-oversight functions or duties, related to move of material goods".

Recommendation 2.3

Amend the Criminal Code to ensure that the bribery of foreign public officials and public officials of international organizations is criminalized explicitly, either through amending the definitions of public officials or by introducing separate criminal offences.

Bring in compliance with each other definitions of an official provided by the Criminal Code and Code on Administrative Liability.

2.4–2.5–2.6 Sanctions, Confiscation, Immunities and Statute of Limitations

Sanctions

The Criminal Code provides for various sanctions for corruption-related crimes, including deprivation of liberty (imprisonment) ranging up to 15 years (for "especially grave" offences), corrective labour, arrest and deprivation of certain rights (including the right to occupy certain positions or to engage in certain activities). For example, for bribe taking, according to Article 210, sanctions range from a fine of 50 to 100 minimal salaries or imprisonment from 5 to 15 years for graver forms of the offence. The sanctions seem to have taken into account the gravity of the offences as required by Article 10.1 of the UNCAC.

Confiscation

Neither the Criminal Code, nor Code on Criminal Procedure (CCP) define the term “confiscation”. This term was excluded from the Criminal Code by the Law Nr. 254-II of 29 August 2001 that abolished confiscation as an additional penalty. It should be noted that other domestic laws including Code on Administrative Liability (article 27) use this term and provide for confiscation accordingly. For example, article 27 of the Code on Administrative Liability provides for confiscation of subjects and instrumentalities of administrative offences.

The measures that are not called confiscation of instrumentalities and proceeds of crime but seem to have the same meaning are provided only by the four articles of the CCP, *i.e.* Articles 211, 284, 285 and 457, that do not fully meet the requirements of the international anti-corruption standards.

The legislation does not fully regulate issues related to confiscation of:

- (a) proceeds of crime that have been transformed or converted, in part or in full, into other property;
- (b) proceeds of crime that have been intermingled with property acquired from legitimate sources;
- (c) income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled.

The proceeds of those offences that did not caused material damages seem not to be subjected to confiscation as it is provided by Article 211-5 of the Code of Criminal Procedure (CCP): “Money and other valuables acquired by criminal methods are to be used upon a court sentence for compensation of material damages inflicted by the offence, and if the disadvantaged person sustaining material damage is unknown, are to be channelled to the state budget”.

The laws do not provide for confiscation of the direct crime proceeds. Article 285 of the CCP says: “Money, material objects and other valuables acquired by an accused person from crime proceeds, are to be spent upon a court sentence for the compensation of material damage, and the amount exceeding this damage is to be channelled to the state budget”.

The CCP enables confiscation only of the objects of crime that are possessed by the third parties and is silent about the confiscation of crime proceeds that were transferred to the third parties.

The laws do not require an offender to demonstrate the lawful origin of the alleged proceeds of crime or other property liable to confiscation.

The laws do not provide for the measures for direct recovery of property as it is established by Article 53 of the UNCAC:

- (a) Measures to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the UNCAC;
- (b) Measures as to permit domestic courts to order those who have committed offences established in accordance with the UNCAC to pay compensation or damages to another State Party that has been harmed by such offences;

(c) Measures to permit domestic courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the UNCAC.

The laws do not fully regulate all aspects of confiscation of crime proceeds without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases (article 54 c UNCAC).

The laws do not provide for the return and disposal of assets as it is established by article 57 of the UNCAC.

Immunity

Various domestic laws grant immunity from being detained and prosecuted for excessive number of public officials including President, members of Parliament, deputies of the regional, district and municipal Kengash of People's Deputies, the Human Rights Commissioner of Parliament (Ombudsman), judges, prosecutors and investigators of the prosecutors' offices. The rules defining the process and criteria for lifting immunity vary in accordance with the specific position of the public official.

Regardless the statement in Uzbekistan's self-assessment report, the immunities seem not to be functional and are not restricted to acts committed in the performance of official duties.

The laws do not specify which procedural acts (except an initiation of a criminal case by Prosecutor-General against any public official who enjoys immunity) are allowed before lifting of immunity.

Pursuant to Articles 221, 223 and 226 of the CCP, officials who enjoy immunity can be detained if caught in the act (*in flagrante delicto*) - no more than 72 hours. However, they cannot be arrested before the immunities are lifted (article 239 of the CCP).

Statute of limitation

The Statute of limitation depends of the gravity of an offence and establishes the following terms of all types of offences including corruption-related offences:

- (a) three years – if a crime does not constitute serious public danger (when the penalties are no more than three years imprisonment for the crimes committed intentionally);
- (b) five years – for a less grave crime (when the penalties are more than three years but not more than five years imprisonment for the crimes committed intentionally);
- (c) ten years – for a grave crime (when the penalties more than five but more ten years imprisonment for the crimes committed intentionally).
- (d) fifteen years – for an especially grave crime (when the penalties are more than ten but no more than 15 years imprisonment or life sentence for the crimes committed intentionally).

The Statute of limitations does not apply to persons who have committed "crimes against peace and security of mankind". "The statute of limitations is interrupted if an offender brought to criminal liability hides from prosecution or trial. The period of limitations is suspended if the person guilty of committing a grave or especially grave crime commits a new intentional offence before the expiration of the periods stipulated by this Article. A person cannot be brought to liability if twenty-five years have passed from the date of commission of an offence" (Article 64 of the Criminal Code).

The Statute of limitations allow for sufficient time to investigate and prosecute corruption-related cases.

Recommendation 2.5.1.

Take measures to enable confiscation of proceeds of crime derived from the corruption-related offences in line with the international standards, including as follows:

- **Provide for a legal definition of the term “confiscation”;**
- **Adopt provisions that enable confiscation in all situations of :**
 - **proceeds of crime that have been transformed or converted, in part or in full, into other property;**
 - **proceeds of crime that have been intermingled with property acquired from legitimate sources;**
 - **income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled;**
- **Consider adopting a provision that requires an offender to demonstrate the lawful origin of the alleged proceeds of corruption offences or other property liable to confiscation.**

Recommendation 2.5.2.

- Take measures to enable direct recovery of property as it is established by Article 53 of the UNCAC including:

- **measures to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the UNCAC,**
- **measures as to permit domestic courts to order those who have committed offences established in accordance with the UNCAC to pay compensation or damages to another State Party that has been harmed by such offences,**
- **measures to permit domestic courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the UNCAC;**
- **Consider adopting provisions that enable confiscation of crime proceeds without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases;**
- **Take measures to enable the return and disposal of assets as it is established by Article 57 of the UNCAC.**

Recommendation 2.6

Adopt clear, simple and transparent rules for lifting of immunity and limit the categories of persons benefiting from immunity and the scope of immunity for some categories to ensure that it is restricted in applications to acts committed in the performance of official duties.

2.7 International cooperation and mutual legal assistance

Uzbekistan is a party to the major UN conventions including the UNCAC and UNTOC, as well as the CIS Minsk Convention. Uzbekistan did not sign the CIS Chisinau Convention that provides for more advanced provisions on Mutual Legal Assistance (MLA), including the MLA for the purpose of seizing and

confiscating crime proceeds, than Minsk Convention. Uzbekistan is also bound by bilateral MLA and/or extradition treaties with more than 20 countries.

In September 2010, Parliament adopted the amendments to the Code of Criminal Procedure (CCP) that introduced a new section entitled "International cooperation in criminal matters". The amendments established the grounds and procedure for mutual legal assistance and extradition that previously had not been regulated by law. The new provisions of the CCP, among other things, allow extradition and MLA on reciprocity basis (previously, bilateral or multilateral treaties had been the only legal grounds for MLA and extradition) Also, the amendments introduced, among other things, simplified the evidentiary requirements and introduced a new article of the admissibility of evidence. Moreover, the amendments provided for the judicial review of the decision on extradition taken by the Prosecutor-General and its simplified procedure as recommended by the UNODC Expert Working Group on extradition best practices.

All crimes covered by the Criminal Code, including corruption crimes, are subject to the MLA provisions and provisions on extradition when the penalties are more than either 1 year or six months imprisonment depending on the purpose of extradition (prosecuting or enforcing a sentence). Extradition of nationals is not permitted. In accordance with the Minsk Convention, Uzbekistan prosecutes its national when it refuses extradition under the nationality grounds. However, the principle "extradite or submit to prosecution" (*aut dedere aut judicare*) is not provided by the CCP. Taking testimonies of a witness or expert by videoconference is not provided by the CCP either.

The absence of dual criminality is one of the grounds for the refusal of assistance and extradition. In the absence of dual criminality, assistance won't be rendered even when it does not involve coercive measures.

Recommendation 2.7

Adopt the principle "extradite or submit to prosecution" in accordance of Article 44(11) of the UNCAC.

Consider adopting provisions that allow to render assistance that does not involve coercive measures in the absence of dual criminality in accordance with Article 9 (b) of the UNCAC.

Consider adopting provisions that allow taking testimony of a witness or expert by video conference in accordance with Article 19 of the UNCAC.

Consider becoming a party to the CIS Chisinau Convention on mutual legal assistance.

2.8. Application, Interpretation and Procedure

The domestic laws do not say anything about special investigative techniques except telephone interceptions that are regulated by article 169-171 of the Code on Criminal Procedure. The self-assessment report says that special investigative techniques are used in corruption investigations but these techniques are regulated by secret instructions. It should be noted that Uzbekistan is the only country of the former Soviet Union that has not yet adopted a law on special investigative techniques. The regulation of the grounds and procedure of these operations by secret instruction violate the rights of suspect/offenders and do not allow for the admissibility in court of evidence derived from these operations.

Recommendation 2.8

Adopt the law that allow for the appropriate use of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic and other forms of surveillance and undercover operations, within territory of Uzbekistan, and to allow for the admissibility in court of evidence derived therefrom, in accordance with Article 50 of the UNCAC.

2.9. Specialised Anti-Corruption Law-Enforcement Bodies

Uzbekistan does not have a separate independent anti-corruption law enforcement body. Instead, special departments/units empowered to investigate corruption-related cases are put in place in the General Prosecutor's Office and Ministry of the Interior. The Investigation Department of the National Security Service also investigates – among other cases – corruption-related cases.

As all the heads of these departments/units are appointed and can be dismissed by their supervisors, it is unlikely that they have sufficient independence to investigate high-level corruption offences. The departments/units do not have budget autonomy. There is no special procedure for selection, appointment or dismissal of the personnel of the anti-corruption units.

If a law enforcement agency or prosecutors' office determines that a case falls outside its jurisdiction, it is mandated by law to refer the case to the appropriate agency. However, there are no written guidelines or formalised mechanisms for cooperation, exchange of information and resources between law enforcement agencies. Rather, the cooperation among seems to be more *de facto*.

Recommendation 2.9

Consider establishing permanent mechanisms of co-operation among law enforcement in investigation and prosecution of corruption, such as written procedures, protocols, Memorandums of Understanding and joint instructions.

Consider establishing a special procedure for the selection, appointment, promotion and dismissal of the personnel of specialized anti-corruption units.

3. Prevention of Corruption

3.1. Corruption Prevention Institutions

See also Section 1.6 “Specialized anti-corruption policy and coordination institutions”.

No public institution or a unit in an existing institution is specifically in charge for prevention of corruption in Uzbekistan. No plans setting up such institution or entrusting a unit with these functions were reported.

3.2. Integrity of Public Service

Currently, there is no unified legal act on Civil Service, which would set the grounds for the merit-based recruitment, appointment and promotion. Legislation of the Republic of Uzbekistan provides neither the definition of public servants nor makes delineation between professional and political public servants.

The legal framework for the civil service in Uzbekistan is scattered in several legislative acts, such as Labour Code of the Republic of Uzbekistan, Acts of the Republic of Uzbekistan on Courts, Prosecutor’s Office, Advocacy, Notaries, Customs Service, Tax Service, etc. These regulatory acts establish status, rights and obligations of employees of governmental and supervisory bodies, institutions, organizations and enterprises, but they do not regulate the recruitment, appointment and promotion process in public service.

Uzbekistan remains one of the few transitions countries where public employment still remains regulated by labour law, while the general trend is to introduce Civil Service Laws. Civil Service Laws set out rules of a unified, politically neutral, impartial and professional public administration, with common values and ethical standards and accountability, merit-based recruitment and promotion.³

Recruitment and promotion

The rules for the recruitment of civil service are stipulated by the Labour Code of the Republic of Uzbekistan. This Code declares such principles for staff selection as non-discrimination and equality. However, these rules do not seem to ensure impartiality and transparency in civil service recruitment and promotion.

There are no unified competitive recruitment Rules for the Civil Service. According to the Article 72 of the Labour Code of the Republic of Uzbekistan, competition, election, etc. *can take* precedence prior to signing an employment agreement. The Labour Code of the Republic of Uzbekistan does not specify when exactly and for holding of which posts these competitions take place. It is unclear, which are the requirements for filling the vacancies in the Civil Service. It appears that these requirements are determined by individual institutions and employer is the one who has full discretion in staff hiring process, as well as appraisal of public officials.

In accordance with Article 18 of the Law “On Population Engagement” of the Republic of Uzbekistan, employers provide information about available vacant positions to the local labour agencies. Legislation of the Republic of Uzbekistan does not request publication of this information in newspapers, on Internet, etc. No information was provided by the authorities of the Republic of Uzbekistan how this works in practice. The main concern is that information concerning available positions in Civil Service does not

³ SIGMA Papers: No. 5, Civil Service Legislation Contents Checklist, Paris 1996

always become available to the public, therefore, equal possibilities for the participation in Civil Service selection process cannot be ensured.

The requirement to set up screening committees is provided for the judiciary. Decree of the President of the Republic of Uzbekistan № UP 2599 “Setting up the High Qualification Commission to select and recommend judges for respective positions” of May 4, 2000, specifies the procedures of selecting judges based on their qualification, knowledge and personal characteristics. Authorities of the Republic of Uzbekistan state that pursuant to the internal resolutions of government agencies, selection commissions have been introduced there as well. However, it is unclear what criteria is set for the establishment of these commissions, what is the number and who are the members of the commissions, what is the procedure for their activities, how many candidates must be selected to be presented to the body having hiring authority.

It appears that head of public agency has wide discretion in appointing public officials. According to the legislation of the Republic of Uzbekistan, in case of refusal to hire, upon request from an employee, the employer, within three days period, has to give a signed document providing motivated justification of the refusal reasons. Rejection to provide the above mentioned document cannot be regarded as an obstacle to appeal the case in the court. In accordance with the information provided by the authorities of the Republic of Uzbekistan, representation bodies of employees have the right to appeal the decision of the employer or its authorized persons in the court if they do not comply with the law or any other regulatory acts concerning labour or in any other way violate the rights of employees. According to Article 1 of the law On appeal in the court against actions and decisions that violate rights and freedoms of citizens, each citizen has rights to go to the court and appeal.

Legislation of the Republic of Uzbekistan does not provide for the rules regulating the appraisal procedure of public officials. Though Article 58 of the Labour Code of the Republic of Uzbekistan declares that government guarantees equal opportunities in elevation in office, the rules and criteria for the promotion in Civil Service remain unregulated.

In the scope of the improvement of public service execution, it is important to adopt a special Law (Law on Civil Service) which will clarify the criteria and rules for merit-based competitive recruitment and promotion in the civil service.

Remuneration

Regulations Nr. 147 of the Cabinet of Ministries of the Republic of Uzbekistan dated April 12, 1996, “Introduction of agreed wages for remuneration of labour for public sector employees, judicial authorities and notaries” and Nr. 339, dated July 3, 1997 “Introduction of 20% wage premium to state officials”, contain the system of remuneration for various categories of public sector workers. It was confirmed by Uzbekistan that the grades and rates of salaries in public sector set out in Regulation Nr. 147 apply to all public officials, including to the members of the government.

Salaries consist of a basic part and variable component. Base payment of public officials in various government agencies make out 69%, while a variable component is 31% of the total salary amount. Base payment of employees in the prosecution service is 67%, while variable component is 33% of the total salary amount. Bonus amounts to employees of state government bodies, judicial authorities and notaries are defined based on their personal contribution to the overall performance. However, it remains unclear how is this contribution measured.

It is important to ensure transparency about salaries of public officials, including at high level, and ensure transparency of the variable part allocation and minimize senior managers’ discretion. It appears

important to define unified precise rules for payment of bonuses (types of bonuses, criteria for allocating each type of bonus, maximum amounts).

Legality and impartiality, conflict of interest, asset declarations

On 6 March 1992 the Cabinet of Ministers of the Republic of Uzbekistan introduced a Regulation partly covering conflict of interest issues. In accordance with this Regulation, entrepreneurial activities are prohibited for employees of government institutions, law-enforcement agencies, high level personnel and specialists in public sector whose functions are to make decisions related to entrepreneurial activities or supervise such activities.

No information provided by the authorities of the Republic of Uzbekistan confirms existence of institutional mechanisms for reporting and managing concrete conflicts of interests, examining and settling disputes in this regards be it within each specific institution or in general in the civil service in the Republic of Uzbekistan.

The only reference is made to the Article 71 of the Law “On the Courts” of the Republic of Uzbekistan according to which authority of judges in the general jurisdiction and economic courts can be stayed upon representation of Highest qualification committee under the President responsible for screening and recommending judges by a decision of a respective qualification panel of judges in the event of a judge being involved in activities incompatible with his position. In order to overhaul the current situation it seems to be important to set up a structure responsible for monitoring, examining and solving issues related to the conflict of interests.

Public officials in Uzbekistan are not obliged to submit asset declarations. Article 192 of the Tax Code of the Republic of Uzbekistan only provides for obligation to taxpayers to submit a tax declaration to the tax administration of their permanent place of residence indicating their one year total income. Simultaneously, the Decree of the President of the Republic of Uzbekistan “Measures for gradual introduction of total income declaration system for private individuals” determines measures for gradual introduction of total income declaration system for private individuals. It seems to be important introduction of law provisions providing obligation of public officials to submit asset declarations, regulating the procedure of declaring personal assets and making these declarations public.

Legislation of the Republic of Uzbekistan sets a mandatory requirement for public officials in the majority of governmental bodies to observe ethical norms and standards. These requirements are set for the deputies of Legislative house, member of Senate Olij Mazhlis of the Republic of Uzbekistan, employees of law-enforcement agencies. However, there is no general code of conduct (Code of Ethics) for public officials. Article 11 of the Act of the Republic of Uzbekistan “Status of a deputy of Legislative House or a member of Senate Olij Mazhlis of the Republic of Uzbekistan”, states that both deputies and senators should strictly observe the ethical norms. In case of non-compliance to the ethical norms, an issue of deputy’s or senator’s behaviour can be addressed by a respective House or, under its instructions, by one of its bodies. Codes of Ethics were developed and approved by all the law-enforcement agencies in the form of internal documents. Information was provided indicating that codes of ethics in prosecution services and some other institutions contain mandatory provisions and sanctions (up till firing). Authorities of the Republic of Uzbekistan state that special attention is paid to the study of ethical norms in the framework of training programs in law-enforcement agencies. Practice of application of ethical codes, including sanctions for their violation, was not analysed by this report.

Gifts, post-office employment and persons reporting corruption

Legislation of the Republic of Uzbekistan makes no differentiation between protocol and other kinds of souvenirs and does not provide provisions regulating the procedures of receiving presents by public employees, which is not compliant with Article 8 of UN Convention against Corruption. No legal constraints for a former public official to be hired to work at an enterprise, institution or organization, which used to report to or be controlled by this person when performing his office duties, are established.

Criminal Code of the Republic of Uzbekistan sets responsibility for any person aged 16 and above for failure to report about truly known heavy and especially grave crimes. Alongside with this, it contains provisions providing criminal responsibility for neglect of official duty or inaction of authorities, which includes also cases of non-reporting of corruption-related offences by public officials irrespective of the nature of their social danger. However, no statistical information is provided concerning the number of reports from public officials regarding corruption crimes. It also appears that criminal legislation of the Republic of Uzbekistan does not cover the responsibility of all public officials to report about corruption related crimes. The definition of public officials provided by the Criminal Code of the Republic of Uzbekistan includes all persons working in any capacity for a state organization.

As regards whistle-blowers' protection, Legislation of the Republic of Uzbekistan does not provide regulations for legal protection of public officials reporting about suspicions of corruption to senior management or to law-enforcement bodies.

Recommendation 3.2

Adopt legislation, which will introduce a system of transparent, merit-based competitive recruitment, appointment and promotion in the civil service. Provide definitions of professional and political officials.

Introduce a transparent salaries scheme in public service and rules and criteria for the allocation of variable component of salaries.

Ensure that the rules on conflicts of interest are enforced in practice and create a structure responsible for the monitoring of their performance, as well as analysis and solution of the disputes related to these issues.

Introduce law provisions, which will set mandatory requirement for public officials and members of their families to submit asset declarations; regulate the procedure of declaring personal assets of public officials and consider checking these declarations and making them public.

Adopt a general Code of Conduct for public service; determine the mechanism of its performance and sanctions that can be imposed for failure to implement ethical rules.

Introduce regulations on accepting gifts by public officials and consider the possibility to set restrictions on post-office employment for public servants.

Adopt regulations on the protection of "whistleblowers".

3.3. Promoting transparency and reducing discretion in public administration

Anti-Corruption screening of legal acts

There is neither a legislative requirement for a mandatory anticorruption audit of legal acts nor a special government body responsible for the performance of the mentioned functions in the Republic of Uzbekistan. Nevertheless, steps were taken to regulate the procedure for these activities, to perform legal

audits and other kinds of expertise of draft legislative acts, as well as for monitoring the current legislation. In the framework of the reforms in parliament system and establishment of parliament of two houses, change in procedures and mechanisms for developing and adoption of legislative acts, pursuant to the Decree #UP-3590 of the President of the Republic of Uzbekistan of April 4th, 2005, the Institute for Monitoring the Current Legislation was established under the President of the Republic of Uzbekistan. The main objectives and activities of the Institute include conducting comprehensive legal expertise of draft legislation, preparing in-depth expertise assessment and conclusions for draft legislative acts on all the stages of their reviewing and approving; monitoring of full compliance with the norms and provisions of the Constitution of the Republic of Uzbekistan and with the international norms and standards. The results of the performed monitoring are sent out to all the legal entities of legislative initiative, ministries, state committees and administration of the Republic of Uzbekistan for their comments and suggestions. Simultaneously, in accordance with the Decree #PP-237 of 15 December 2005, of the President of the Republic of Uzbekistan Center for monitoring legislative acts under the Ministry of Justice of the Republic of Uzbekistan was formed. This Center is responsible for the monitoring of preparations of the legislative acts, assessment of their compliance with the objectives and tasks of ongoing reforms, international norms and standards, the Constitution of the Republic of Uzbekistan; elaboration of proposals for updating and developing legislative basis for reforms. Center for monitoring legislative acts finalised a screening of existing legal acts in 2010 and determined most typical causes of corruption. Besides, a report was prepared, reflecting the most problematic aspects in the law that can cause corrupt behavior. In the context of this, it would be important to set a requirement of mandatory anti-corruption screening of legal acts and develop the procedure of the screening.

Simplification of existing regulation

Republic of Uzbekistan fails having specific action plans to combat corruption, aimed at conducting audits and simplifying regulation in the corruption-sensitive sectors. Nevertheless, the authorities of the Republic of Uzbekistan state that each government administration on a systematic basis perform large scale preventative measures aimed at simplification of administrative procedures, decreasing the role of government bodies in the business activities. A series of measures taken in 2005 were reported by Uzbekistan, such as to decrease the number and simplify controls of businesses, to improve taxation, to limit types and simplify permits, to simplify procedure of certification, etc.

According to the Heritage Foundation and Wall Street Journal report released in 2010 “Index of Economic Freedom”, in practice, investors face barriers, including a cumbersome bureaucracy, inconsistent and burdensome regulation and corruption. Concerns are related to holding a foreign exchange account, limits and delays to payments and transfers, controls of some capital transactions.⁴

Administrative procedures

There is no a general Code of administrative procedures in the Republic of Uzbekistan. The issues related to administration procedures are regulated by sectoral legislative acts. The information provided by the authorities of the Republic of Uzbekistan does not clarify the core of these regulations, whether a complaint mechanism is foreseen for the citizens, if yes, what is the procedure for the review of complaints.

At the same time, Article 27 of the Civil Procedure Code of the Republic of Uzbekistan provides for the procedure of appealing administrative actions (decisions), violating the citizen’s human rights and

⁴ Heritage Foundation and Wall Street Journal, 2010 Index of Economic Freedom

freedom to the civil court. In accordance with this procedure, a citizen has the right to petition directly the court with his claim or to higher-level authority, or to an official.

Legislation of the Republic of Uzbekistan provides provisions regarding the review of the acts contradicting the law. In accordance with Article 38 of the Law "On the Prosecutor's office", the prosecutor delivers a protest against the act contradicting the law to the body which accepted it, or to a higher-level body. The latter one has 10 days time period to review the protest. In exceptional instances, requiring immediate correction of the law violations, the prosecutor has the right to cut back on the length of the investigation. The results of such review are reported to the prosecutor within three days in the written form. In case when the protest was rejected, as well as in the cases when the protest was not reviewed within the established time framework, prosecutor has the right to apply to a court to declare it unlawful. In accordance with Article 277 of the Civil Procedure Code Prosecutor's petition shall be examined in the court within 20 days. If the court identifies that the prosecutor's petition is justified, it passes the judgment about granting the application and adjudication of the act as illegal.

The right to review the laws and other legislative acts is provided also for the Constitutional Court of the Republic of Uzbekistan according to the Law of the Republic of Uzbekistan "On the Constitutional Court of the Republic of Uzbekistan". The Constitutional court determines compliance of the Constitution, the laws, regulations of the Houses of Olij Mazhlis, Decrees of the President, government and local authority regulations, interstate and other obligations of the Republic of Uzbekistan. The right to introduce issues for the review of Constitutional court of the Republic of Uzbekistan is given to the Houses of Olij Mazhlis, President of the Republic of Uzbekistan, Speaker of Legislative House of Olij Mazhlis, Senate Chairman of Olij Mazhlis, Zhokargi Kenes of the Republic of Karakalpakstan, a group of deputies but not less than one fourth of the total number of the Senate Olij Mazhlis members, Chairman of the Supreme Court, Chairman of the Supreme Economic Court and General Prosecutor of the Republic of Uzbekistan as well as at least three judges of the Constitutional Court. The decision of the Constitutional Court of the Republic of Uzbekistan is final and not subject to any appeal.

Recommendation 3.3

Establish a requirement of mandatory anti-corruption screening of legal acts; adopt rules regulating procedure of the screening and the consequences if the screening reveals provisions fostering corruption.

Adopt measures aimed at simplification of regulation in different sectors; consider the possibility to develop and adopt a single code of administrative procedures.

3.4. Public Financial Control and Audit

Supreme audit

Accounts Chamber is the supreme audit institution of the Republic of Uzbekistan, which provides monitoring and control over execution of the State budget of the Republic of Uzbekistan, status, asset and liability flow of the State, operations with precious metals and gems, administration of gold and foreign currency reserves, attracting into the economy and effective use of foreign capital, state external debt servicing in a timely manner. The activities of this institution are regulated by the Decrees of the President of the Republic of Uzbekistan #UP-3093 of 21 June 2002 "On setting up Accounts Chamber of the Republic of Uzbekistan", #UP-3592 dated 4 April 2005 "On improving of activities of the Accounts Chamber of the Republic of Uzbekistan". The Accounts Chamber of the Republic of Uzbekistan performs its activities

based on the main principles of the Lima Declaration of the International organization of higher revision institutions (INTOSAI).

The Accounts Chamber is an independent supreme institution of financial control. It reports on the work completed to the President and the Parliament of the Republic of Uzbekistan. The Accounts Chamber is free to develop action plans and identify objects for auditing on its own.

The Accounts Chamber, its organizational structure and number of employees is established by the decree of the President of the Republic of Uzbekistan. Chairman of this body is appointed and released from the office by resolution of the President of the Republic of Uzbekistan. Internal work-related issues, procedures for administration of affairs, preparation and execution of audit activities are specified by the Regulation of the Accounts Chamber, approved by the Chairman. Currently staff of the Accounts Chamber is formed of the Chairman, who has one Deputy and one assistant, four Chief auditors and four functioning groups of auditors. Authorities of the Republic of Uzbekistan provided no information in regard to the budget of the Accounts Chamber, training of the staff, as well as the number of audits carried during a year.

According to the legislation of the Republic of Uzbekistan, the Accounts Chamber performs audits of incomes and expenditures of state budget, monitors and provides control over non-budget special purpose funds, status and assets/liabilities flow, reproductive performance, administration and managing of gold and currency reserves, as well as external borrowings. It performs control over execution of expenditure part of the State budget in general by items, by branches, by territorial entities and by state government bodies, financed from the State budget; conducts audits and perform control over generation of income, rational and effective use of non-budget funds, conducts in-depth analysis and evaluation of money-credit policy, measures to strengthen the national currency, controls the legality of export and import operations, the timely and full receipt of foreign currency payments, and receipt of mandatory payments from imported goods (work, services) into the budget, analyzes reports and balance accounts for managing external assets, monitors the justification for, and effectiveness of, placement and transfer of gold resources in foreign banks, issues related to the sale of government property oversees, as well as monitors the administration of government foreign debt and its timely servicing. The Accounts Chamber performs only financial audits. Anti-fraud and anti-corruption audits per se are not conducted, but are part of the on-going regular audits issues.

The current legislation of the Republic of Uzbekistan does not contain provisions which would allow the Accounts Chamber to examine the work of internal controls. Assessments to the work of the system of internal control are given in the scope of financial or other audits carried out by the Accounts Chamber.

The results of the audits are shared with the audited agencies first and then are submitted to the relevant governmental bodies. If audits by the Accounts Chamber inspectors reveal indications of corruption, embezzlement, or damage to government (or enterprise), materials are handed over to law enforcement bodies, in accordance with Procedures for Interaction between the Accounts Chamber Office and Law Enforcement bodies. Over the last 3 years more than 50 audit files containing signs of criminal activity were handed to law enforcement bodies by the Accounts Chamber. Data whether any of these violations led to criminal investigations of corruption-related crimes is not available.

When conducting control activity, the Accounts Chamber can draw upon experts from the Ministry of Finance, the Government Tax Committee, and other ministries, government committees, and agencies of the Republic of Uzbekistan. In conducting audits on the basis of semi-annual and annual Control Activity Programs, the Accounts Chamber, drawing on employees from ministries and agencies, and also qualified independent experts, determines the type and character of violations and their causation, and systematizes them. The Accounts Chamber has the right to conduct additional review of issues challenged

by the object of the audit, and to draw upon competent specialists of authorized bodies and require of them corresponding conclusions.

Financial management and control

Legal grounds for the performance of financial management and control in the Republic of Uzbekistan are scattered in numerous regulative acts, such as Laws of the Republic of Uzbekistan “On the budget system”, dated 14.12.2000; “On treasury execution of the government budget”, dated 26.08.2004; “On government control of activities by economic entities”, dated 24.12.1998; Decree of the President of the Republic of Uzbekistan No 3592 “On improving the organization of activity by the Accounts Chamber of the Republic of Uzbekistan”, dated 04.04.2005; Statue of the President of the Republic of Uzbekistan No 594 “On measures to further develop the system of treasury execution of the government budget”, dated 28.02.2007; Addendum No. 2 to Statue No. 393 by the Cabinet of Ministers of the Republic of Uzbekistan, dated 15.11.2002; “Statue of the Main Control and Revision Division of the Ministry of Finance of the Republic of Uzbekistan and its territorial control-audit directorates”; Statues of the Cabinet of Ministers of the Republic of Uzbekistan No. 553 “On approving Statues of the Ministry of Finance of the Republic of Uzbekistan”, dated 23.11.1992; No. 414. “On improving the procedure for financing budget organization”, dated 03.09.1999; No. 53 “On approving Statues on the treasury of the Ministry of Finance of the Republic of Uzbekistan” dated 20.03.2007.

Public financial management and control activity is centralized in the Republic of Uzbekistan and is carried out by the Ministry of Finance of the Republic of Uzbekistan. Ministry of Finance is responsible for controlling the use of budgetary funds as allocated in the budget and therefore, controls the spending of the budgetary resources. In accordance with the Statue “On the Ministry of Finance” of the Republic of Uzbekistan, the mentioned body conducts inspections and audits of financial-economic activity of enterprises, associations, organizations and establishments financed out of the republic and local budgets, complex audits of the work of financial bodies in terms of drawing up and executing the budget of the republic, as well as conducts inspections and audits of the financial-economic activity within ministries and agencies. As a result of completed inspections and audits, the Ministry of Finance gives the directives to eliminate identified deficiencies.

Currently, the system of financial management and control contains ex-ante (to ensure compliance with laws and sub-legal acts prior to incurring expenses), ongoing (accurate delivery of goods/services), and ex-post control subsequent control (checking after payment). However, according to the information provided by the authorities of the Republic of Uzbekistan it remains unclear whether this information is accessible by public or not, or whether substantiations are presented to the public when discrepancies are detected between the approved and the actual expenditures.

Legislation of the Republic of Uzbekistan states that the Treasury of the Ministry of Finance and its territorial sub-divisions with the staff of 2627 employees is responsible for the performance of ex-ante and ongoing control of expenditures of budget organizations. The Treasury is obliged to execute expenses of the government budget from a treasury account within established timelines and in accordance with the available funds allocated in the budget. When Treasury detects unlawful use of budget funds by organizations, false escalation of prices of goods (work, services) procured by budget recipients, unsubstantiated increase by budget recipient in the sum of obligations to creditors, it submits available materials to the Main Control and Revision Division of the Ministry of Finance of the Republic of Uzbekistan and its territorial sub-divisions. The latter ones, with the staff of 790 employees, perform subsequent control. The Main Control and Revision Division and control-revision divisions conduct inspections and audits, give assessment of the activity of territorial financial bodies and budget

establishments and inform the management of the Ministry of Finance of the Republic of Uzbekistan of identified facts of violation of financial and budget discipline.

As a positive step to overhaul performance of financial activities, reforms take place in the Republic of Uzbekistan. One of the measures aimed to ensure effective use of budget funds was the phased introduction of the treasury system for executing the budget. To conduct audits of the treasury execution of the Government budget, the Uniform Accounts Plan was developed and went into force 1 January 2010. At present activities are carried to set up a structure of internal control and audits within the Treasury and its sub-divisions of the Ministry of Finance of the Republic of Uzbekistan and its further expansion in financial bodies.

Internal audit

There is no public internal audit in the Republic of Uzbekistan at this moment.

Besides, currently in Uzbekistan the Treasury at the Ministry of Finance take measures to develop a structural unit subordinated to it that will be in charge of internal control and audit; it is planned to further develop activities of this structure in financial bodies.

Inspection

The inspectorate service responsible for financial control is the Main Control and Revision Division of the Ministry of Finance of the Republic of Uzbekistan. At the same time, there are decentralized control-audit directorates or inspectorates in the Ministry of Internal Affairs, Ministry of Defense, and the National Security Service.

Main Control and Revision Division (Main KRU) is a structural part of the Ministry of Finance of the Republic of Uzbekistan and is directly subordinate to the Ministry of Finance of the Republic of Uzbekistan. Formally it reports to the head of the Ministry of Finance, the Cabinet of Ministers and Oliy Mazhlis of the Republic of Uzbekistan. The staff of the Main KRU and its territorial directorates counts 790 employees. These structures carry their activities as part of the Ministry of Finance and do not have separate budgets thus they can be restricted by the minister. No information is provided by the authorities of the Republic of Uzbekistan in regard to the number of the staff of inspectorates acting in the Ministries and National Security Service.

Main KRU is empowered to control over compliance with budget discipline at all stages of the budget process. The subjects of inspection are all types of government budget income and expense line items. Generally, the Main KRU and its territorial directorates carry out inspections and audits on tasking from the Government and law enforcement bodies. However, the head of Main Control and Revision Division of the Ministry of Finance, heads of the Control-Revision Directorates of the Republic of Karakalpakstan, regions, city of Tashkent and their deputies are empowered to examine cases of administrative violations and to initiate investigations on behalf of bodies of the Main Control and Revision Division. Pursuant to the "Procedure for drawing of documents on stealing, embezzling, abuse of public office and other violations within the system of financial transactions and turning over to law enforcement bodies", dated 19 June 2007, if the inspectorate uncovers violations during the course of investigations, materials from the investigations shall be submitted to law enforcement bodies. Information gathered as part of revisions and controls by the Main Control and Revision Division and its territorial units can be used as evidence in courts.

Recommendation 3.4

Introduce anti-fraud and anti-corruption audits in the scope of activities of the Accounts Chamber of the Republic of Uzbekistan.

Ensure transparency of public expenditure via adopting rules setting mandatory requirement to make this information public.

Create internal audit units in executive bodies. Ensure operational independence of the internal control units. Set unified regulations for the performance of internal control units acting in different state bodies, organizations.

Provide trainings in the field of corruption and fraud detection to the auditors of the Accounts Chamber, employees of structures carrying out internal audit.

3.5. Public Procurement

Organisation

The public procurement system in the Republic of Uzbekistan is regulated by several legislative acts: Civil Code of the Republic of Uzbekistan, Law on “Budgeting System”, Directives of the Cabinet of Ministers of the Republic of Uzbekistan “Improvements in the system for purchasing basic types of provisions for government needs”, “On organizing supplies of provision for government needs”, “On purchasing basis types of good provisions for government needs”, “On measures to improve the organization of trade bidding”, “On measures to improve the system of competitive trades in capital construction”, “On organizing the activity of the Committee for Control of Government Reserves under the Cabinet of Ministers of the Republic of Uzbekistan”.

The main concern in regard to the public procurement system in the Republic of Uzbekistan is that transparency is not always ensured. Firstly, the public procurement system in the Republic of Uzbekistan does not cover all public procurement contracts. Contracts can be made with suppliers without bids in several cases: when supply of goods is related to the sphere of activity of subjects of natural monopolies; purchase of goods takes place through clearing houses; the price of the requested goods in total does not exceed 10 minimum wages at the moment the contract is made; deliveries of cultural valuables are being purchased; the goods can be purchased from only and single supplier having exclusive right to sell; work and services can be performed only by bodies of government power and control in accordance with their authority or sub-departments of government agencies and enterprises; performing additional work totalling not more than 20% of the original contract sum is requested; there is an urgent need for specific goods needed to eliminate (or prevent) the effects of inexorable force, in regard to which use of other sourcing methods requiring time is not appropriate; a bid (competition) is cancelled due to lack of suppliers or lack of interest in contract, if the purchaser is located in a distant region where there is only a single supplier in the functional territory of the purchaser and adjacent regions, but also when it is established that obtaining bids from other locales will be of no benefit or savings and will increase costs due to transportation. Secondly, legislation of the Republic of Uzbekistan allows conducting bids in closed manner upon the agreement of corresponding structures of the Cabinet of Ministers, with the participation of prior determined purchasing organizations which are invited by the customer.

Public procurement is decentralized in the Republic of Uzbekistan and performed by special divisions of procuring entities, *i.e.* governmental bodies. There is no central organization for public procurement.

The requirement of carrying out tenders (bids based on competitions) is set for bids under single contract valued in excess of equivalent of 100 000 USD, payable from the state budget, extra-budgetary funds of

budgetary organizations, budgetary trust funds, as well as from foreign grants and loans made available under government guarantees by international and foreign financial institutions. A tender commission is created by the procuring entity during the implementation of a single supply contract for an amount not exceeding the equivalent of one million U.S. dollars. If the cost of a single supply contract exceeds the equivalent of one million USD, the tender commission is created by the procuring entity in concurrence with the relevant structure of the Cabinet of Ministers. Assistance in organization of bids of public procurement is provided by the Agency “UzbekTenderConsulting” under the Ministry of Foreign Economic relations, Investments, and Trade of the Republic of Uzbekistan.

In accordance with the legislation of the Republic of Uzbekistan the decision as to the bid winner is made by a simple majority of the overall number of members of the bid commission. In case of a tie, the vote of the chairman of the bid commission is the decisive vote. Generally, the bid commissions consist of an odd number of members (as a rule, they have no less than nine to eleven persons), including: representatives of the client (no more than 30% of the bid commission), Ministry of Finance, the Ministry of Foreign Economic Relations, Investments, and Trade of the Republic of Uzbekistan or their territorial sub-divisions, servicing commercial bank and independent expert organizations, clients higher level organizations, ministries, agencies, representatives of transport-expediter companies, if the organization of trade bids draws upon foreign suppliers.

Transparency

To ensure transparency in the public procurement system, the legislation of the Republic of Uzbekistan requires providing all potential bidders with the information about upcoming tender through media publications not later than 30 days prior to the tender. Though it is established that publication is given to the most widely-distributed and specialized magazines, newspapers, however, there is a possibility also to inform the potential bidder by e-mail, fax or in any other form of official invitations addressed to specific candidates. For closed tenders, the tender announcement in the media is not published. Tender results are published by the working body in the mass media within three days.

Pre-qualification of applicants is foreseen by the Regulations on public procurement. During the qualification selection of bidding applicants, besides of bidders not qualifying tender requirements, companies and organizations undergoing restructuring, liquidation or bankruptcy processes or who have unduly met their liabilities under previously concluded contracts or who are currently involved in a lawsuit or arbitration proceedings with the customer are excluded from the competition by the Tender Commission. A decision to disallow certain bidder’s participation in the tender is to be made known to all applicants in writing.

According to the information provided by the authorities of the Republic of Uzbekistan procuring bodies have procurement plans which should allow organize the bidding procedures properly.

Review

External review, supervision and monitoring of public procurement procedures are fulfilled by the Audit Chamber of the Republic of Uzbekistan. No independent review body is established to deal with the complaints. Currently, in accordance with the Republic of Uzbekistan legislation complaints are filed with the public authorities or directly to courts. They can be addressed also to the Oliy Majlis Authorized Representative for Human Rights (Ombudsman). Nevertheless, it appears that regulations are to be clarified in regard to the procedure of submitting complaints to public authorities and their review.

Republic of Uzbekistan does not provide special measures against or sanctions for corruption, as blacklisting and banning the companies with a previous history of corruption to engage in business activities, or requesting anti-corruption declarations from the bidders, etc. No information is available also in regard to the value, number of purchases from a single source or non-competitive procurement, as well as the number of court appeals per year, the percentage of positive and negative decisions and the number of cancelled contracts.

Recommendation 3.5

Review the existing public procurement legislation by introducing provisions that will ensure transparency at all stages of procurement process; expand the use of competitive procedures; ensure that single-source and emergency procurements are based on law and properly controlled.

Set clear regulation in regard to the review mechanism by public authorities to establish an independent and effective complaint procedure. Establish an independent public procurement review body competent to review appeals filed by participants of the tendering procedures, introduce a “freezing period” for the results of tenders to allow for filing of complaints. Adopt provisions stating that the eligibility criteria for bidding in the public procurement include the absence of a history of corruption. Create a register of debarred entities.

Provide corruption and anti-corruption training to the staff of the bodies responsible for public procurement. Ensure statistical information and analysis of data on procurement values, methods, complaints and other relevant information.

3.6. Access to Information

Articles 29 and 30 of the Constitution of the Republic of Uzbekistan declare that “everyone has the right to seek, receive and disseminate any information, except that directed against the existing constitutional system or subject to other restrictions provided by the law”. The access to information law “On the Guarantees and Freedom of Access to Information” regulates relations arising in regard to this constitutional right.

Any person is entitled to apply directly or via his (her) representative to the information owner and ask for the information. The request for information can be expressed in writing or orally. Written requests are subject to registration and they must be answered during a 30 day period. Generally, response to an oral request should be provided immediately. According to Article 8 of the Law “On the Guarantees and Freedom of Access to Information”, the information on any requests, concerning the rights and legitimate interests of the petitioner, must be provided free of charge. Providing of information of any other types can be charged according to mutual agreement of the sides.

If the responding body or the official to whom the request was made, do not possess the required information, they are obligated to inform the applicant about this fact and, when possible, to give him the name of the body or the official possessing such information. The refusal to provide requested information may be justified only by the fact that it contains state secrets or any other secrets protected by the law. It appears that the definition of “other secrets protected by the law” needs to be clarified in order to avoid wide discretion of authorities while giving interpretation to this concept.

In accordance with the Article 12 of the Law “On the Guarantees and Freedom of Access to Information,” violations of the rights of citizens to obtain and use information, may be appealed in court. A person found

guilty of violating the right of people to information shall be held liable in accordance with the administrative and criminal legislation. Though there is no special freedom of information Commission or Ombudsman in the Republic of Uzbekistan, however the Commissioner of the Oliy Majlis for Human Rights (Ombudsman) is empowered to protect citizens' constitutional rights to freely seek, receive, explore, transfer and disseminate information. As no information is provided by the authorities of the Republic of Uzbekistan in regard to the number of requests on information, percentage of their refusal, violations registered or appeals submitted to the court or to the Ombudsman, it's difficult to assess the effectiveness of the provisions provided. There is a need to ensure a system of accurate registration and analysis of the data about the above mentioned issues, as well as a body responsible for the monitoring of implementation of the law on freedom to information.

According to Decree No. 203 of the Cabinet of Ministers "On the Measures for Promotion of Public Relations in Public and Economic Management Bodies" dated 22.09.2006, information services are established in all governmental agencies. No provisions regulate pro-active publication of information by state authorities. According to the Regulations on the state accounting of regulatory legal acts of the Republic of Uzbekistan, approved by the Order No. 195-MX of the Minister of Justice of the Republic of Uzbekistan, dated 10 September 2008, the Ministry of Justice and its territorial divisions maintain state accounting registers of the regulatory legal acts of the Republic of Uzbekistan. These registers are maintained in both paper and electronic format, and get published on the official website of the Ministry of Justice.

Defamation is criminalised under the Republic of Uzbekistan law and is understood as dissemination of intentionally false, dishonouring fabrications in regard to another person. However no special protection is provided for public officials from defamation in the Criminal Law of the Republic of Uzbekistan.

Recommendation 3.6

Ensure that legislation on free access to information limits discretion of officials in refusing to provide information; set precise definitions of the "state secret" or "other secret provided by the law".

Carry out campaigns to raise citizens' awareness about their rights and responsibilities in regard to the access to information regulations. Ensure systematic training of officers who are responsible to provide information to the public on the access to information.

Establish a unified electronic system of publication of information by public institutions, define the list of information to be published by them mandatory and ensure this publication including of all legislative acts, court decisions and information about state budget income and expenditure, including information about income from export and how it is used. Ensure free public access to this information.

Ensure a special agency or an existing body (for instance, the Ombudsman) is responsible for the enforcement of the access to information legislation, performs surveillance over the implementation of the regulations, independent review of complaints and can apply sanctions in this area.

3.7. Political corruption

Financing of political parties and election campaigns

The Law of the Republic of Uzbekistan "On the Financing of Political Parties" defines the sources of political parties' funding as follows: entry and membership fees; proceeds derived from entrepreneurial activities; state funding; donations from legal entities and citizens of the Republic of Uzbekistan. Foreign countries, legal entities of foreign states, international organizations, their representative and branch

offices, as well as enterprises with foreign investments, bodies of self-government, religious organizations, foreign nationals, stateless persons, anonymous persons or those hiding their identity under a pseudonym are not allowed to make donations to political parties. If any of the mentioned donations takes place, the donations must be returned to the donors or, when impossible, transferred to the State budget. Forms of donation can be: money, property, services and works.

Limits on the maximum amount of the membership fee are established in internal regulations of the political parties; there are also limits to donations by legal persons and natural persons, which cannot exceed 500 minimum salaries per year. As to the state funding, the annual volume of public funds to finance political parties is calculated by multiplying two percent of the minimum wage by the number of citizens included in voter lists at the latest elections for the Legislative House.

It remains unclear how seriously donations in form of rendering services or performance of work are accounted for and whether sanctions are imposed in case of illegal donations.

In accordance with the article 64 of the Law “On Elections to the Oliy Majlis of the Republic of Uzbekistan”, the costs of preparing and holding elections to the Oliy Majlis of the Republic of Uzbekistan must be covered at the solely expense of public funds. Funding and other material support to candidates for the Legislative House and members of the Republic of Uzbekistan Oliy Majlis Senate from any other sources is not allowed. Political parties, public associations, institutions, organizations and citizens may voluntarily transfer their funds for support of the elections to the Central Election Commission.

Transparency and control of party financing

The main body responsible for the control performance over political party’s revenues and proper use of its funds and other assets is Audit Chamber of the Republic of Uzbekistan. Upon the official request by a no less than one tenth of the deputies, Republic of Uzbekistan Oliy Majlis Legislative Chamber can also carry out verification of receipt and proper use by political parties of their financial and other assets.

A political party annually submits financial reports on receipt and expenditure of financial and other assets, including public funds, to the State Tax Service, the Audit Chamber and the Ministry of Justice of the Republic of Uzbekistan. These financial reports should contain information about the sources and amounts of the funds received into the bank account(s) of a political party, on the expenditure of these funds, the assets of a political party with an indication of their value, as well as their state registration.

When donations from legal entities and citizens of the Republic of Uzbekistan are not in the form of money transfers, a political party assesses such donation in monetary terms and enters the corresponding data, including the information about the donor, into a financial statement of the political party. The funds, expended by a political party to participate in the elections for the Legislative House of the Republic of Uzbekistan Oliy Majlis, are accounted separately.

Information on political party’s funding, as well as sources of such funding shall be made public. Political parties present reports on sources of funding for their activities to the Republic of Uzbekistan Oliy Majlis Legislative House or to its representative body. As Uzbekistan’s self-assessment report indicates, these reports are reviewed with the participation of mass media and any other interested organizations upon invitation.

Legislation of the Republic of Uzbekistan does not request making public information on each natural and legal person making a donation. It is not clear whether political parties are subject to internal audit as well.

Administrative Violations Code of the Republic of Uzbekistan set violations of rules on financing of parties and their activities and sanctions, which mainly consist of fines and administrative detention of up to fifteen days.

While there seems to be a system of financing of political parties in place in Uzbekistan, it is difficult to assess how it works in practice. No information was provided by the authorities of the Republic of Uzbekistan on its actual running. It is not clear if income and expenditure of political parties is monitored by Audit Chamber or other bodies, and, if so, if any violations were detected and sanctions actually imposed. It is also not clear how accessible is information on party's financing to the public (how wide media coverage after above presentations in Parliament is, are the reports on political party's funding published in official gazette, available on Internet, etc.).

Conflict of interest of political officials

As to the conflict of interest for political public officials, the Republic of Uzbekistan provides no special legislative act regulating these issues. Rather, the provisions defining conflict of interest issues are scattered in several legislative acts. As to the regulation of lobbyist activities, no information was provided by the authorities of the Republic of Uzbekistan. It appears that there is no procedure to ensure transparency in activities of lobbyists.

Recommendation 3.7

Further strengthen transparency of political party's financing and financing of electoral campaigns, including ensure this information is widely and easily available;

Introduce a requirement to disclose information about sources of private donations received by political parties, above a certain threshold.

3.8 Integrity in judiciary

The judicial system of Uzbekistan consists of the Constitutional Court, Supreme Court and Higher Economic Court of the Republic of Uzbekistan, Supreme Court and Higher Economic Court of the Republic of Karakalpakstan – all elected for a term of five years; and regional and Tashkent city municipal courts on civil and criminal cases, inter-district, district and municipal courts on civil and criminal cases, military and economic courts – all appointed for the same period. Judicial independence and its guarantees are declared by the Constitution and various articles of the Law on Courts. However, it is impossible to assess the actual independence of judiciary without assessing how the laws are implemented in practice.

The human rights organizations that are officially registered in Uzbekistan, *i.e.* Ezgulik, Independent Human Rights Organization of Uzbekistan, Committee of individuals' Rights Protection, claim that improper influence from the prosecutor's office and the executive branch continue to be a serious public relations issue facing the judiciary.

Procedure for the appointment of judges is regulated by Article 63 of the Law On Courts. According to this provision, the judges of the Supreme Court and the Supreme Economic Court are elected by the Senate (Higher Chamber of Parliament) upon a submission of the President of the Republic of Uzbekistan. The candidates are submitted for approval by the President on the basis of the opinion of the Higher Qualification Commission for the selection and recommendations for judges at the President's Office of

the Republic Uzbekistan. Judges of regional, Tashkent city municipal courts, inter-district (municipal) courts, military courts, regional and Tashkent city economic courts are appointed by the President upon a submission of the Higher Qualification Commission. All judges are elected or appointed for a term of five years. The composition and duties of the Higher Qualification Commission were established by the President's Decree of March 17, 2006 that approved the Regulations on the Commission. The Commission consists of seventeen people. The Chairman and eleven members are approved for an office term of five years and operate on a voluntary basis. The Deputy Chairman and four remaining members carry out their activities on a permanent basis. According to the Regulation, the Commission is formed from the representatives of the two chambers of Parliament, Supreme Court, Supreme Economic Court, Ministries of Justice and Interior, General Prosecutor's Office, and "with the participation of other highly skilled legal professionals and eminent public figures". The composition of the Commission is to be approved by a presidential decree.

Relevant qualification boards of judges form the pool of candidates for inter-district, district (municipal) courts in civil and criminal cases, district and territorial military courts, the Economic Court of the Republic of Karakalpakstan, regional and Tashkent city Economic Courts (except for the chairmen and vice-chairmen of economic courts) through the acceptance of applications from qualified persons qualified wishing to be enlisted in the reserve pool or to fill specific vacancies of judges. The qualifications boards organize a peer review of professional, "moral and professional qualities" of the candidates and, within two months from the date of receipt of materials, carry out qualification examinations, on the results of which a decision on the acceptance or refusal of each application for enrolment into the pool of candidates for judges' position is taken.

It is unclear how the candidates learn about the concrete vacancies because the latter are not publicly announced. Although the procedure for selection (and promotion) is "merit based," there are no established criteria. Selection/promotion seems to be totally discretionary. Further, there seem to be no selection criteria for promotion to chief judge for a district who has the authority and full discretion to distribute cases among judges.

The Law On Courts (Articles 71 and 72) provides for the grounds and procedure for suspension and early termination of judges that varies depending on the status of a judge as described in details in the self assessment report. The procedure corresponds to the procedure of the appointment of judges. Also, the Law and the Regulations on the Qualified Boards of Judges approved by Parliament in December 2001 establish the ground and procedure for disciplinary proceedings against judges that also described in details in the self assessment report. The report does not provide statistical data on disciplinary proceedings and sanctions against judges.

The report refers to the Cabinet's of Ministers Regulations No. 147, entitled "On the Introduction of Tariff Scale of Wages for Employees of the Bodies of State Power and Administration, Judicial and Notary Offices" of April 12, 1996, that approved the grades and tariff rates of wages for managers and specialists of the judiciary. However, the report does not provide the information about the level of remuneration of judges and how it compares to the average wage for the country or in the civil service.

Judgments in all courts are publicly announced including the judgments of in camera hearings (Article 19 of the CCP). However, the decisions are not published and there are no rules on their publication and on access of general public to judicial decisions either.

The Code of Conduct (Ethics Code) for judges has not yet been adopted. Currently, the draft completed by the Research Centre under the Supreme Court is under the discussion with various authorities.

Recommendation 3.8

Ensure transparency of the judiciary, including but not limited to such means as establishing and publicizing the criteria for the selection and promotion and reasons for dismissal of judges; ensuring that high-profile corruption and human rights cases are transparently tried.

Adopt and implement a Code of Conduct for judges in line with the Bangalore Principles of Judicial Conduct.

Ensure access of public to the decisions of courts through the adoption and implementation of the relevant rules.

3.9 Integrity in the private sector

Uzbekistan's self-assessment report indicates that small business and entrepreneurship are area of risks to various forms of corruption. Therefore, Uzbekistan indicates that it wants to further liberalise legislation in this area and strengthen defence of rights of businesses.

Accounting and Auditing in the Private Sector

Generally, in regard to accounting in private sector the Republic of Uzbekistan is compliant with international standards: making of improperly identifiable transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents are all prohibited by laws regulating accounting and auditing procedure in all business entities. However, the establishment of off-balance sheet accounts is not prohibited. Except of the creation of off-balance sheet accounts, the above mentioned actions are considered as violations under the legislation of the Republic of Uzbekistan. The sanctions are foreseen in the Tax Code, Administrative Responsibility Code, as well as the Criminal Code, and can be fines, correctional labour, imprisonment, deprivation of certain rights, etc.

Auditing in the private sector is conducted in two forms: mandatory and proactive. Joint stock companies, banks and other lending institutions, insurance companies, investment and other funds, accumulating funds from legal entities and individuals, and trust managers of investment assets, charities and other public funds, sources of which are the voluntary contributions (donations) of individuals and legal entities, extra budgetary funds, whose assets are sourced from the provided by the legislation compulsory contributions made by legal entities and physical persons and economic entities having a state-owned share in their authorized capital are subject to mandatory annual external audit. In accordance with the Law of the Republic of Uzbekistan "On Audit Activity", the normative acts regulating audit activities, including the national auditing standards, are developed and approved by the Ministry of Finance. The independence of auditors is safeguarded by the provisions of the Law "On Audit Activity", which prohibits incorporation of auditing firms by ministries, state committees, departments and other bodies of state administration and economic management, as well as by their representatives. The auditing firm is not entitled to conduct an audit of the same business entity for more than three years in a row.

When uncovering signs of illegal activities, including corruption, the auditor reports this to the management of the audited entity. At the same time, in accordance with the Memorandum of Understanding with the Prosecutor General, The Audit Chamber transfers the documented facts disclosed by the Accounting Chamber to the prosecutor's office for the legal assessment of violations.

Internal company controls

Legislation of the Republic of Uzbekistan contains provisions regulating internal company control. Though a requirement of establishment of audit commission is foreseen by the Law of the Republic of Uzbekistan “On the Joint Stock Companies and Protection of Shareholders’ Rights”, nevertheless this requirement is set as mandatory only for a joint-stock company with a carrying value of assets over one billion UZS. A provision on establishment of audit commission can be found also in the Law of the Republic of Uzbekistan “On the Limited Liability Companies”, depending from the size of the enterprise it can be foreseen in the internal regulation, compulsory or an internal audit should be created by the overseeing council of the enterprise.

The reports of the audit commission are made public at the general meeting of shareholders – the highest governing body of the joint stock company on an annual basis. Practically the same procedure is foreseen for limited liability companies.

As to the whistleblower protection, there are no whistleblower protection acts or statutes in the Republic of Uzbekistan, and the issues of violation or inviolability of corporate ethical standards are not legally regulated either.

Awareness Raising and Corporate Ethics

In accordance with the information provided by the authorities of the Republic of Uzbekistan, in order to raise awareness on corruption related issues in private sector, training sessions, seminars and conferences are organized under the auspices of or by the Legislative House and Senate of the Oliy Majlis, the Chamber of Commodity Producers and Entrepreneurs, political parties and other non-profit organizations, as well as by the state authorities and administration. However there is no information about the essence of these awareness raising campaigns. Private sector entities are encouraged to introduce corporate rules of conduct and ethic rules for employees of the private sector.

Recommendation 3.9

Introduce legislative regulations requesting determining of the identity of the beneficial owners of funds deposited, conducting scrutiny of accounts for current and ex-high ranked public officials and their family members.

Encourage private sector entities to adopt adequate internal controls, develop self-regulation (code of conduct, anti-corruption compliance measures); set precise regulations and requirements for creation of audit committees in private sector entities.

Encourage the private companies to publish or otherwise publicly disclosure the reports on their internal control.

Summary of recommendations

<i>Nr.</i>	<i>Recommendation</i>	<i>Issue covered</i>
Pillar I. Anti-Corruption Policy		
1.1.	✓	Anti-corruption policy documents
1.2.		
1.3.	✓	Corruption surveys
1.4.	✓	Public participation
1.5.		Awareness, public education
1.6.	✓	Policy and coordination institutions
1.7.	✓	International conventions
Pillar II. Criminalisation of corruption		
2.1.	✓	Offences and elements of offence
2.2.		
2.3.	✓	Definition of public official
2.4.		Sanctions
2.5.	✓	Confiscation
	✓	Recovery of property
2.6.	✓	Immunity
2.7.	✓	International cooperation and mutual legal assistance
2.8.	✓	Application, interpretation and procedure
2.9.	✓	Specialised law-enforcement bodies
2.10.		Statistics
Pillar III. Prevention of corruption		
3.1.		Corruption prevention institutions
3.2.	✓	Integrity of public service
3.3.	✓	Promoting transparency in public sector (anti-corruption Screening of laws, simplifying regulation, administrative procedures)
3.4.	✓	Audit and financial control
3.5.	✓	Public procurement
3.6.	✓	Access to information
3.7.	✓	Political corruption
3.8.	✓	Integrity of judiciary
3.9.	✓	Integrity in private sector