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Office on Drugs and Crime

Self-Assessment Checklist on the Implementation of the United Nations Convention Against Corruption

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II. Preventive measures (chapter II)

A. Article 5 Preventive anti-corruption policies and practices

1. Paragraph 1 of article 5 (Policies preventive of corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The concept of UN Convention against Corruption is appropriately reflected in the legislation of Mongolia. The Anti-Corruption Law of Mongolia was first enacted in 1996; however, it was not well implemented due to indefinite implementation mechanisms. Particularly, there was no coordination to enable operations of a special authority to combat corruption and issues of harmonizing activities of state organizations towards preventing and combating corruption specified by law, providing professional guidance and methodological assistance were missing.

Later, the National Program for Combating Corruption was adopted by the Parliament in 2002 and amended in 2004, 2006. This program is planned to be implemented in two stages from 2002 to 2010. The State Ih Hural established a National Council with functions to coordinate and supervise the implementation of this program. Deputy Head of State Ih Hural (Parliament) leads the Council which consists of General Judge, Prosecutor General, Chairman of Public Service Council, Secretary of National Security Council, several ministers, heads of agencies and representatives of NGOs. In 2005, a joint group of NGOs conducted monitoring on the implementation of this program and concluded that the coordination and supervision duties were not performed satisfactorily due to the fact that the Council did not have full time operations. The National Program for Combating Corruption has three chapters and includes its objectives, goals, principles, implementation timeframes, expected results and implementation activities. Moreover, the Program aims to improve the election system, create legal environment for corruption prevention, improve public service, maintain independent status of judiciary, liberalize the activities and economy of executive organizations and increase participation of civil society in combating corruption.

In 2006, the Anti-Corruption Law was revised following which the Council was brought down and its functions to implement the Program are now performed by the IAAC.

The revised Anti-Corruption Law specifies in detail the policy and activities for corruption prevention. In addition, the IAAC is in the process of revising the National Program for Combating Corruption based on current needs and conditions. A workshop on improvement of National Program for Combating Corruption was held among the representatives of government and non-government organizations and their views and opinions were received.

Please provide examples of the successful use or implementation of this article:

In Article 1 of the Constitution of Mongolia, it is declared that the fundamental principles of the State governance shall be securing democracy, justice, freedom, equality, national integrity and rule of law and as stated in Article 46.2 thereof core civil servants of Mongolia shall be citizens of Mongolia and he/she shall strictly obey the Constitution and other laws and serve for the interest of the State and people.

Law on Public Service was enacted in 1995 and amended several times since then. The latest amendment was made in May, 2008.

Therefore, as Law on Public Service stipulates Civil servant undertakes to perform its rights and duties, in the interest of the State and its people, within its discretion entitled by law, to obey moral/ethical obligation and discipline of Civil servant and culture of Public service and its organization, to respect reputation of Public service, and to report its assets and income and its change if any, to respective authority and to the public. According to Article 15.1.6 thereof, Civil servant shall strictly be prohibited from taking any reward, gift, or loan and getting free or discounted service from organization, legal entity and individual as return of public service provided to them. Civil servants shall not work simultaneously in private sector, political party and other public organization as permanent employee or shall not be representative of any third person in the governmental organization in which he is serving or in the sub-organization of organization in which he is being employed.

According to the Law on Public Service, code of conduct for state administrative civil servant has been adopted and enforced by the Government. In parallel, state organizations adopt code of conducts for their specific sector including the code of conduct for Judges, code of conduct for Prosecutor, code of conduct of Police officer, code of conduct for Auditor. Depending on the specific regulation stipulated in law, these rules are enacted by different bodies and officials. In judiciary, it is the Disciplinary Committee of Judges which supervises the implementation of code of conduct for Judges.

According to Article 16.10 of the Constitution of Mongolia some civil servants may be suspended from their membership in political party. However, the Law on Public Service and other legislative pieces do not prohibit core civil servant from having political party membership. It implies that civil servant can be, to some extent, dependent from politicians. In other words, this regulation provides the condition for dismissal of many core civil servants and appointment of person to civil service irrespective of their knowledge, skill, capacity, experience and profession based on the instructions from the political party to which they are members. This undermines public trust in civil service and results in the loss of principles of stability and professionalism and core civil service officers feel discouraged in carrying out civil service in good faith and lose belief in the future.

The May 2008 amendment to the Law on Public Service which indicates that core civil servants shall have no political membership will become an important step towards

maintaining the principles of stability and professionalism in civil service, improving effectiveness of state service and increase the reputation of state service among public.

Article 17.12 of Law on Public Service *permitted temporary appointment* of citizens in a state administrative position for up to 6 months based on work necessity. This created obstacles for implementing the principle of filling a vacancy based on career growth and pursuing professionalism and stability in civil service. In other words, the authorized officials felt free to appoint a person, who is known to them or depending on his/her political party membership, as an administrative officer in the name of “*temporary*” service, even though that person could not pass or has received low scores in professional examination of civil service, and job announcements were made as to suit the said person’s qualification.

Therefore, there was a need to foster practice whereby the vacant positions in core public service are filled through selection process from the officials who are already working in that organization or in other related organizations, considering their work performance and level of professionalism without appointing someone for temporary period and, if not possible, from the resource list of citizens who passed professional examination to newly enter civil service so that the law can be implemented practically and effectively.

Thus the 2008 amendment to the Law on Public Service invalidated the provision related to the temporary appointment of staff.

Activities of the IAAC within the framework of corruption prevention function are described in the Anti-Corruption Law. Obligations and activities of the government bodies in relation to corruption prevention are also specified in the Anti-Corruption Law.

Public Procurement Law was revised in 2005. According to this law public servant is prohibited from accepting or proposing unlawful proposals for private gain and taking illegal action; public servant shall inform the higher official and refuse from participating in tender process if there are such conditions which may create conflict of interest as his/her family member competes in tender or works for or receives remuneration from the legal person which is competing in tender; public servant is obliged to inform the higher official and law enforcement bodies if tender participant offers bribe or puts pressure on him/her with purpose to influence tender decision.

The Criminal Code was revised in 2002 and amended in 2008 introducing offences under the Chapter on Malfeasance Crimes over which the investigators of Independent Authority against Corruption will conduct investigation.

The Criminal Procedures Code was also passed by the Parliament in 2002. This Code was amended in 2007 defining the investigation mandate of the IAAC investigators over offences subjected to criminal liability.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

(i) No assistance would be required

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

B. Article 6 Preventive anti-corruption body or bodies

2. Paragraph 1 of article 6 (Anti-corruption body or bodies)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The Parliament passed a specific law to combat corruption in 1996 which was the first step to create a legal anti-corruption framework in Mongolia. However, this law did not bring any significant results until 2006 due the lack of an implementing mechanism. Several Governments have changed since the adoption of this law; however, none paid attention towards establishing a mechanism for implementing it. Hence, there was a requirement for establishing an implementing mechanism for this law or creating a specialized organization to work in this field.

The revised Anti-Corruption law was passed by the Parliament in 2006 and in 2007 the first specialized anti-corruption agency in Mongolia - the Independent Authority against Corruption (IAAC) - was established. Article 15 of this Law mandates the IAAC as an independent state special body with functions to educate and raise awareness of public against corruption, its prevention and authorises the IAAC with the power to administer inquiry and investigate corruption incidences as well as monitor annual asset and income declarations of civil servants of those required by this law.

The structure of the IAAC was approved by the Resolution 3 of 2007 of the Parliament. The Independent Authority against Corruption is operating with 4 major divisions including Prevention and Public Awareness Division, Monitoring and Evaluation Division, Investigation Division, and Administrative Division as well as with 4 main service units including Research and Analysis Unit, Security and Inspection Service, Intelligence Service, and Financial and Operational Service. According to the structure approved by the Parliament, the Independent Authority against Corruption has over 90 staff members. It has been more than a year since the IAAC has started implementing its functions stated in the Anti-Corruption Law.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting

Legal advice

Site visit by anti-corruption expert

Development of an action plan for implementation

Other assistance (please specify) training on Prevention knowledge **Capacity Building**

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(P) Yes, in part

If yes or yes in part, by whom?

WB
UNDP
Asia foundation
Open Society Forum

If yes or yes in part, would the extension and/or integration of such assistance help your country adopt the measures described above?

Yes

Provide examples of successful use or implementation of this article:

Being a relatively new organization, the IAAC needs to make its activities more effective by various means such as taking advice from other countries and international organizations, inviting and employing consultants from countries with good anti-corruption expertise.

An international consultant has been invited and working to carry out the development of the national and agency-level anti-corruption strategies.

IAAC is collaborating with the World Bank Governance Assistance Project, UNDP Project on Improvement of National Justice System, Asia Foundation and Open Society Forum in prevention and awareness activities.

IAAC, in cooperation with the World Bank Governance Assistance Project, conducted training series on the concept of corruption, its causes, consequences, and types; procured equipment to strengthen the IAAC capacity; and held nationwide open discussion with the purpose to listen to comments of employers and businesspeople on obstacles in legislation, rules, bureaucracy and delay from government organizations and to determine their standpoint in combating corruption. In addition, draft law on Prevention of Conflict of Interests in Public Service was prepared within the above project. A working group for finalizing this draft law has been established under the Office of President of Mongolia. Draft law is planned to be discussed by the State Ih Hural within this year.

In cooperation with the World Bank's Governance Assistance Project, three international consultants have been selected by the related IAAC management officials. One of the consultants has signed a contract with the IAAC and is currently working to consult on the improvement and recommendation of review of assets and income declaration of public officials. The other two consultants are working on developing anti-corruption strategy and constructing corruption index.

Shortly after the establishment of the IAAC, in June 2007 a national conference was organized jointly with UNDP for high level public officials including members of Parliament, ministers, heads of agencies, state secretaries of the ministries and Aimag governors to listen to their will against corruption. In addition, with UNDP support the

“National Program against Corruption” (2002) was revised and discussed by representatives of state organizations at the capital city and local levels and by representatives of non-governmental organizations. On the occasion of the United Nations’ Anti-Corruption Day – December 9 – a TV play was produced and shown to civil servants.

IAAC has no sub-structure or branch units in rural areas. Hence, the IAAC officers with assistance from UNDP organized public awareness and education activities such as delivering their services in rural areas, promoting the Anti-Corruption Law, organizing meetings with rural citizens, taking their views and comments in 21 Aimags twice in 2008.

Jointly with Asia Foundation training series were held for IAAC staff members to improve their knowledge and strengthen their capacity. In addition, a workshop on “Planning Anti-Corruption Activities in State Organizations” was organized for state secretaries of ministries and heads of state agencies in 2008. Similarly, with the assistance from Asia Foundation a TV advertisement for 1969 hotline for receiving citizens’ complaints and information was produced and broadcasted via television, and posters and handouts for this hotline have been made and distributed to state organizations.

IAAC elaborated a set of recommendations with 18 articles on ‘reducing bureaucracy in state organizations, facilitating public services in making them more transparent and efficient, improving access to information to prevent from corruption, keeping activities open and ensuring civil participation’ and distributed it to state organizations at all levels in 2007.

An external project on “Monitoring the openness and transparency in public service” was conducted by Globe International NGO to examine the implementation of the above recommendations. This project was implemented for 6 months from July 01, 2007 to December 2007 at the request of IAAC and financed by Open Society Forum. The objective was to develop general recommendation for improvement of public service by obtaining realistic information on the functioning of public organizations and based on that information, measuring the level of implementation of recommendations, and, if not implemented, identifying the influential factors.

During the monitoring period, Globe International operated call service 1977 and received complaints regarding unlawful activities of public servants and officials from citizens and transferred it to the IAAC twice a week. On the track of report, IAAC had delivered demand letters to relevant organizations. Totally, 330 citizens called to this number and monthly reports along with their first level monitoring results were prepared and posted in the website of the IAAC and Globe International NGO.

The monitoring study covered 189 servants, 185 officials of 197 organizations and 749 citizens out of 200 servants and 200 officials of 200 public organizations, and 780 citizens. Jointly with Open Society Forum, results of this monitoring study were introduced to the related officers from state organizations and open discussions held.

3. Paragraph 2 of article 6 (Independent status, resources and trained staff for anti-corruption body or bodies)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

IAAC is a special, independent state body as defined in the Anti-Corruption Law of Mongolia.

As indicated in Article 16 under 16.1 of the Anti-Corruption Law, the Independent Authority against Corruption has centralized management; it operates independently abiding by the principles and in respect of the rule of law, being autonomous and transparent, and not divulging the secrets. Similarly, under 16.2 of the same law it is prohibited for any legal person, official or individual, to influence or interfere in the operation of the Independent Authority against Corruption. In accordance with 21.1 of the Anti-Corruption Law, the Chairperson and Deputy Chairperson of the IAAC are appointed for 6-year terms by the State Great Khural, based on the nomination by the President of Mongolia. The appointment of the IAAC Chairperson and Deputy Chairperson by the Parliament does not mean that IAAC reports to the Parliament.

IAAC does not report its activities to any organization or official. However, under 26.1 of Article 26 of the Anti-Corruption Law, the Parliament informs annually about the information from the Independent Authority against Corruption on the implementation of anti-corruption legislation and general corruption situation. However, it is not entitled to discuss the information, give assignments, or interfere with the operations.

According to Article 26.2 of the Anti-Corruption Law, the Special Supervisory Sub-committee of the State Great Khural shall monitor the implementation of the Law on Undercover Operations by the Independent Authority against Corruption. In accordance with 26.3 of the same law, the Prosecutor General supervises the undercover operations and investigative work, and administration of enquiry by the Independent Authority against Corruption according to the bases and procedures specified in the Law on Undercover Operations, the Criminal Procedures Code, and Law on the Prosecutor General. This is a general procedure applicable only in undercover operations and criminal procedures and does not mean that it interferes with IAAC operations and controls all its operations.

In accordance with 28.1 of the Anti-Corruption Law, political parties, coalitions, movements or clerical organizations are prohibited to conduct political, religious, or other activities within the premises of the Anti-Corruption Authority office. Under 29.1 of the same law, activities of the Independent Authority against Corruption are financed from the state budget and the state ensures the economic resources for the Authority's operation. The budget of the Independent Authority against Corruption is sufficient to enable the Agency to operate independently as specified in 29.2 of the Anti-Corruption Law.

Unless otherwise provided by law, it is prohibited to relieve an officer of IAAC from his/her duties, dismiss or transfer him/her without his/her own consent to another job or official position. In Article 31.1* it is prohibited to detain, incarcerate, arrest or search the home, office, vehicle or person of the Head and the Deputy Head of the IAAC, without permission of the State Ih Hural, and other officers without permission of the Head of the IAAC. In addition, officer of IAAC may not hold concurrently engage in work or hold positions unrelated to his/her official duties specified by the law, other than academic work. He/she shall not join as a member, or be elected or appointed to a leadership position of a political party, trade union, religious organization, or any similar legal person; disclose state, organizational, or personal secrets exposed to or entrusted to him/her in the

course of performing official duties; disclose information on his/her official duties to the public and others without special permission from higher authority.

The IAAC takes measures to enrol its officers in domestic and foreign training programs and has provided the officers with equipment and devices required for their activities.

UNDP, World Bank Governance Assistance Project and Asia Foundation provided assistance in carrying out the above activities.

Please provide examples of the successful use or implementation of this article:

In the past period the IAAC prepared and delivered information annually to the State Great Hural. IAAC officers were given English training with the purpose of improving their language skills.

C. Article 9 Public procurement and management of public finances

4. Subparagraph 1 (a) of article 9 (Systems of procurement designed to prevent corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Mongolia made its first step to set up and develop a procurement system in 1999 with the assistance of Asian Development Bank and the ratification of the Law on Procedures for Selecting Contractors for Goods and Services to be procured with State and Local Property Funds in April 2000 created a practical legal environment particularly coordinating public procurement.

With implementation of the law, the first unit responsible for procurement policy and methodology called Procurement Service was established at the Department for Budget Planning and Coordination of the Ministry of Finance and Economy. Consequently in accordance with Government Resolution No. 75 in 2001 this was changed to an independent Division on Procurement Policy and Coordination.

In the course of implementing the law, and in connection with the revision of the Law on Management and Financing of Public Organizations and development of a new budget management and financing system, new requirements developed to increase the rights and responsibilities of the procuring entity, improve the procurement inspection mechanism, and to clarify procurement policy, methodology, rights and responsibilities concerning inspection.

Thus, the law was revised with technical assistance from the World Bank as a result of which the Law on Procurement of Goods, Work and Services with State and Local Property Funds (Public Procurement) was enacted in December 2005. Amendments and alterations to the revised law were made in February 2007. The objectives and benefits of this law are:

- *Strengthen decentralization in procurement and simplify management and organization,*
- *Increase rights and responsibilities of the procuring entity /from procurement planning to reporting /,*

- *Clarify procurement policy, methodology, rights and responsibilities for inspection and coordination /state central administrative organization in charge of budget /,*
- *Creation of a legal environment for using electronic technology in procurement /e-procurement/.*

Since the enactment of the revised law, the division in charge of procurement was expanded into the Department for Procurement Policy and Coordination.

Please provide examples of the successful use or implementation of this article:

Article 6 of the Law on Public Procurement has legalized five main procurement principles which are “*transparency, equal opportunity to compete, economy and efficiency, and responsibility*”. This guarantees the basis for advertising the procurement procedures to public in open manner, giving the opportunity to any interested body to compete in bidding on one side, and providing such conditions by the customer in procurement implementation and handling the bidding process efficiently on the other side.

Articles 7, 8 of this law specify procurement procedure, and its selection and, accordingly, procurement of goods, works and/or services is based on cost estimates and all procurement is carried out in accordance with open procurement procedure unless the law provides otherwise (Article 7, para.2; Article 8, para.2).

The procuring entity, in accordance with Article 17, para.1, Article 21, announces publicly the invitation to tender through nation-wide daily newspapers and other forms of mass media and gives an equal opportunity to all interested bidders to participate.

Similarly, in accordance with para.4 of Article 21 of the law, the procuring entity puts the invitation to tender whose value exceeds the threshold value (goods and services 50 million Tugrug, work 100 million Tugrug) set forth in the law (8.1, Article 8) on the web site (www.e-procurement.mn) and briefs on tender selections as they take place.

Under Article 24 of the law, the procuring entity provides a sufficient and equal time to bidders to prepare and submit their tenders. The submission deadline of tenders is determined from the day of initial announcement of the tender and for open tendering, the deadline timeframe is 30 days or more, for limited tendering – 15 days or more, and for comparative tendering – 5 days or more.

5. Subparagraph 1 (b) of article 9 (Establishment of conditions for participation in public procurement)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The procuring entity is responsible for preparing, in accordance with Article 19 of the law, tender documents¹ pursuant to template tender documents, technical specifications, and all necessary information, instructions, contract templates, methodology, designs, contract terms and conditions offered by the procuring entity and selling it to the interested body without delay.

If the interested body will need clarifications and additional information related to tender documents, it may request so in writing and obtain a reply in accordance with procedures specified in the law.

Please provide examples of the successful use or implementation of this article:

Tender invitations, related legislation and all necessary information are placed in the Government procurement website /www.e-procurement.mn/.

6. Subparagraph 1 (c) of article 9 (Criteria for public procurement decisions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

All necessary provisions are included in the Law on Public Procurement.

The procuring entity will evaluate the submitted bids in accordance with technical and financial qualifications specified in Articles 14-16 of the law and criteria for tender documents in compliance with Articles 27-28 of the law, and determine if they meet the requirements.

Selecting consultancy services are a special procurement procedure based on human intellectual productivity, therefore, procedures and methodology for evaluation of bidders for consultancy services are legalized particularly under Articles 35-39 of the law.

Please provide examples of the successful use or implementation of this article:

Mechanism for resolving disputes exists in practice:

A bidder may submit a complaint to the procuring entity if he/she perceives the procuring entity's of breaching of its duties related to tendering in accordance with para.1 of Article 54 of the law.

The complainant may appeal to the state administrative body for budgetary issues if he/she does not agree with the procuring entity's decision, the procuring entity did not issue a decision within 10 days specified in the law, or the procuring entity authorized a contract, in accordance with Article 55 of the law.

In accordance with Article 56 of the law, the complainant may file a complaint to the court if the state administrative body for budgetary issues did not make a ruling within 14 days specified in the law or the former did not agree with the latter's ruling, of if the procuring body has signed a contract with the winning bidder.

7. Subparagraph 1 (d) of article 9 (System of domestic review of public procurement decisions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The procuring entity establishes an evaluation committee² when procuring goods, works or services with cost estimates above the threshold values specified in the law (subpara.8.1.1, Article 8). As

indicated in para.3 of Article 47 of the law, officials appointed to the evaluation committee would satisfy the following requirements:

- specialized in procurement or related sector,
- not have family relations with the bidder or his/her representative,
- not have a labour contract relationship with a bidder in the last 3 years,
- not have any violations of civil servant's duties specified in the law in last one year.

In case of a breach of the procedures contained in the law (by a procuring entity, its officials and tender participant) penalties are legalized in detail in Article 57 of the law.

Please provide examples of the successful use or implementation of this article:

All public organizations are smoothly delivering tender related materials to the interested persons. In addition, all required information may be obtained from the Government procurement website /www.e-procurement.mn/.

8. Subparagraph 1 (e) of article 9 (Measures regarding public procurement personnel)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

In accordance with Article 50 of the law, the civil servant involved in procurement should have the following duties:

- provide for fair competition;
- respect the state interests;
- not make violations illicit behaviour such as offering and accepting illegal proposals for own private interest;
- inform his/her direct supervisor about a potential conflict of interest such a bidder being his/her family member ;
- promptly inform his/her direct supervisor and law enforcement authority if a bidder attempts to influence tendering results by proposing a bribe and putting pressure.

Please provide examples of the successful use or implementation of this article:

Public organizations have set up and are operating Evaluation Committees for procurement activities.

9. Subparagraph 2 (a) of article 9 (Transparency and accountability in public finances)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law on Central Budget was passed in 2002. This law regulates relations concerning central budget of Mongolia, rights and responsibilities of the budget governor, classification of budget revenue and expenditures, reporting of budget performance and budget accounting.

Relations concerning allocation of budget funds, financing, expenditures, performance and reporting are regulated by the Law on Management and Financing of Public Organizations.

According to Article 8 of this law, the member of Government in charge of finances and budget has full powers for efficient management of state property, national budget funds and risks. In line with Article 9 of this law, the state central organization in charge of finance and budget, i.e. the Ministry of Finance has full rights for product supply to national public organizations within the scope of power of the budget governor and it supervises the product supply procured with state budget funds by local organizations; produces Government's financial statements in conformity with international accounting standards; and prepares central budget performance report. Furthermore, the Ministry of Finance exercises the mandate to maintain the bank account for deposits and payments for the national budget in accordance with Article 9.1.8 of the same law.

Article 13 of the Law on Management and Financing of Public Organizations states that a public organization reserves the right to supply work and services related to state functions, receive financing for this purpose and spend the approved budget funds for the specified purpose.

Budget approval procedure: Law on Management and Financing of Public Organizations was passed in 2003 and amended in 2006. This law regulates relations concerning budget preparation, approval, spending, and reporting, rights and responsibilities of the state organizations and the officials on budget, human resources policy of the public organizations, operations management principles, budget control and responsibilities. This law concerns all level organizations financed from national and local budgets and legal bodies with state and local property or their shares (51 percent or higher). The law indicates that the articles, parts, clauses of the law regulating relations concerning the general manager, results agreement, products, selling of products outside agreement do not serve organizations for national security, and undercover operations of the authorized undercover organizations as specified in the law.

Budget approval procedure: Appropriate governance structure plays a key role in providing macro-economic stability and economic growth and it is essential to pay attention to proper budget policy and transparency in the management of public financing and budget in order to implement it. Budget transparency is effective in expanding discussion between the state and public on the scope and direction of budget policy and creating liability system in budget performance. Budget transparency is based on four main principles:

1. Clear duties and responsibilities
2. Transparency in budget planning
3. Accessible and transparent information for public
4. Accurate budget data and methodology.

Please provide examples of the successful use or implementation of this article:

Following is the detailed explanation of how budget planning procedure in our country matches these four principles.

Clear duties and responsibilities: Law on Management and Financing of Public Organizations (2003) and the Law on Central Budget of Mongolia (2002) have clarified the procedures for budget planning, and the system of duties and responsibilities of the participating persons, state management on finance and budget. This way, public organizations came under vertical system and budget planning is implemented at every stage with associated liability.

Transparency in budget planning: Law on Management and Financing of Public Organizations clearly indicates what documents should accompany the submission of the annual and amended budget

proposal from the Government to the Parliament, and outlines the budget proposal structure. This provides the conditions for transparency and openness in the structure of the annual and amended budget proposal and in the documents they comprise. Furthermore, the Law on Central Budget of Mongolia clarifies the definition of budget revenue and expenditures, their source and structure.

Accessible and transparent information for public: The Ministry of Finance publishes, maintains access to and distributes annual and amended budget proposals submitted from the Government to the Parliament as well as approved budgets of the previous years. Approved budgets and budget proposals submitted from the Government to the Parliament are published as a book and the associated materials are timely prepared and uploaded to the website of the Ministry of Finance (www.mof.gov.mn) and the budget transparency website (www.iltod.mn). This makes the budget proposal open and transparent for public and provides conditions for holding wide discussions between the state and the public.

10. Subparagraph 2 (b) of article 9 (Timely reporting on revenue and expenditures)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The Law on Management and Financing of Public Organizations legalized procedures for reporting on budget performance on annual, quarterly and monthly basis.

In accordance with the Law on Management and Financing of Public Organizations, the National Audit Office conducts audit on annual budget performance and provides conclusions and advice which are delivered to the associated organizations. This provides conditions for external inspection of the budget planning and performance, analyzing the procedures, giving the appropriate evaluation and making corrections.

Please provide examples of the successful use or implementation of this article:

Under para.1 of Article 38 of this law, member of Government in charge of budget shall submit budget performance and annual financial statement of the Government to the state central audit organization for audit conclusion within March 20 of the following year. The law states that the central state audit organization shall produce an audit conclusion report on the financial statement within one month of its receipt. Similarly, under para.2 of this article, the national budget organization shall submit annual financial statement to the state central audit organization within February 15 of the following year. State central audit organization shall produce audit report on the financial statement within one month of its receipt.

In accordance with this article, legal entities with state property or shares of it submit annual financial statements within March 1 of the following year and the Governor submits combined local annual financial statement within February 20 of the following year to the related state audit organization and the state audit organization produces audit report within one month.

The Law on Management and Financing of Public Organizations legalized the procedures for preparation of budget reports on annual, quarterly, and monthly performance. Based on this information, the National Statistical Committee prepares yearly, quarterly and monthly statistical data and information at national level and publicizes them. The budget performance information for the particular reporting period is timely placed on the Ministry of Finance and transparency websites, and thus delivered to public.

11. Subparagraph 2 (c) of article 9 (Accounting and auditing standards)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The Law on State Audit was passed in 2003 by the Parliament and amended in 2006. The Law on State Audit is adhered to when conducting audit and providing the related report and advice on national and local revenue and expenditure performance, public organizations, legal persons with state and local property or shares of it, financial statements and performance audit of projects and programs which received financial support from the state budget.

The structure of the state audit organization consists of the state central audit centre and local organizations. The state central audit organization is the Mongolian National Audit Office and local organizations are the Aimag and Metropolitan audit offices.

The highest audit organization in Mongolia – the National Audit Office - was established in ... The Office consists of an Auditor General of Mongolia, Deputy Auditor General and other officers. Deputy Auditor General and the officers are entitled to provide assistance to the Auditor General in implementing his powers stated in this law. Auditor General of Mongolia, Deputy Auditor General and other officers of the National Audit Office are special state officials. Under Article 7.5 of the above law, the Auditor General of Mongolia passes and is observing the implementation of the Code of Ethics in order to ensure justice in the operations of the state audit organization. The Code of Ethics should be abided by the Auditor General of Mongolia, officers of the state audit organizations, and people participating in the state audit operations on behalf of the National Audit Office.

The National Audit Office passed auditing and reporting standards, which are observed by officers of the state audit organization, internal inspection, and professional auditors conducting audit on behalf of the state audit organizations. These standards must comply with publicly recognized auditing principles and standards, in particular with standards of international organization of high level inspection organizations, and International Federation of Accountants.

State audit organization carries out financial statements and performance audit. In accordance with Article 18.1 of this law, the Government and other organizations must produce their annual financial statements according to international accounting standards and submit to the state audit organization within the period specified in the Law on Management and Financing of Public Organizations. State audit organizations conducts audit on the financial statements within the period specified in the Law on Management and Financing of Public Organizations, produces a summary report and submits to the general governor of the budget, and copies, if required, to the central administration office in charge of finance and budget and local organizations respectively.

Under Article 19 of the same law, the state audit organization is entitled to conduct performance audit on any organization and program within the scope of its full powers. The procedure for performance audit is passed by the Auditor General of Mongolia.

Please provide examples of the successful use or implementation of this article:

Under para.2 of Article 5 of the Law on State Audit, the financial statements audit will report and verify if the financial condition of the audited organization, results of operations and monetary transactions have been reported accurately in compliance with publicly recognized principles and national and

international accounting standards. In accordance with para.3 of this article, performance audit inspects how economic, efficient, and effective was the inspected organization in implementing its functions and produces its report and advice.

Under Article 28 of this law, unless a person in breach of legislation on state audit is criminally liable, the judge will impose administrative punishment. In particular, failure to submit related documents within the specified period, to implement the demands within the given deadline, or obstructing operations of the state audit, negative influence or attempt of such influence to produce an accurate auditing report, audit evasion, ungrounded refusal to submit required information or documents, intentional damage and destruction, submission of forged documents are subject to fine.

Besides the provisions of the Law on State Audit, the Central State Audit Organization conducts auditing and verification of annual financial statements of public organizations and legal persons with state property or shares of it.

For the purpose of improving accounting inspection and external inspection activities, related amendments and alterations to the Accounting and Audit Laws are planned for next year. According to the Accounting Law, the national general inspector, national senior inspector and national inspectors work with authority to supervise the implementation of the Law on Accounting.

12. Subparagraph 2 (d) of article 9 (Systems of risk management and internal control)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Similar to international practice, external inspection in Mongolia is carried out with guidance of International Standards by audit companies in conformity with the Laws on Accounting and on Audit.

Please provide examples of the successful use or implementation of this article:

Enactment of the Audit Law enabled the legal framework for external inspection; however, it needs to be developed further. For this purpose, amendments and alterations to the Accounting and Audit Laws are planned for 2009 as to improve the legal environment.

Article 14 of the Law on Management and Finance of Public Organizations indicates the restrictions for public organizations and their officials except for the cases specified in the law. In particular, the restrictions include borrowing, lending, making loan payment, converting loans; opening bank account outside the central coordination of funds; making guarantee with financial impact, undertaking obligation for compensation of loss; accepting payment and fees other than specified in the law, earning revenue breaching this law by all means including supply of extra product; making expenditures outside the budget breaching this law; investing in other types than savings of the central coordination of funds; using revenue from the sales of capital for financing running costs.

The World Bank started implementation of a project for improvement of internal inspection in Mongolia in 2006. An Internal Inspection Manual, financed by the World Bank, has been prepared in conformity with the international practice. As of now, internal inspection is carried out by monitoring divisions of the respected ministries and agencies. The project aims to create an internal inspection structure at every governor general of the budget.

13. Subparagraph 2 (e) of article 9 (Corrective action upon failure to comply)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law on Accounting

Please provide examples of the successful use or implementation of this article:

Amendments to Accounting and Audit Laws to improve supervision and external inspection of accounting are planned for next year.

According to the Law on Accounting there are state chief inspector, the state senior inspector and the state inspector who are entitled to supervise implementation of the legislation on accounting.

Unless a person in breach of legislation on accounting is criminally viable, the Judge or State Inspector shall impose the following administrative punishment:

- For breach of paragraphs 8.3, 8.4 of Article 8 and paragraph 20.1 of Article 20 of this law a fine of MNT 30000-60000 shall be imposed upon citizen;
- In case of failure of the business entity or organization to maintain accounting records and preparation of financial statements, a fine of MNT 30000-60000 shall be imposed upon officials, a fine of MNT 60000-250000 shall be imposed on entity and organization;
- The official who failed to submit the financial statements within the period set in paragraphs 13.2, 13.3 and 13.4 of the Article 13 of this law shall be subject to penalty of MNT 30000-60000.

14. Paragraph 3 of article 9 (Prevention of falsification of public expenditure records)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Law on Management and Finance of Public Organizations

Please provide examples of the successful use or implementation of this article:

Article 64 of the Law on Management and Finance of Public Organizations, Article 28 of the Law on State Audit, and Article 23 of the Law on Accounting indicate the liabilities imposed for those who

breach the above legislation. If criminal liabilities are not applicable for those in breach of legislation on budget, administrative liabilities are stated in Item 43¹ of the Law on Administrative Liabilities. Legislation on budget comprises the Constitution of Mongolia, Law on Management and Financing of Public Organizations and other legislative acts passed in accordance with the above.

Article 159 of the Criminal Code describes the criminal punishments in case of violation of the auditing legislation:

159.1. Causing damage in a large amount by intentional violation of the auditing rules for the examination and approval of financial activities and rendering auditing conclusions shall be punishable by a fine equal to 100 to 150 amounts of minimum salary or by incarceration for a term of more than 3 to 6 months.

159.2. The same crime committed repeatedly or in a group or if it has caused damage in an extremely large amount shall be punishable by imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of 3 years.

Article 271 of the Criminal Code establishes offence for forgery in office. According to this Article, forgery in office, that is, introduction by an official of knowingly false information or the records or into official documents, falsification, as well as making or issue of knowingly false documents for lucrative or other personal interests is punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months. [/This part was altered on February 1, 2008/](#)

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting

Legal advice

Site visit by anti-corruption expert

Development of an action plan for implementation

Other assistance (please specify) training on Prevention knowledge

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

III. Criminalization and law enforcement (chapter III)

A. Article 15 Bribery of national public officials

15. Subparagraph (a) of article 15 (Active bribery of a national public official)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Chapter 28 of the Criminal Code contains articles on malfeasance crimes. State officials referred to in this chapter include persons holding managerial and executive positions in public organizations. Criminal Code establishes offence for bribery only for cases of receiving or giving of a bribe, which does not fully meet the requirements of the Convention.

Para.1 of Article 268 of the Criminal Code states that “Receiving of a bribe by an official exclusively in view of his/her official post for a support or connivance in office, a favourable solution of issues within his/her competence, or for a performance or a failure to perform in the interests of the person giving the bribe of any action which this person should have or could have performed using his/her official post, with or without an advance promise to do so shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.”

Para.2 of the same law rules that the same crime committed way of creating impediments, or repeatedly, by a person who previously was sentenced for this crime, by an organized group, or a criminal organization, or receiving a bribery in a large or extremely large amount shall be punishable by imprisonment for a term of more than 5 to 10 years with confiscation of property.” *This part was amended on February 1, 2008/*

Article 15 of the Convention has defined that besides receiving and giving a bribe to a public official the promise and offering shall also be considered an offence, in other words, the promise, offering or giving to a public official as well as the solicitation or acceptance by a public official directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. From the Article 15 (a) of the Convention, the Mongolian Criminal Code does not include the promise and offering to a public official of an undue advantage in order that the official act or refrain from acting in the exercise of his or her official duties.

Please provide examples of the successful use or implementation of this article:

There have been ... cases resolved by court from 2002 up to date in accordance with this Article of the Criminal Code.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting **X**

Legal advice **X**

Site visit by anti-corruption expert **X**

Development of an action plan for implementation **X**

Other assistance (please specify)

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

16. Subparagraph (b) of article 15 (Passive bribery of a national public official)

Has your country adopted the measures described above? (Check one answer)

(N) No

Please cite the applicable law(s) or other measure(s):

Similarly, the Mongolian legislation does not specify about the solicitation or acceptance by a public official directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, as indicated in the Article 15 (b) of the Convention.

Restrictions for government officials are specified in para.1, Article 15 of the Law on Public Service. According to Article 15.1.6 of this law, government officials are prohibited to receive gifts, monetary payment, rewards, loans, free or discounted services, or other preferential treatment from other organizations, economic entities, or citizens for performing official functions. If the government officials violate this clause the judge will impose an administrative punishment if criminal punishment is not applicable.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting

Legal advice

Site visit by anti-corruption expert

Development of an action plan for implementation

Other assistance (please specify)

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

B. Article 16 Bribery of foreign public officials and officials of public international organizations

17. Paragraph 1 of article 16 (Active bribery of a foreign public official or an official of a public international organization)

Has your country adopted the measures described above? (Check one answer)

(N) No

The Criminal Code of Mongolia does not establish the “bribery of foreign public officials and officials of public international organizations” described in Article 16 of the Convention as an

offence. The Criminal Code is only applicable to national state officials, in particular managerial and executive position holders in state organizations.

18. Paragraph 2 of article 16 (Passive bribery of a foreign public official or an official of a public international organization)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting **X**

Legal advice **X**

Site visit by anti-corruption expert **X**

Development of an action plan for implementation **X**

Other assistance (please specify)

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

C. Article 17 Embezzlement, misappropriation or other diversion of property by a public official

19. Embezzlement, misappropriation or other diversion of property by a public official (article 17)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Misappropriation or embezzlement of others' property is punishable by law and Article 150 of the Criminal Code describes the punishments for the persons who commit this offence.

The Criminal Code, Article 150.1 rules that misappropriation or embezzlement of a business entity, organization or citizen's property committed by a person to whom such property was entrusted, or by abuse or excess of one's office shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, or by incarceration for a term of 1 to 3 months. Para.2 of the same Article specifies that the same crime committed repeatedly, in a group or if it has caused damage in a large amount shall be punishable by incarceration for a term of 3 to 6 months with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years, or imprisonment for a term of up to 5 years." */This part was amended on February 1, 2008/*

Similarly, if the same crime has caused damage in an extremely large amount it is punishable by imprisonment for a term of 5 to 10 years with confiscation of property as specified in Article 150.3 of the Criminal Code. */This part was amended on February 1, 2008/*

As described in Article 273.1 of Criminal Code, spending of the state budget funds by a budget governor: contrary to their designation; acquisition of inventory at a price higher than the market one; acquisition of inventory in amounts exceeding the needs under the excuse of stocking, thereby blocking the cash flow; intentional increase of inventory prices with the view of creating deficit; sale of property of a state and budget organization for a price lower than the market one; misappropriation of funds by way of using of under-quality goods and products in construction and building works performed by a state budget or own financing that has caused a substantial damage shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

Under Article 273.2 of the same law, if the same crime has caused damage in a large or extremely large amount it is punishable by a fine equal to 51 to 250 amounts of minimum salary with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 2 years or by imprisonment for a term of 2 to 5 years.

In 1996, Law on State and Local Property was passed by the State Ih Hural. This law regulates relations concerning state and local property rights, power of legislative and executive bodies over public property, rights and competencies of state-owned legal persons and their officials, and definition of principles and procedures for activities of organizations implementing state property related policies.

Article 82 of the Law on State and Local Property states that persons who violate legislation on state and local property receive punishment imposed by the authorized official of the State Property Commission if criminal punishment is not applicable. Paragraph 1 of Article 82 of this law rules that donating, presenting, collateralizing, lending, investing as a share in other property of a state property and assets without permission from an authorized organization shall be punishable by a fine equal to MNT 30000–60000 with compensation for the incurred loss. Similarly, violating the procedure stated in the law and selling or renting of a state property is punishable by a fine equal to MNT 25000-60000 with compensation for the incurred loss according to paragraph - of the same Article.

Please provide examples of the successful use or implementation of this article:

There have been ... cases resolved by court from 2002 up to date in accordance with this Article of the Criminal Code.

D. Article 23 Laundering of proceeds of crime

20. Subparagraph 1 (a) (Criminalization of conversion or transfer of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The Criminal Code of Mongolia was revised in 2002. Article 163 of this Code establishes criminal offence for the use of illegally gained property and money and describes the related punishment. However, this offence was not included in malfeasance crimes, but in the group of offences against administration.

After that the Criminal Code was amended in February 2008. According to these amendments and alterations, Article 163 of the Criminal Code was invalidated. Instead, a new article on money laundering was included in the chapter on Malfeasance Crimes. In other words, Article 268¹ of the

Criminal Code establishes offence for “money laundering” and according to Article 268¹ para.1 knowingly concealing or disguising the source of explicitly illegal assets with intention to finance organized groups, criminal grouping, and terrorism and proceeds from arms, drugs, human trafficking or production of forged bank notes or conversion of such assets for the purpose of legalizing it, is punishable by a fine equal to 51 to 250 amounts of minimum salary, or by incarceration for a term up to 5 years. Para.2 of Article 268¹ of the same law states that the same crime committed repeatedly or in a group or committed abusing the power by officials and if it has earned a large amount, is punishable by imprisonment for a term of 5 to 10 years with confiscation of property. Under 268¹ para.3, the same crime committed by an organized group or a criminal grouping, or if it has earned an extremely large amount, is punishable by imprisonment for a term of 10 to 15 years with confiscation of property.

Although money laundering is established as malfeasance crime IAAC investigators do not investigate such cases.

The Parliament passed the law on amendments and alterations to the Criminal Procedures Code (CPC) in August 2007. In accordance with amendments made to Article 26.2 and 27.2 of Article 27 of the CPC, the IAAC investigators were given mandate to administer enquiry and investigate crimes described in 8 provisions of the Criminal Code and starting from September 7, 2008 they have begun investigation of corruption crimes.

Please provide examples of the successful use or implementation of this article:

Under 268¹ of the Criminal Code, “money laundering”, knowingly concealing or disguising the source of explicitly illegal assets or conversion of such assets for the purpose of legalizing it, is subject to criminal liability. Concealment or disguise of the source of assets and conversion of such assets includes all actions such as changing or transferring the assets, concealing or changing the assets’ characteristics, source, location, coordination, movement and its ownership or ownership rights. As of today there are no people sentenced under the Criminal Code article on money laundering.

21. Subparagraph 1 (b) of article 23 (Criminalization of acquisition, possession or use of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Code

Please provide examples of the successful use or implementation of this article:

Similarly, concealing or disguising the source of assets and converting such assets include acquisition, possession or use of these assets.

Under 268¹.2 of the same law, money laundering crime committed repeatedly or in a group or if it has been committed abusing the power by officials and earned a large amount; under 268¹.3, if committed by an organized group or a criminal grouping it is subject to criminal liability. Participating in, having relation to, conspiring, or attempting to commit money laundering crime and helping, encouraging, giving opportunity or advice to commit such crime may be committed by organized groups or criminal groupings, therefore these offences are established under 268¹.2 and 268¹.3 of the Criminal Code.

Under Article 155 of the Criminal Code, acquisition and sale of property knowingly obtained by way of crime is established as an offence. Under 155.1 of this Article, acquisition, delivery, storage or distribution of the property knowingly obtained by way of crime without an advance promise is punishable by a fine equal to 5 to 50 amounts of minimum salary, or by incarceration for a term of 1 to 3 months. [*This part was amended on February 1, 2008/*](#)

22. Subparagraphs 2 (a), (b), (c) and (e) of article 23 (Predicate offence in the laundering of proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

For the purpose of implementing or applying paragraph 1 of this Article, all criminal offences indicated in this Convention have been generally included as predicate offences in Article 268 of the Criminal Code of Mongolia;

The Parliament passed the Law on Combating Money Laundering and Terrorism Financing in July 2006 in order to regulate relations concerning prevention and combating money laundering and terrorism financing.

Please provide examples of the successful use or implementation of this article:

Under 3.1.1 of this law, “money laundering” is defined as conversion of assets, though known as illicitly gained, for the purpose of concealing their origin and legalizing the right to possess, use and administer them.

In 3.1.4 of the same law, “illegally gained assets” means assets gained otherwise than provided in Article 166 of the Criminal Code, i.e. through commitment of a rather severe, severe or extremely severe crime. Article 166 of the Criminal Code is on tax evasion. In most countries’ legislation against money laundering, assets gained by committing tax evasion are not comprised under the definition of illegally gained assets. This experience has been taken by our lawmakers and used in our legislation.

23. Subparagraph 2 (d) of article 23 (Predicate offence in the laundering of proceeds of crime)

Has your country furnished copies of its laws that give effect to article 23 and of any subsequent changes to such laws or a description thereof to the Secretary-General, as described above? (Check one answer)

(Y) Yes

Persons who have committed crimes in the territory of Mongolia are subject to the criminal liability under para.1 of Article 13 of the Criminal Code. In para.3 of the same Article, it is indicated “the matter of criminal liability of the persons who enjoy diplomatic immunity and those who do not fall within the criminal jurisdiction of Mongolian courts under the laws in force and international agreements shall be settled through the diplomatic channels”. Under para.1 of Article 14 of the Criminal Code, if a citizen of Mongolia or a stateless person permanently residing in Mongolia commits crime specified in the Code while abroad and he/she has not been sentenced for it, he/she shall be subject to criminal liability under this Code whereas under para.4 of the same Article, foreign nationals and stateless persons who

have committed crimes beyond the territory of Mongolia are subject to criminal liability under the Criminal Code if only an international agreement to which Mongolia is a party provides so.

In compliance with Article 16 of this law, Financial Intelligence Unit (FIU) is established and working at Mongolbank with a function to implement the legislation on combating money laundering and terrorism financing. The Governor of Mongolbank approves and ensures the operation strategy and organizational strategy of the FIU. As indicated in 11.3.2 of this law, if the particular transaction has been proved and documented to be designed for money laundering and terrorism financing, the FIU implements its function to respectively inform the competent body and transfer the related documents for investigation. So far, there have been no cases of proving any transaction of being designed for money laundering and informing the authorized organizations.

Article 155 of the Criminal Code establishes offence for obtaining and selling of proceeds of crime. Para.1 of this Article rules that obtaining, storing and selling proceeds of crime though known as illicitly gained is punishable by a fine equal to 5 to 50 amounts of minimum salary, or by incarceration for a term of 1 to 3 months. *[/This part was amended on February 1, 2008/](#)*

E. Article 25. Obstruction of justice

24. Subparagraph (a) of article 25 (Criminalization of use of inducement, threats or force to interfere with witnesses or officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Crimes against court proceeding are described in Chapter 27 of Criminal Code.

Please provide examples of the successful use or implementation of this article:

Article 251.1 Forcing of testimony by an inquirer or investigator by threat, violence, torture, humiliation, deception or other illegal methods shall be punishable by imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years. Article 251.2 rules that the same crime if it has entailed a less serious or severe bodily injury or has caused damage in a large amount shall be punishable by imprisonment for a term of more than 5 to 10 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

Para.1 of Article 254 of Criminal Code describes punishment for intentional false testimony during the inquiry, investigation or court proceedings by a witness, victim, intentional false expert opinion by an expert witness, intentional false translation by a translator, or intentional false interpretation by an interpreter. Article 254.2 says the same crime committed with lucrative or other private purposes, charging with a serious or grave crime, by falsification of evidence, false testimony, or it has caused grave harm shall be punishable by a fine equal to 101 to 250 amounts of minimum salary, or imprisonment for a term of 2 to 5 years.

Para.1 of Article 256 establishes punishment for making a witness or victim give a false testimony, an expert witness render a false opinion or an interpreter do false interpretation by violence, giving remuneration or threatening with destruction of property.

25. Subparagraph (b) of article 25 (Criminalization of interference with actions of judicial or law enforcement officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Para.1 of Article 245 establishes that intentional impeding inquiry, investigation and court trial proceedings shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 200 hours of forced labour or by incarceration for a term of 1 to 3 months. According to para.2 of Article 245 the same crime committed by use of one's official position shall be punishable by a fine equal to 51 to 250 amounts of minimum salary, 300 to 500 hours of forced labour or by incarceration for a term of more than 3 to 6 months, or imprisonment for a term of up to 3 years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.

IV. International cooperation (chapter IV)

A. Article 44 Extradition

26. Subparagraph 6 (a) (Taking the Convention against Corruption as the legal basis for cooperation on extradition)

Has your country notified the Secretary General, as described above? (Check one answer)

(Y) Yes

In compliance with Article 15 of Constitution, it is prohibited to extradite citizens of Mongolia to other state. Also in Article 15 of Criminal Code, citizens of Mongolia shall not be extradited to a foreign state for prosecution in criminal cases or for subjecting to criminal liability. Refusal for extraditing citizens of Mongolia is also specified in Article 406 of Criminal Procedure Law.

Para.2 of Article 15 of Criminal Code rules that that the foreign nationals and stateless persons who committed crimes beyond the territory of Mongolia and are within the territory of Mongolia may be extradited to the foreign states to be subjected to criminal liability or for serving punishment as provided for in an international agreement to which Mongolia is a party. The procedure of transfer is regulated by the chapter of Criminal Procedure Code for cooperation on legal assistance by inquiry and investigation organizations, prosecutor and court of Mongolia and other countries.

Mongolia applies the UN Convention against Corruption as the legal basis for cooperation with other State Parties on extradition of criminals. Notice on refusal of extraditing citizens of Mongolia to the foreign state for prosecution in criminal cases was given to the Secretary General of UN through the Ministry of Foreign Affairs.

B. Article 46 Mutual legal assistance

27. Paragraph 13 of article 46 (Designation of a central authority to receive requests for mutual legal assistance)

Has your country notified the Secretary General, as described above? (Check one answer)

(Y) Yes

Chapter 45 of Criminal Procedure Code regulates activities concerning mutual legal assistance with respect to criminal cases between court, procurator's office, investigation and inquiry agencies of Mongolia and relevant foreign institutions. In addition, Mongolia has agreement on mutual legal assistance with other states. Currently, Mongolia has concluded agreement on mutual legal assistance with 18 states such as post socialist countries, Russian Federation, Poland, Kazakhstan, Republic of Korea, Turkey, People's Republic of China and India. Ministry of Justice and Internal Affairs, Prosecutor General and General Office Police have the right to receipt, execution and transfer of such requests for legal assistance. Different organizations such as Ministry of Justice and Home Affairs in some agreements and Office of Prosecutor General or General Police Department are given the right to receive, execute and transfer of requests for mutual legal assistance.

Notice that for cases described in para.13 of Article 46 of the Convention, the central authority to receive, execute or transfer to competent organizations the requests for mutual legal assistance is the Ministry of Justice and Home Affairs of Mongolia was given to the Secretary General through the Ministry of Foreign Affairs.

After the establishment of the Independent Authority against Corruption, on July 31 of this year a notice was given to the Secretary General of UN through the Ministry of Foreign Affairs which stated that the Independent Authority against Corruption of Mongolia is the authority to assist other States Parties in developing and implementing specific measures for the prevention of corruption according to Article 6.3 of UNCAC.

V. Asset recovery (chapter V)

A. Article 52 Prevention and detection of transfers of proceeds of crime

28. Paragraph 1 of article 52 (Verification of identity and enhanced scrutiny of customers of financial institutions)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Law on Combating Money Laundering and Terrorism Financing

Please provide examples of the successful use or implementation of this article:

Law on Combating Money Laundering and Terrorism Financing stipulates checking of customer information. In the following cases the competent person is obligated to check customer information as provided in para.1 of Article 5 of this law:

- 5.1.1. prior to delivering financial services;
- 5.1.2. prior to making transactions equal to or above MNT 20 million (or in foreign currency equal to the amount);
- 5.1.3. in case there are grounds to consider that several transactions are related to each other, though each for amount less than stipulated in Article 5.1.2, but all together totalling to MNT 20 million (or in foreign currency equal to the amount) or above, were executed in order avoid the submission of information, stipulated in Article 5.1.2 of this Law;
- 5.1.4. in case there is a need to verify previously received information about a customer;
- 5.1.5. prior to transactions, related to foreign payments;
- 5.1.6. in case there are other grounds to view that a particular customer or a particular transaction is linked to money laundering or terrorism financing;

Competent person should collect the following information from customers:

- 5.2.1. if the customer is an individual, his/her name, surname, identification card number, residence address, contact telephone numbers and a notarized copy of ID card;
- 5.2.2. if the customer is a legal person – its name, address, state registration and tax payer's number, contact telephone numbers, and a notarized copy of the state registration certificate, and detailed background information on the management;
- 5.2.3. the purpose of transaction, information on beneficiary;
- 5.2.4. information on the person, who executed the non-cash transfer.

Person stipulated in Article 6 of the Law on Combating Money Laundering and Terrorism Financing is obliged to examine with particular care the following transactions:

- 6.1.1 a transaction equal to or above MNT 20 million (or in foreign currency equal to the amount) ;
- 6.1.2. a transaction with unclear purpose;
- 6.1.3. a transaction, executed via countries that are listed in Item 3.2 of this Law;
- 6.1.4. a non-case transaction or the one without complete information on remitter;
- 6.1.5. a transaction executed in the name of government officers or political party leaders, listed in Item 3.2 of this Law.
- 6.1.6 transactions of a customer of other nature compared to his/her earlier transactions.

However, the law does not have provisions requiring supervision over the account of persons holding or had hold position in government authority or their family members or close partners and accounts in their name.

Article 19 of this law describes how the Financial Information Unit shall cooperate with the similar organizations in other countries.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

- Model legislation
- Legislative drafting
- Legal advice
- Site visit by anti-corruption expert
- Development of an action plan for implementation
- Other assistance (please specify)
- No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

29. Subparagraph 2 (a) of article 52 (Issuance of advisories to financial institutions)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Law on Combating Money Laundering and Terrorism Financing

Please provide examples of the successful use or implementation of this article:

The Financial Information Unit has the obligation to examine information related to money laundering and terrorism financing, develop methodology for inspection and detection of suspicious transactions, inform about it to related persons and organize the implementation. The following recommendations and methods have been developed and put in practice. ...

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

- Model legislation
- Legislative drafting
- Legal advice
- Site visit by anti-corruption expert
- Development of an action plan for implementation
- Other assistance (please specify)
- No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

30. Subparagraph 2 (b) of article 52 (Notifying financial institutions of identity of account holder for enhanced scrutiny)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Anti-Corruption Law of Mongolia, Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 166 of the Criminal Procedures Code (CPC) of Mongolia legalizes initiation of criminal cases if there exists one of the following grounds and if there does not exist any condition that prevents from carrying out criminal proceedings and if there is sufficient evidence proving a commission of crime: complaint filed by a citizen on a committed crime; report of business entities, organizations and officials on a crime; appearing to confess in committing a crime; direct discovery of indicia of a crime by an inquiry officer, investigator and procurator; information on a crime obtained and documented through undercover operation.

In this case complaints and reports of business entities, organizations and officials concerning a crime shall be reviewed within a period of not more than five days in order to decide whether to initiate a criminal case, according to Article 171 of CPC. This period may be extended for up to 14 days by the head of inquiry and investigation in instances required to obtain additional explanations, documents and other materials or to carry out view of criminal scene.

The Independent Authority against Corruption officers in charge of undercover work, inquiry and investigations shall exercise the mandate to inspect and temporarily freeze, without special permit, bank accounts and transactions of citizens, business entities or organizations as specified by Article 24.1.4 of the Anti-Corruption Law. In addition, the following provisions are implemented: Article 76, para.5 of CPC on limitation of power to administer and dispose assets, whereby rights of administration and disposal of monetary assets placed at a bank or other financial institutions may be limited and Article 134, para.9 on sealing of property whereby a saving deposit shall be sealed in an amount equal to the payment to be paid and an account of an organization shall be frozen for transactions.

Article 401 of CPC deals with the implementation of instruction by authorized organization of foreign country on execution of procedural actions and according to international agreement on mutual legal assistance and according to Article 46 of UN Convention against Corruption mutual legal assistance is afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements concluded with particular country and according to the above provisions of the CPC of Mongolia bank accounts and transactions of citizens, business entities or organizations mentioned in the request may be inspected and temporarily frozen, their rights of administration and disposal of monetary assets placed at a bank may be limited, and accounts may be frozen for withdrawal transactions.

31. Paragraph 3 of article 52 (Implementation of measures to require financial institutions to maintain adequate records)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Law on Combating Money Laundering and Terrorism Financing

Please provide examples of the successful use or implementation of this article:

All financial organizations are obliged to inform about cash transactions specified in this law to the Financial Information Unit.

The Financial Information Unit may check the account if there are reasonable grounds to view that account is used for money laundering and terrorism financing.

Law on Combating Money Laundering and Terrorism Financing requires that the file of materials and documents, related to transactions and closed accounts of the customer are kept at least for 5 years.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

- Model legislation
- Legislative drafting
- Legal advice
- Site visit by anti-corruption expert
- Development of an action plan for implementation
- Other assistance (please specify)
- No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

32. Paragraph 4 of article 52 (Prevention of establishment of banks having no physical presence or affiliation to a registered financial group)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

- Model legislation
- Legislative drafting
- Legal advice
- Site visit by anti-corruption expert
- Development of an action plan for implementation
- Other assistance (please specify)
- No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

33. Paragraph 5 of article 52 (Establishment of financial disclosure systems for public officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes, in part

Please cite the applicable law(s) or other measure(s):

The Anti-Corruption Law, Law on Combating Money Laundering and Terrorism Financing

Please provide examples of the successful use or implementation of this article:

In accordance with Anti-Corruption Law, public servant is obliged to submit his/her assets, income declaration. In failure of such duty, he/she is subject to dismissal, resignation, release or suspension from his/her office. The assets and income declaration of high level officials is publicized in the “Turiin Medeelel” magazine.

Law on Combating Money Laundering and Terrorism Financing requires that the file of materials and documents, related to transactions and closed accounts of the customer are kept at least for 5 years.

34. Paragraph 6 of article 52 (Requiring public officials to report foreign financial accounts)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

- Model legislation
- Legislative drafting
- Legal advice
- Site visit by anti-corruption expert
- Development of an action plan for implementation
- Other assistance (please specify)
- No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

B. Article 53 Measures for direct recovery of property

35. Subparagraph (a) of article 53 (Institution by a State party of measures to permit another State party to initiate civil action in its courts)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Code, Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 3 of CPC of Mongolia deals with limits of operation of the Law on Criminal Procedure and in para.1 it rules that regardless of the place where a crime is committed, criminal proceedings on the territory of Mongolia shall be, in all circumstances, executed in conformity with the Law. The

legislation of Mongolia currently does not stipulate on initiating civil action in courts for the purpose of establishing property rights and owners of proceeds of crime committed in the territory of any State Party. However, if in the course of investigation it is proven with evidence that the property is of foreign origin and that it constitutes proceeds of crime committed abroad, according to Article 42 of CPC of Mongolia victims shall be identified and according to Article 43 for the purpose of identifying a civil plaintiff Article 401 of CPC of Mongolia shall be pursued for executing procedural action for identifying the victim and civil plaintiff and request for investigation may be made to the authorized organization of the particular country.

If a State Party in the territory of which crime has been committed sends a request to an authorized organization of Mongolia, Article 401 of CPC of Mongolia rules that criminal procedural action will be implemented based on instruction by authorized organization of foreign country. If the person who committed crime in foreign country is a citizen of Mongolia or stateless person residing in Mongolia and if he/she was not prosecuted and subjected to criminal liability in the country of commission of crime, according to para.1 of Article 14 of Criminal Code “If a citizen of Mongolia or a stateless person permanently residing in Mongolia has committed a crime specified in this Code abroad and he/she has not been sentenced for it, he/she shall be subject to criminal liability under this Code.” Therefore, a case may be initiated for criminal liability under this law and according to the request of the State Party the relevant information may be provided and requested procedural action executed. In addition, under Article 398 of CPC instruction on executing certain procedural action may be sent to the authorized organization of foreign country and this instruction may request to identify the possessors and property right owners of the proceeds of crime to the authorized organization in the particular country.

36. Subparagraph (b) of article 53 (Institution by a State party of measures to permit its courts to order payment of compensation or damages)

Has your country adopted the measures described above? (Check one answer)

(N)No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

- Model legislation
- Legislative drafting
- Legal advice
- Site visit by anti-corruption expert
- Development of an action plan for implementation
- Other assistance (please specify)
- No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N)No

37. Subparagraph (c) of article 53 (Institution by a State party of measures to permit its courts or competent authorities to recognize another State party's claim of legitimate ownership of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Under Article 401 of CPC of Mongolia the organization which receives instructions of authorized organization of foreign country on execution of procedural actions shall implement the request according to normal rules provided by Criminal Procedures Code in compliance with international agreements on mutual legal assistance and Article 46 of UN Convention against Corruption.

In implementing the instruction, norms and provisions of foreign procedural actions may be applied if international agreements provide so. If international agreements provide so, a representative of relevant organization from the foreign country may participate in implementing the instruction. If it is not possible to implement the instruction and if international agreements do not provide otherwise, the received documents shall be returned to the foreign organization who gave the instruction stating the reason for non-implementation. The law also rules that if implementation of an instruction is to contradict sovereignty and security of Mongolia or to violate legislation, it shall be returned.

Based on the request received under these provisions, procedural action shall be implemented according to normal rules provided by the Criminal Procedures Code where Article 132 stipulates grounds for executing seizure and search, Article 133 - procedure for executing seizure and search and Article 138 - seizure of items or documents. These provisions will be pursued in implementing the request and the reply shall be sent to the authorized organization of the requesting country.

If an offence established in a particular country is not criminalized in Mongolia under the criminal law and if the offence established under the UN Convention against Corruption is also not criminalized under the criminal law of Mongolia the request for procedural action from a State Party shall be received and, as procedural action is not possible, returned to the authorized organization of the requesting country and grounds for non-execution shall be explained.

C. Article 54 Mechanisms for recovery of property through international cooperation in confiscation

38. Subparagraph 1 (a) of article 54 (Institution by a State party of measures to permit its competent authorities to give effect to orders of confiscation issued by courts of another State party)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 401 of Criminal Procedures Code of Mongolia provides for implementation of instruction by an authorized organization of a foreign country for procedural action and the authorized organization receiving the request for mutual legal assistance in compliance with international agreements for mutual legal assistance and Article 46 of UN Convention against Corruption shall receive the request and decision made whether to implement the instruction in cases when other evidence received through

procedural action implemented in our country complies with evidence and proof mentioned in the request. In other cases court decision alone by a State Party shall not serve as grounds for seizure and confiscation of proceeds of crime.

39. Subparagraph 1 (b) of article 54 (Confiscation of property of foreign origin)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 401 of Criminal Procedures Code of Mongolia provides for implementation of instruction by an authorized organization of a foreign country for procedural action and the authorized organization receiving the request for mutual legal assistance shall implement the instruction in compliance with international agreements for mutual legal assistance and Article 46 of UN Convention against Corruption.

In addition, in case when a particular crime is detected and procedural action is initiated by an authorized organization of our country not necessarily by a request of a State Party and when property of foreign origin is proven by evidence in the course of investigation, the property shall be seized and protected, the administration and disposal rights limited, bank transactions frozen and the required property shall be confiscated according to grounds and procedures stipulated under CPC. The related State Party shall be informed on these actions and it may request implementation of the necessary procedural action.

40. Subparagraph 1 (c) of article 54 (Confiscation without a criminal conviction of property acquired through corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

If criminal case and prosecution may not be initiated for a particular case, a civil action may be initiated for proceeds of crime in courts of countries with agreement for mutual legal assistance and the civil action of this case shall be resolved by court proceedings. In case there is criminal action, according to Article 291 of CPC, a court shall completely or partially satisfy the civil suit or shall deny it, depending on whether the grounds and amount of the suit have been proved.

41. Subparagraph 2 (a) of article 54 (Freezing or seizure of property upon freezing or seizure order)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 134 of Criminal Procedures Code of Mongolia deals with sealing of property. According to para.1 of Article 134 property of an accused, a suspect, or of other persons legally bearing material responsibility for their actions shall be sealed for the purpose of securing a civil suit or possible confiscation of a property. Under para.2 of Article 134 sealing of property may be executed simultaneously with a seizure or search, or separately. Under para.3 of Article 134 an inquiry officer or investigator shall issue a decree on sealing of a property with description of grounds and have it approved by a procurator. Law stipulates that if necessary, a sealed property may be seized temporarily according to para.7 of Article 134.

Order of the court or an authorized organization of a requesting State Party for seizure or confiscation sent to an authorized organization of our country according to grounds and procedures stipulated in Article 46 of the Convention shall be received and property shall be seized according to grounds and procedures stipulated in CPC of Mongolia. In the course of execution, order for property seizure shall be accompanied by the order of the authorized organization of a requesting country on property seizure, which court order, and practical information about the crime committed and related evidence and presented to and approved by the prosecutor, and the property mentioned in the order of the requesting country shall be seized.

42. Subparagraph 2 (b) of article 54 (Freezing or seizure of property upon request providing sufficient grounds)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Under Article 401 of CPC of Mongolia the organization which receives instructions of authorized organization of foreign country on execution of procedural actions shall implement the request according to normal rules provided by Criminal Procedures Code in compliance with international agreements on mutual legal assistance and Article 46 of UN Convention against Corruption. The requested procedural action shall be implemented according to the Criminal Procedures Code pursuing Article 132 which stipulates grounds for executing seizure and search, Article 133 - procedure for executing seizure and search, Article 134 – sealing of property and Article 138 - seizure of items or documents.

43. Subparagraph 2 (c) of article 54 (Preserving property for confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Instruction for procedural action according to Article 398 of Criminal Procedures Code of Mongolia in cases of transfer and conversion of proceeds of crime committed in Mongolia abroad shall be sent to the authorized organization of the State Party. The offence described in the particular instruction shall be included in the Convention and the requested country shall comply with its domestic legislation, international agreement and convention provisions.

A criminal case may not be initiated, and if initiated, procurator and court shall terminate according to Article 24.1.3 of Criminal Procedures Code of Mongolia if the person involved in the crime has died. In this case relevant order and request from an authorized organization of a State Party on confiscation of proceeds of crime committed by the deceased person shall be sent to the court organization of our country and resolved by civil procedure.

D. Article 55 International cooperation for purposes of confiscation

44. Paragraph 1 of article 55 (Submission of request for order of confiscation to competent authorities)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Under Article 401 of Criminal Procedures Code of Mongolia the organization which receives instructions of authorized organization of foreign country on execution of procedural actions shall implement the request according to normal rules provided by Criminal Procedures Code in compliance with international agreements on mutual legal assistance and Article 46 of UN Convention against Corruption. However, in case of requests for procedural action by a State Party for an offence criminalized under the UN Convention against Corruption which is not criminalized under criminal law of Mongolia, it is not possible for the authorized organization to implement it.

45. Paragraph 2 of article 55 (Identification, tracing, freezing or seizure of proceeds of crime for eventual confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

This matter was mentioned above and the authorized organization receiving the request shall execute all necessary procedural action provided for in the CPC and implement them based on supervision and permission from the prosecution organization which supervises domestic inquiry and investigation for seizure and confiscation of proceeds of crime mentioned in the request.

Seizure and confiscation of proceeds of crime is implemented under the following provisions. Under para.1 of Article 133 of Criminal Procedures Code of Mongolia An inquiry officer or an investigator shall issue a decree with description of grounds for seizure or search to be approved by a procurator and the decree shall be read to concerned persons prior to commencement of the action. Under para.2 of Article 133, in circumstances not permitting delay a seizure or search may be executed directly or during night hours and a procurator shall be informed on the action within 24 hours. According to para.3 of Article 134, an inquiry officer or investigator shall issue a decree on sealing of a property with description of grounds and have it approved by a procurator. However, for incoming requests it is possible to execute the above-mentioned search, seizure and confiscation of property only when criminal case is initiated and file number is given and for complains and information with criminal characteristics it is only possible to implement confiscation of property.

46. Paragraph 3 of article 55 (Contents of request for order of confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 399 of CPC of Mongolia deals with content of instruction on executing procedural actions and it rules that instruction on executing certain procedural action shall be made in writing and include name of the organization giving instruction, name and address of the organization receiving the instruction, content of the instruction and the case, citizenship of the person with respect to whom the instruction is made, his/her occupation, information on place where he/she resides or stays, if it is a legal entity, - its name and address, physical and other evidence, information on classification of the crime, and if necessary, -amount of damage. For instruction and requests sent to countries without agreement on mutual legal assistance, besides information under para.15 of Article 46 of UN Convention against Convention, information under subpara.a, b, c of para.3 of Article 55 must be also attached.

E. Article 57 Return and disposal of assets

47. Paragraph 1 of article 57 (Disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Refraining from acting or acting unduly with or without promising in advance, bribing directly or indirectly by way of creating impediments or repeatedly or by a person previously punished for bribery, or if committed by an organized group or criminal grouping, or if large or extremely large amount of bribery was accepted is punishable by imprisonment from 5 to 10 years with confiscation of property.

In addition, Malfeasance Crimes included under Article 263 of Criminal Code of Mongolia on Abuse of power or of office by a state official, Article 264 on excess of authority by a state official, Article 265 on abuse of authority by an official of an NGO or a business entity, Article 266 on excess of authority by an official of an NGO or a business entity, Article 273 on spending of the budget funds contrary to their designation if they caused damage up to in extremely large amount to business entity, organization and interests protected by civil law, inquiry officer or investigator shall take measures for seizure and confiscation of property of the guilty person for the purpose of compensating the damage, and decision is made by a valid court order that the seized or confiscated property of the guilty person shall be issued to victim organization, entity or citizen. Punishment sanction stipulates that the property and monetary assets gained by way of committing bribery of the person guilty of bribery offence shall be confiscated as state income.

48. Paragraph 2 of article 57 (Return of confiscated property upon request by another State party)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting

Legal advice

Site visit by anti-corruption expert

Development of an action plan for implementation

Other assistance (please specify)

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

49. Paragraph 3 of article 57 (Return of property confiscated in accordance with article 55 of the Convention against Corruption)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation
Legislative drafting
Legal advice
Site visit by anti-corruption expert
Development of an action plan for implementation
Other assistance (please specify)
No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

50. Paragraph 4 of article 57 (Deduction of expenses incurred in return or disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Criminal Procedures Code of Mongolia

Please provide examples of the successful use or implementation of this article:

Article 99 of Criminal Procedures Code of Mongolia specifies the costs of criminal proceedings. They consist of the following expenses: expenses paid to a victim, his/her representative, witness, third party witness, expert, and translator, interpreter; expenses incurred for storing, transferring, and examining physical evidence; expenses incurred for search of suspect, accused, or defendant escaped from inquiry, investigation or court proceedings; expenses paid to defence counsel; expenses incurred for coerced arrival of suspect, accused, or defendant, as well as expenses in relation to postponing of court session due to non appearance of defendant without respectful reasons; any other expenses incurred in relation to procedural actions.

Article 100 of CPC stipulates about determination of amount of the recoverable costs of procedural actions. Recoverable costs of procedural actions shall be determined according to following rules: For travel, lodging and meal expenses to be disbursed to victim, his/her representative, witness, third party witness, expert, translator and interpreter, – by equal sums for official missions established in organizations funded by the state budget, and if victim, expert, witness and third party witness summoned to appear in court have lost their wages, - by average wages and fees for the time spent. Fees for a specialist, expert, translator and interpreter work, - as mutually agreed, but this provision shall not apply if such duties have been fulfilled as part of his/her occupational functions. Article 101 specifies about exaction of costs of procedural actions. If a defendant is found guilty, a court shall have the right to exact costs of procedural actions from him/her.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting **X**
Legal advice **X**
Site visit by anti-corruption expert **X**
Development of an action plan for implementation
Other assistance (please specify)
No assistance is necessary

We propose the following areas for further assistance:

- Train authorized officials on making request for mutual legal assistance in compliance with UN Convention against Corruption;
- How to submit requests for mutual legal assistance, how to cooperate, how to harmonize the content of requests for mutual legal assistance to the Convention requirements,
- How to make mutual legal assistance effective,
- How to maintain regular, fast and efficient communication and information exchange about corruption offences, subjects who commit crime and their property,
- Deterring and detecting transfer of proceeds of crimes under the UN Convention against Corruption, asset recovery,
- What are the ways of cooperation to deter transfer of proceeds of corruption, how to detect these acts, how to recover the assets which are already transferred to other countries.
- How the anti-corruption agency can efficiently collaborate in this area with foreign countries,
- Methods of detection, deterring and recovering assets before the proceeds of corruption crimes are transferred to foreign countries,
- Movement of proceeds of crimes included in the UN Convention against Corruption and ways of transferring, concealing and disguising the proceeds,
- Methods and types of concealing, disguising and using proceeds of corruption crimes,
- How does of the movement of proceeds of crime happen, how to control or, how to detect and prove it, confiscate with evidence,
- Methods and ways of protecting victims and witnesses who cooperate with judiciary,
- How witnesses and victims are placed under protection, how their security is provided,
- Ensuring security of families of witnesses and victims,
- Methods of investigating corruption crimes and collecting evidence and proof in the course of investigation,
- Collecting evidence and proof and justifying them using latest technology and equipment,
- Collecting and justifying evidence while tracing the criminals, detecting him/her in the action, detecting and justifying evidence,
- Learn about the latest technology and equipment used in detecting and investigating corruption crimes, collecting and justifying evidence and how to use them in practice.

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No

51. Paragraph 5 of article 57 (Conclusion of agreements on final disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all that apply)

Model legislation

Legislative drafting

Legal advice

Site visit by anti-corruption expert

Development of an action plan for implementation

Other assistance (please specify)

No assistance is necessary

Are any of the forms of technical assistance mentioned above already provided? (Check one)

(N) No