UNODC
United Nations Office on Drugs and Crime

PILOT REVIEW PROGRAMME: MONGOLIA

Review of the Implementation of Articles 5, 15, 16, 17, 25, 46 paragraphs 9 and 13, 52 and 53 of the United Nations Convention against Corruption

Reviewing Countries:
Pakistan and Sweden

A. Introduction

Article 63 of the United Nations Convention against Corruption (UNCAC) establishes a Conference of the States Parties with a mandate to, *inter alia*, promote and review the implementation of the Convention. In accordance with Article 63 paragraph 7, the Conference shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

At its first session, held in Jordan in December 2006, the Conference of the States Parties agreed that it was necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention (Resolution 1/1). The Conference established an open-ended intergovernmental expert group to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandates, in particular with respect to taking stock of States' efforts to implement the Convention. The Conference also requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and their analysis of implementation efforts and to report on those efforts to the Conference. In addition, several countries already during the session of the Conference expressed their readiness to support on an interim basis a review mechanism which would combine the self-assessment component with a review process supported by the Secretariat.

The "Pilot Review Programme", of which this report forms part of, was established to offer adequate opportunity to test possible means for implementation review of the Convention, with the overall objective to evaluate efficiency and effectiveness of the tested mechanism(s) and to provide to the Conference of the States Parties information on lessons learnt and experience acquired, thus enabling the Conference to make informed decisions on the establishment of the appropriate mechanism for reviewing the implementation of the Convention. The Pilot Programme is an interim measure to help fine-tune the course of action. It is strictly voluntary and limited in scope and time.

The methodology used under the Pilot Review Programme is to conduct a limited review of the implementation of UNCAC in the participating countries using a combined self-assessment / group / expert review method as possible mechanism(s) for reviewing the implementation of the Convention.

Throughout the review process, members of the Group engage with the individual country in an active dialogue, discussing preliminary findings and requesting additional information. Where requested, country visits are conducted to assist in undertaking the self-assessments and/or preparing the recommendations. The teams conducting the country visits are composed of experts from two prior agreed upon countries from the Group and a member of the Secretariat

The scope of review is Articles: 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 13 and 9; 52 (prevention and detection of transfers of proceeds of crime) and 53 (measures for direct recovery of property).

B. Process

The following review of Mongolia's implementation of the United Nations Convention against Corruption is based on the self assessment report received from Mongolia, the outcome of the active dialogue between Mongolia and the experts from Pakistan and Sweden, a review of relevant regional review mechanism reports including the 2007 Asia Pacific Group—Financial Action Task Force (APG-FATF) report, and the on-site country visit held in Mongolia on 20-22 April 2009. During the country visit, meetings were held with: the Independent Authority Against Corruption; the Ministry of Justice and Home Affairs; the Ministry of Foreign Relations; the Central Bank of Mongolia's Financial Intelligence Unit; the Ministry of Finance; the Supreme Audit Institution of Mongolia; the

General Prosecutor's Office; the Supreme Court of Mongolia; Globe International (a non-governmental organization (NGO) in Mongolia); the National Coordinator of the Mongolian Extractive Industries Transparency Initiative, the Mongolian Employers' Federation; and the Government Service Council.

C. Executive summary

Mongolia has fully adopted the measures required in accordance with the provisions of UNCAC Article 46 (mutual legal assistance), particularly paragraphs 9 and 13. Mongolia has adopted measures with the view to attaining continued compliance with UNCAC Article 5 (preventive anti-corruption policies and practices). Mongolia has also adopted most of the measures required in accordance with UNCAC Articles 17 (embezzlement, misappropriation or other diversion of property by a public official); and 52 (prevention and detection of transfers of proceeds of crime).

Mongolia has adopted only some of the measures required in accordance with UNCAC Articles 15 (bribery of national public officials); 25 (obstruction of justice), and 53 (measures for direct recovery of property), and Mongolia has not adopted the measures required in accordance with UNCAC Article 16 (bribery of foreign public officials and officials of public international organizations).

D. Implementation of the United Nations Convention against Corruption

1. Ratification of the Convention

The Convention was signed by Mongolia on 29 April 2005. (UN Doc. No. C.N.323.2005.TREATIES-11.) It was subsequently ratified by Mongolia on 11 January 2006. (UN Doc No. C.N.9.2006.TREATIES-1.) In order to more fully implement the measures required under the Convention, Mongolia enacted the new amended Anti-Corruption Law on 8 July 2006, which came into force on 1 November 2006.

2. The Mongolian legal system

Article 10 paragraph 3 of the Mongolian Constitution states that "[t]he international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession". The UNCAC therefore ranks high among the laws of Mongolia, constituting an integral part of its domestic legislation.

The President is the Head of State in Mongolia. The Prime Minister, in consultation with the President, submit his/her proposals on the nomination of the cabinet members to the legislature (State Great Hural). Mongolia has a unicameral legislature consisting of the State Great Hural. The Supreme Court is the highest judicial organ. The President shall appoint the judges of the Supreme Court upon their presentation to the State Great Hural by the General Council of Courts, and appoint judges of other courts on the proposal of the General Council of Courts.

In 2006, the new Anti-Corruption Law created the Mongolian Independent Authority Against Corruption (IAAC), which is Mongolia's main anti-corruption agency. The Criminal Code was revised in 2002 and amended in 2008, introducing offences under the Chapter on Malfeasance Crimes over which the investigators of the IAAC have investigation powers. The Criminal Procedures Code was also passed by the Parliament in 2002 and amended in 2007 to define the investigation mandate of the IAAC investigators over offences subjected to criminal liability. The IAAC is a special independent government body whose functions are limited to raising anti-corruption public awareness and education and corruption prevention activities, under-cover operations, inquiries and investigations in detecting corruption crimes and review and inspection of the assets and income declarations of those required by this law, but do not include the authority to prosecute.

3. Review of implementation of selected articles

3.1. Article 5

> ***Preventive anti-corruption policies and practices***
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> "1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
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> "2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
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> "3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
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> "4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption."

a. Summary of the main requirements

In accordance with Article 5, States Parties are required: (a) To develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1); and (b) To collaborate with each other and relevant international and regional bodies for the pursuit of the above goals (para. 4). Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States Parties to develop and maintain a wide range of measures and policies for the prevention of corruption, in accordance with the fundamental principles of their legal system. Under article 5, paragraph 1, the requirement is to develop, implement and maintain effective, coordinated measures that: (a) promote the participation of the wider society in anti-corruption activities; and (b) reflect the principles of: (i) the rule of law; (ii) proper management of public affairs and public property; (iii) integrity; (iv) transparency; and (v) accountability. These general aims are to be pursued through a range of mandatory and optional measures outlined in subsequent articles of the Convention. Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States Parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law.

b. Findings and observations of the review team concerning Article 5

The National Program for Combating Corruption

The National Program for Combating Corruption (NPCC), which was adopted by the Parliament in 2002 and amended in 2004 and 2006, includes a detailed prevention strategy for Mongolia. The 2006 amendments were adopted by Parliament in 2007. This program is being implemented in two stages during the period from 2002 to 2010. The NPCC has three chapters and includes concrete objectives, goals, principles, implementation timeframes, expected results and implementation activities. More specifically, the Program aims to improve the election system, create a legal environment for corruption prevention, improve public service, maintain the independent status of the judiciary, liberalize the activities and economy of executive organizations, and increase the participation of civil society in combating corruption.

The State Ih (Great) Hural originally established a National Council to implement the NPCC with functions to coordinate and supervise the implementation of this program. This former National Council consisted of the Deputy Head of State Ih (Great) Hural leading the Council, which consisted of the Judge General, the Prosecutor General, the Chairman of Public Service Council, the Secretary of National Security Council, several ministers, heads of agencies and representatives of NGOs. In 2005, a joint group of NGOs conducted a review 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 revised 2006 Anti-Corruption Law, which was expressly designed to more fully implement UNCAC, designated the IAAC to be the lead agency for implementing the NPCC and specified, in detail, the policy and activities for corruption prevention. The IAAC was established on the 1st of November 2006, and the first independent Commissioner to the IAAC was appointed on 27 December 2006. The IAAC is currently in the process of revising the NPCC based on current needs and conditions. A workshop on improving the NPCC was recently held among the representatives of government and non-government organizations, and their views and opinions were received. In connection with the completion of the term of the NPCC in 2010, the IAAC is drafting a mid-term Programme of Prevention and Combating against Corruption for approval.

IAAC's Preventive Anti-Corruption Activities

Chapter II of the Anti-Corruption Law provides a detailed framework of "Anti-Corruption Public Awareness and Education and Corruption Prevention Work" by the IAAC. These include the participation and involvement of business entities, NGOs and citizens, educational institutions, and the media in a broad range of preventive activities (Article 5). By way of example of the participation being sought, shortly after the establishment of the IAAC, around 100 business people from various sectors were invited to meet with the IAAC. They engaged in an open discussion, and provided the IAAC with a better understanding about the problems that the private sector is encountering and recommendations as to how these problems may be addressed. In order to further engage the business community, a Memorandum of Understanding was signed by the IAAC and the Mongolian Employers' Federation (MONEF). The MONEF, in collaboration with the IAAC, relatively recently conducted nation-wide seminars on anti-corruption that focused on the private sector.

Additionally, NGO networks, such as Globe International and Transparency International have proven to be active in the area of anti-corruption activities, particularly at the local level and in remote areas. The IAAC stated that it had received reports from NGOs working in 21 aimags in the first quarter of 2009. It was also reported that the Mongolian Extractive Industries Initiative was well under way in its implementation. A second validation report is to be produced by September 2009 with data collected from 102 companies.

The Anti-Corruption Law mandates that there be transparency and openness of government activities, particularly in the areas of policy dialogue, State monitoring, the State budget, and government procurement and licensing activities (Article 6). Any official who fails to perform his/her duties with respect to the prevention and combating of corruption shall be subject to a disciplinary penalty by an authorised official. Also according to the law, any organisations and business entities that receive resolutions of the IAAC are obligated to undertake and adopt the relevant actions and report in a timely fashion and a failure is subject to a fine of MNT 150,000 – 200,000 (Article 6.9). Specifically, in regards to the activities of the IAAC within the framework of prevention, these are described in the Anti-Corruption Law. It is also to be noted that a given percentage of the IAAC's budget is to be spent solely on preventative anti-corruption activities. Crime prevention budget is distributed to each aimag 10% of this budget is spent for solely prevention of corruption in compliance with the agreement made by the IAAC with the aimag governors, and the leaders of the aimag NGO networks.

According to the IAAC, from September 2007 to the first quarter of 2009, the IAAC's Investigation Department received 1182 complaints and information relating to corruption against 800 officials of

various governmental and non-governmental organisations, of which 97% have been dealt with. Within the same time-frame, there had been 268 corruption-related criminal cases identified against 588 persons, including 33 political officials, 95 State administration officials, and 121 officials in the State Special Service.

Additionally, the IAAC has the mandate to receive and consider, as they deem fit, the asset and income declarations of public officials. According to the IAAC, in 2008, 271 high-ranking officials submitted their asset and income declarations and 53,160 from other public officials. As for the period 2007-2009, the relevant institutions were imposed to dismiss their 53 public officials from service for not submitting their declarations. The IAAC stated that they could use additional resources to more effectively review the income declarations that they receive. It is also important to note the role that the media and civil society has played in generating awareness. There were newspaper and television advertisements that provided for a countdown until the submission date of the asset and income declarations, and after the deadline, civil society was informed about those who had not submitted their declarations.

It is also important to note that the IAAC has the right under the Criminal Procedure Code to act on its own initiative regarding a corruption related matter assigned to the agency by law. The IAAC also has a special intelligence unit, and this operates in conjunction with the investigations unit of the IAAC. Additionally, the IAAC has established a hotline, working 24 hours, 7 days a week, to facilitate a complaint registration service for the general public.

Preventive Guidelines for Public Officials and Codes of Conduct

Article 46.2 of the Constitution mandates that "State employees must… strictly abide by the Constitution and other laws and *work for the benefit of the people and in the interests of the State*" (emphasis added). The activities of civil servants are more specifically regulated by the 1995 Law on Public Service, which was amended in 2008: to comply with UNCAC; for civil servants, to perform their rights and duties in the interests of the State and its people, as provided for in the Law; to obey the moral/ethical obligations and disciplines of civil servants, the culture of the public service and the organization; to respect the reputation of the public service; and to provide asset and income declarations, and report any subsequent changes to the respective authority and the public.

According to this Law on Public Service, a code of conduct for State administrative civil servants has been adopted and enforced by the Government. In parallel, State agencies have adopted code of conducts for their specific sector including for: judges; prosecutors; police officers; and auditors. Depending on the specific provisions stipulated in the given codes of conduct, the enforcement mechanism is to be enacted by different bodies and delegated officials. For example, in the judiciary, it is the Disciplinary Committee of Judges who supervises the implementation of the code of conduct for judges.

Government Service Council

The Government Service Council of Mongolia was established 15 years ago and has been independent for the last 6-7 years. Currently, there are over 140,000 civil servants in Mongolia. The Council is responsible for determining the standards required of civil servants and ensuring their compliance with these standards. The Council, itself, does not have the mandate to deal with corruption-related matters, but as provided for by the Anti-Corruption Law, there is a requirement for them to refer such matters to the IAAC.

Another main function of the Council is to select and generate a pool of potential civil servants, for governing and executive posts. This involves a four-tier process: a general exam; an evaluation of an individual's qualifications; an interview; and a position-specific test (i.e. computer, language skills). The 2008 amendments additionally: required civil servants to be non-political party members (see below); imposed certain requirements on executive civil servants; and proposed the establishment of a

unit within the Council for the purposes of civil service training, research and consulting; to date, this unit has not been created. The Council also recently proposed a code of ethics, for administrative civil servants-, and drafted bill to prevent the conflict of interest by civil servants , but these are still awaiting the Parliament and the Government approval.

Political Independence

According to Article 16.10 of the Mongolian Constitution, "[t]he right to freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinion. Political parties and other mass organizations shall uphold public order and state security, and abide by law. Discrimination and persecution of a person for joining a political party or other associations or for being their member are prohibited. Party membership of some categories of state employees may be suspended from their membership in political party". This implies that civil servants could be, to some extent, dependent on politicians, and historically political party membership was often a prerequisite for many civil servant positions. In particular, this lead to the dismissal of many core civil servants and the appointment of persons, irrespective of their knowledge, skill, qualification, experience and education, by the political party in power to which the appointed persons were members. This undermined public trust and resulted in a loss of stability and qualification; core civil servants felt discouraged in carrying out their functions in good faith. However, to address this issue, the May 2008 amendments to the Law on Public Service established a new rule that required core civil servants to have no political membership.

The 2008 amendments also removed the potential risk factors that had been in existence regarding temporary employment. Previously, Article 17.12 of Law on Public Service permitted the temporary appointment of citizens in State administrative positions for up to 6 months based on requirements of association or political party affiliations. The 2008 amendments to the Law on Public Service invalidated this provision, and required vacant positions to be filled from a pool of officials who were already working in the agency or in a related agency, to consider their work performance and level of qualification, and if necessary, to be taken from the pool of candidates who successfully completed the examination to step into the public service.

Procurement

The Public Procurement Law was revised in 2005. The principles of procurement, as provided for in Article 6.1, states that "[t]he principles of transparency, equal opportunity to compete, economy and efficiency, and responsibility shall be pursued in public procurement". According to the Public Procurement Law, public servants are prohibited from accepting or proposing unlawful proposals for private gain and undertaking illegal action; public servants must inform high-ranking officials and refuse participation in the tender process if there are such conditions that might create a conflict of interest, if his/her family member(s) were to compete in the tender, work for or receive remuneration from the legal person which is competing in tender (Article 50.1.3. "not make violations illicit behaviour such as offering and accepting illegal proposals for own private interest"); and public servants are obliged to inform high-ranking officials and law enforcement bodies, if a tender participant offers a bribe or puts pressure on him/her that has the aim of influencing the tender decision (Article 50.1.4. "inform his/her direct supervisor about a potential conflict of interest such a tenderer being his/her family member or his/her family member working for and/or being paid a remuneration from a tenderer and not involve in the organization of a given tendering"). Further, "[a]ny tenderer shall be regarded as not meeting general qualification conditions who: …14.1.6. has been proven by the authorities to have been guilty of a serious misrepresentation in supplying information in tender submission; [and] 14.1.7. has been convicted by a court of a criminal offence of corruption in the last three years". It is to be noted that these provisions did not appear to have been amended by the Amendment to the Public Procurement Law of 6 February 2007. Article 2.2 of the Public Procurement Law also provides that "[i]f an international treaty, to which Mongolia is a party, is inconsistent with this Law, the provisions of the international treaty shall prevail."

The authority that used to be responsible for public procurement was the Ministry of Finance. The Ministry stated that since 2006, respective ministries and agencies have become responsible for their own public procurement up to a given threshold under existing legislation. However, if this threshold is surpassed, the responsibility shifts to the Ministry of Finance. The Ministry of Finance noted that additional support could be used to strengthen their procurement system, such as by preferably developing an electronic means for the management and tracking of the procurement of government contracts.

A complaint review mechanism also exists, whereby all bidders have the right to complain to the Ministry of Finance, if they feel that bidding was not carried out in compliance with the law. Last year, around 70 complaints were said to have been received.

Audits

The Supreme Audit Institution of Mongolia was established in 1995 when the State Audit and Inspection Act came into force. The Institution's main function is to conduct audits, check execution of state budgets and enhance good governance on all State agencies and organisations, as well as Parliament, if requested by Parliament or the Prime Minister. The two main types of audits that are conducted are performance and financial statement (includes investments). In 2008, 14 performance and 50 financial statement audits were conducted. Once an audit has been conducted, the report is first given to the Speaker of Parliament and Standing Committees, and if necessary, to the President. The report becomes available on the website, except for if the report contains confidential information. It is to be noted that the Institution has no power to review the commercial bank accounts of agencies and organisations. In 2003, a State Audit Bill including the request to audit commercial banks was put to Parliament, but not approved. If violations are identified by the institution, it only has the power to transfer these cases to the relevant agency/organisation (i.e. corruption-related violations would be transferred to the IAAC). It was held that the identified corruption-related violations that fell within the scope of grand corruption were predominately connected to infrastructure and the mining sector, and within petty corruption, the education and health sectors.

Taken together, these comprehensive preventive systems and strategies would appear to confirm that Mongolia has adopted a preventive anti-corruption policies and practices within the meaning of UNCAC Article 5.

Mongolia has adopted measures with the view to attain continued compliance with UNCAC Article 5.

3.2 Article 15

Bribery of national public officials

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) The promise, offering or giving, to 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;

"(b) 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."

a. Summary of the main requirements

In accordance with Article 15, States Parties must establish two offences: active and passive bribery of national public officials:

States Parties must establish as a criminal offence, when committed intentionally, the promise, offering or giving to 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 (Article 15, subparagraph (a))[1]. The required elements of this offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. Thus, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary. The undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization. Some national legislation might cover the promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the official's duties.

States Parties must establish as a criminal offence, when committed intentionally, 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 (Article 15, subparagraph *(b)*). This offence is the passive version of the first offence. The required elements are soliciting or accepting the bribe. The link with the influence on official conduct must also be established. As with the previous offence, the undue advantage may be for the official or some other person or entity. The solicitation or acceptance must be by the public official or through an intermediary, that is, directly or indirectly. The mental or subjective element is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties[2].

b. Findings and observations of the review team concerning Article 15

Chapter 28 of the Criminal Code contains Articles on malfeasant crimes, including bribery, which is specifically discussed in Articles 268 and 269. State officials are referred to in this chapter, including all political, special, administrative and technical service civil servants.

Active Bribery

Article 269 (Giving of a bribe) mandates that:

"269.1. Giving of a bribe to an official in person or through an intermediary shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 3 years.

"269.2. The same crime committed repeatedly, by a person who previously was sentenced for this crime, by an organized group, or a criminal organization shall be punishable by imprisonment for a term of more than 5 to 8 years.

Note: "a person who voluntarily confesses to a competent authority giving of the bribe shall be released from criminal liability" according to Article 269 of the Criminal Code of September 2002.

[1] It is reiterated that for the purposes of the Convention, with the exception of some measures under chapter II, "public official" is defined in Article 2, subparagraph *(a)*. An interpretative note indicates that, for the purpose of defining "public official", each State party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of Article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

[2] See Article 28, which provides that "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances".

The amendments made to the Criminal Code in February of 2008 removed this statement. This situation made it more difficult to detect bribery crime and the IAAC has developed a proposal to restore this statement in the Criminal Code.

Given this language, it does not appear that Mongolia's active bribery legislation would cover the *promise or offer of a future benefit*, as required by the UNCAC.

Passive Bribery

Article 268 (Receiving of a bribe) mandates that:

"Receiving of a bribe by an official exclusively in view of his/her official post for a support or connivance in office, a favorable solution of issues within his/her competence, or for a performance or a failure to perform in the interests of the person giving the bribe of any action which this person should have or could have performed using 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".

It is also to be noted that Article 15.1.6 of 1995 Law on Public Service states that a civil servant shall strictly be prohibited from taking any reward, gift, or loan and prohibited from receiving a free or discounted service from an organization, legal entity or individual as return for public service provided. This is one of the contributing factors for why civil servants are also not to work simultaneously in the private sector, for a political party, for another public organizations as a permanent employee or be a representative of any third person in the Governmental organization in which s/he is serving or in a sub-organization of the organization in which s/he is being employed.

In addition to the above, it is to be noted that Article 270 covers "intermediation in bribery" and Articles 30, 31, and 32 also cover incomplete crimes (including bribery), attempt of a crime (including bribery), and preparation for a crime (including bribery).

However, it does not appear that Mongolia's passive bribery legislation would cover *solicitation* of a bribe by a public official, as required by the UNCAC.

Mongolia has adopted some of the measures required in accordance with UNCAC Article 15.

3.3 Article 16

Bribery of foreign public officials and officials of public international organizations

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, 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, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

"2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, 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."

a. Summary of the main requirements

Under Article 16, paragraph 1, States must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, 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, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. Article 16 does not require that bribery of foreign public officials constitute an offence under the domestic law of the concerned foreign country.[3]

Article 16, paragraph 2, requires that States Parties consider establishing as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, 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. This is the mirror provision of Article 15, subparagraph *(b)*, which mandates the criminalization of passive bribery of national public officials.

b. Findings and observations of the review team concerning article 16

Mongolia has not adopted measures regarding either the active or passive bribery of a foreign public official or an official of a public international organization.

Mongolia has not adopted the measures required in accordance with UNCAC Article 16.

3.4 Article 17

> ***Embezzlement, misappropriation or other diversion of property by a public official***
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> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position."

a. Summary of the main requirements

States Parties must establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. The required elements of the offence are the embezzlement, misappropriation or other diversion by public officials of items of value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property,

[3] As noted in Chapter I of the Convention against Corruption, "foreign public official" is defined as "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise" (Article 2, subparagraph *(b)*). The "foreign country" can be any other country, that is, it does not have to be a State party. State parties' domestic legislation must cover the definition of "foreign public official" given in Article 2, subparagraph *(b)* of the Convention, as it would not be adequate to consider that foreign public officials are public officials as defined under the legislation of the foreign country concerned. An official of a public international organization is defined as "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization" (Article 2, subparagraph *(c)*).

public or private funds or securities or any other thing of value. This article does not "require the prosecution of de minimis offences" (A/58/422/Add.1, para. 29).

b. Findings and observations of the review team concerning Article 17

Article 150 of the Criminal Code (Misappropriation or embezzlement of property) mandates that:

"150.1. Misappropriation or embezzlement of a business entity, organization or citizen's property committed by a person to whom such property was entrusted, or by abuse or excess of one's office shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, or by incarceration for a term of 1 to 3 months.

150.2. The same crime committed repeatedly, in a group or if it has caused damage in a large amount shall be punishable by incarceration for a term of 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".

Similarly, if the same crime has caused damage regarding an extremely large amount it is punishable by imprisonment for a term of 5 to 10 years with confiscation of the property, as specified in Article 150.3 of the Criminal Code.

Article 260 (Embezzlement or concealment of the property being under custody) also has special embezzlement provisions for law enforcement authorities:

"260.1. Intentional embezzlement, concealment or transfer to others of the property being under custody of a law-enforcement authority committed by a person to whom such property has been entrusted 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."

In addition, Article 273.1 (spending of the State budget funds contrary to their designation) further provides that:
"Spending of the state budget funds by a budget governor:
273.1.1. contrary to their designation;
273.1.2. acquisition of inventory at a price higher than the market one;
273.1.3. acquisition of inventory in amounts exceeding the needs under the excuse of stocking, thereby blocking the cash flow;
273.1.4. intentional increase of inventory prices with the view of creating deficit;
273.1.5. sale of property of a state and budget organization for a price lower than the market one;
273.1.6. misappropriation of funds by way of using of under-quality goods and products in construction and building works performed by a state budget or own financing that has caused a substantial damage shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.
278.3. The same crime if it has caused damage in a large or extremely large amount shall be punishable by a fine equal to 51 to 250 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of 2 years or by imprisonment for a term of 2 to 5 years."

Finally, Article 82 of the Law on State and Local Property claims 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 rules that donating, presenting, collateralizing, lending, and 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.

However, while embezzlement of state property is covered by this Mongolian legislation, it does not appear that there is a specific reference to such embezzlement by *public officials,* as is required by the UNCAC.

Mongolia has adopted some of the measures required in accordance with UNCAC Article 17.

3.5 Article 25

Obstruction of justice

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

"(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official."

a. Summary of the main requirements

Under Article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials whose role would be to produce accurate evidence and testimony. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States Parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences established in accordance with the Convention (Article 25(a)). The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence.

b. Findings and observations of the review team concerning Article 25(a) and (b)

Use of inducement, threats or force to interfere with witnesses

Article 256 of the Criminal Code provides:

"256.1. 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 shall be punishable by 200 to 300 hours of forced labour, a fine equal to 51 to 100 amounts of minimum salary, or imprisonment for a term of up to 3 years.

256.2. The same crime committed by an organized group, or causing damage in a large or an extremely large amount shall be punishable by imprisonment for a term of more than 5 to 8 years".

Similarly, Article 245 states:

"245.1. 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.

245.2. 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 deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years".

In addition, Article 254 mandates that:

"254.1. Intentional false testimony during the inquiry, investigation or court proceedings by a witness, victim, intentional false expert opinion by an expert witness, intentional false interpretation by an interpreter shall be punishable by a fine equal to 51 to 100 amounts of minimum salary, or imprisonment for a term of up to 2 years.

"254.2. 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".

It is further to be noted that individuals who instigate Article 254 behaviour can be prosecuted on an accomplice basis under Article 35 of the Criminal Code.

Interference with actions by coercion of judicial or law enforcement officials

As noted above, Article 245 criminalizes:

"245.1. 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.

245.2. 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 deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years".

However, it does not appear that this legislation specifically covers the coercion of *judicial and law enforcement officials* in order to obstruct justice, as is required by the UNCAC.

Mongolia has adopted some of the measures required in accordance with UNCAC Article 25.

3.6 Article 46

Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

"…"

"9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

"(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not

involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

"(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

"…".

"13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central Authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible."

a. Summary of the main requirements

The Convention against Corruption requires States Parties: (a) To ensure the widest measure of mutual legal assistance for the purposes listed in Article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (Article 46, paragraph 1); (b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under Article 26 (Article 46, paragraph 2); (c) To ensure that mutual legal assistance is not refused by it on the grounds of bank secrecy (Article 46, paragraph 8); (d) To apply paragraphs 9 to 29 of Article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State party (Article 46, paragraph 7).

Article 46, paragraph 9, allows for the extension of mutual legal assistance in the absence of dual criminality, in pursuit of the goals of the Convention, including asset recovery. An important novelty is that States Parties are required to render assistance if non-coercive measures are involved, even when dual criminality is absent, where consistent with the basic concepts of their legal system (Article 46, paragraph 9 (b)). An example of such a measure even in the absence of dual criminality is the exchange of information regarding the offence of bribery of foreign officials or officials of international organizations, when such cooperation is essential to bring corrupt officials to justice (see the interpretative note contained in document A/58/422/Add.1, paragraph 26, relating to Article 16, paragraph 2, of the Convention). Further, the Convention invites States Parties to consider adopting measures as necessary to enable them to provide a wider scope of assistance pursuant to Article 46 even in the absence of dual criminality (Article 46, paragraph 9 (c)). States Parties need to review carefully existing laws, requirements and practice regarding dual criminality in mutual assistance. In some instances, new legislation may be required.

The UNCAC requires the designation of a central authority with the power to receive and execute or transmit mutual legal assistance requests to the competent authorities to handle it in each State party. The competent authorities may be different at different stages of the proceedings for which mutual

legal assistance is requested. Article 46, paragraphs 13 and 14 requires States Parties to notify the Secretary-General of the United Nations of their central authority designated for the purpose of Article 46, as well as of the language(s) acceptable to them in this regard.

b. Findings and observations of the review team concerning Article 46

UNCAC Article 46(9)

The Mongolian Criminal Procedure Code is silent as to whether or not dual criminality is required for the provision of mutual legal assistance. According to the 2007 APG-FATF Report on Mongolia, it remains unclear as to whether or not Mongolia would provide MLA in the absence of dual criminality. However, the Ministry of Justice and Home Affairs confirmed during the on-site visit that if there is a MLA request the request would still be fulfilled even in the absence of dual criminality.

Even though there is no specific provision in the Mongolian Criminal Procedure Code requiring dual criminality in order to provide MLA. Constitution of Mongolia provides that 'the international treaty to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession'. Therefore, Mongolia accepts to provide legal assistance requests based on the mutual legal assistance agreement or international treaty to which Mongolia is party.

Mongolia has adopted some of the measures required in accordance with UNCAC Article 46(9).

UNCAC Article 46(13)

On 11 September 2008, Mongolia informed the UN Secretary General that the central authority that shall have the responsibility and power to receive UNCAC-related requests for MLA and either to execute them or to transmit them to the competent authorities for execution is the Ministry of Justice and Home Affairs of Mongolia (U.N. Doc. No. C.N.641.2008.TREATIES-23).

Their address is:

Ministry of Justice and Home Affairs of Mongolia
Trade Street 6/1
Ulaanbaatar 210646, Mongolia.
Tel: 976 11 267014, Fax: 976 11 325225
E-mail: admin@mojha.gov.mn
Web page: www.mojha.gov.mn

Mongolia has adopted the measures required in accordance with UNCAC Article 46(13).

3.7 Article 52

Prevention and detection of transfers of proceeds of crime

"1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

"2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

"(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

"(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

"3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

"4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

"5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

"6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance."

a. Summary of the main requirements

Without prejudice to Article 14, States Parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction: (a) To verify the identity of customers; (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and (c) To conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. These provisions must be seen in the context of the more general regulatory and supervisory regime they must establish against money-laundering, in which customer identification, record-keeping and reporting requirements feature prominently.

In order to facilitate the implementation of these measures, States Parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required: (a) To issue advisories regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; (b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify; *(c)* Ensure that financial institutions maintain adequate records of accounts and transactions involving the persons mentioned in paragraph 1 of Article 52, including information on the identity of the customer and the beneficial owner; and *(d)* Prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

States Parties are also required to consider: *(a)* Establishing financial disclosure systems for appropriate public officials and appropriate sanctions for non-compliance; *(b)* Permitting their competent authorities to share that information with authorities in other States parties when necessary to investigate, claim and recover proceeds of corruption offences; *(c)* Requiring appropriate public officials with an interest in or control over a financial account in a foreign country: (i) To report that relationship to appropriate authorities; (ii) To maintain appropriate records related to such accounts; (iii) To provide for sanctions for non-compliance.

States Parties may also wish to consider requiring financial institutions to: *(a)* To refuse to enter into or continue a correspondent banking relationship with banks that have no physical presence and that are not affiliated with a regulated financial group; and *(b)* To guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

b. Findings and observations of the review team concerning Article 52

Paragraph 1: Customer Verification

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

"5.1. Reporting entities shall obtain customer information in the following cases:
- 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".

The following information should be collected from customers:

"5.2.1. [I]f 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 [*sic*]".

According to Article 2.1 of the 'Regulation on Know Your Customer for Banks to Prevent Money Laundering and Fighting against Financing of Terrorism' "Banks have a right to collect and verify necessary information of the customers in accordance with the know your customers requirements". It is to be noted that pursuant to Article 2.4, "[i]f a customer refuses to provide information stipulated in Article 2.2. [i.e. as provided for in Article 5.2 of the Law on Combating Money Laundering and Financing Terrorism] of this regulation, the bank is obliged not to open an account, conduct transactions and provide other financial services". "The term "examination of customer information" means to identify the customer and verify that customers identity by using official documents, state database or other information and obtaining, collecting the customer's information that not prohibited by the laws of Mongolia in order to know the customer" (Article 1.3.1). In order to achieve this, "Banks shall develop complex internal policies and procedures" (Article 1.4), as well as "create [a] general risk profile of the customers and to monitor high risk customers and transactions that do not conform to normal or expected transactions" (Article 1.5). Furthermore, Article 2.6.1 provides that banks are prohibited: "to open…an anonymous, numbered account, and conduct transaction under false name, to use closed accounts" (*sic*, Article 2.6.1). There are further requirements of due diligence (Article 2.7), obligation to conduct special review (Article 3.1), and banks developing and approving internal policies and procedures, and appointing a compliance officer (Article 4.1).

Paragraph 2: Enhanced Scrutiny and Advisories

Enhanced customer scrutiny is also required for all transactions, in the Law on Combating Money Laundering and Terrorism Financing, which include:

"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."

According to Article 1.1 of the Regulation on Reporting Suspicious and Cash Transactions, "[t]he purpose of this regulation is to detect suspicious transactions for combating money laundering and financing of terrorism, to ensure safety and security of the information on suspicious transactions, and to regulate transmission mechanism of suspicious and cash transaction reports from management and officers of banks to the Financial Information Unit at the Bank of Mongolia…and other related organizations." The Mongolian FIU also confirmed during the on-site visit that if there are reasonable grounds to view that the account is used for money laundering and terrorism financing, they will apply enhanced scrutiny to the transaction and conduct further administrative inquiries.

Article 1.3.1 of this Regulation states that a suspicious transaction report (STR) "means a report transmitted, in approved format by the Bank of Mongolia, by banks to the FIU [Financial Information Unit] and it shall include information on suspicious transactions that have [an] unclear name and address of a recipient or transactions suspected of being related to money laundering and financing of terrorism, and information on persons who conducted transactions". Of interest is the inclusion of cash transaction reports (CTR) to this Regulation, which "means a report transmitted, in approved format approved by the Bank of Mongolia, by banks to the FIU and shall include information on transactions that involve local and foreign currency, checks, bills, and securities widely used in international settlement". Assuming that the requirements are fulfilled, 24 hours is the limit provided to banks to

transmit STRs (Article 2.1) and within 7 working days for CTRs (Article 3.1). Specifically, in regards to CTRs and STRs, the FIU stated that they have a Memorandum of Understanding (MOU) with the General Intelligence Agency, and a similar MOU is to be established between the FIU and the IAAC, regarding the modalities of sharing information that the FIU has received.[4]

Cooperation between the different financial institutions is regulated by instruments such as the 'Regulation on Cooperation between Bank of Mongolia and Mongolian Customs General Administration on Combating Money Laundering and Fighting against Financing of Terrorism.' In regards to the FIU, the 'Chapter of Financial Information Unit,' it operates within the Bank of Mongolia and has the function of implementing the Law of Mongolia in Combating Money Laundering and Financing of Terrorism (Article 1.1).

The FIU stated that 16 banks are in compliance with FIU standards, and that there are 8 types of organisations that must report to the FIU: banks; insurance companies; security brokers; savings and credit cooperatives; pawn shops; currency exchanges; gambling centres; and non-bank financial institutions. To date, the FIU has focused on receiving information, but this information is yet to be analysed and then reported to relevant agencies (i.e. IAAC, General Prosecutor's Office, Policy Authority and Intelligence). The FIU also has a 'cooperation council' within the Bank of Mongolia that comprises of all law enforcement agencies, including the IAAC, which meets quarterly.

Chapter 6 of the 'Regulation on Know Your Customer for Banks to Prevent Money Laundering and Fighting against Financing of Terrorism' includes a section on the use of this information, entitled 'Cooperation with State Authorities'. Pursuant to Article 6.1, "Banks shall collaborate with the Bank of Mongolia and other State Authorities in line with laws and regulations" in order to implement internal polices and procedures against money laundering and financing of terrorism.

However, it does not appear that the relevant Mongolian provisions requiring supervision over the account of all required "individuals who are, or have been, entrusted with prominent public functions and their family members and close associates," i.e. politically exposed persons (PEPs), within the meaning of UNCAC Article 52. During the on-site visit, the Mongolian FIU confirmed that there is only enhanced scrutiny for international PEPs and not for domestic Mongolian PEPs.

Paragraph 3: Customer Records

In additional to the information provided for above in Article 5(1) of the Law on Combating Money Laundering and Terrorism Financing, Article 8.1 of this Law requires that the file of materials and documents, related to transactions and closed accounts of the customer, are kept for at least 5 years.

Chapter 5 of the 'Regulation on Know Your Customer for Banks to Prevent Money Laundering and Fighting against Financing of Terrorism' is titled 'Record Keeping'. Bank are required to keep the relevant records of transactions for no less than 5 years (Article 5.1), keep documents with the customer's name and address for no less than 5 years (Article. 5.2), and maintain availability of customer's details, if required in court (Article 5.3).

Paragraph 4: Shell Banks

Article 4 of the Mongolian Banking Law defines the types of banks that may operate in Mongolia and prohibits the licensing of shell banks. In addition, Article 2.6 of the 2007 Bank of Mongolia

[4] In regards to international cooperation between the FIU and international organisations and other States, the FIU has worked closely together with the World Bank, UNODC and on 20 May 2009 attended a plenary session of the Egmont Group. It also has established links with China, Russia and the Republic of Turkey. However, the FIU stated that they had not yet officially sought information from abroad.

'Regulation on Know Your Customer for Banks to Prevent Money Laundering and Fighting against Financing of Terrorism' precludes Mongolian banks from having financial membership with shell banks and their related legal entities.

Paragraph 5 and 6: Financial Disclosure

In accordance with Chapter III of the Anti-Corruption Law, public servants are obliged to submit his/her asset and income declarations (see above, under UNCAC Article 5, the information provided for by the IAAC on asset and income declarations). Under Article 10.1, viewed in conjunction with Article 4.1, the following individuals are required to file asset disclosure:

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

4.1.2 Managers and administrative officials of state or locally-owned legal persons, or legal persons with state or local equity;

4.1.3 The National Council Chairperson and the General Director of public radio and television;

4.1.4 Managers and executive officers of non-governmental organizations, temporarily or permanently performing particular state functions in compliance with legislation;

4.1.5. Electoral candidates, stipulated in Article 3.1.9 of this Law".

Under Article 10.3 of the Anti-Corruption Law, all of the assets and incomes of the above listed officials to be disclosed, including whether or not they include foreign and domestic accounts, as determined by the Regulations on the Assets and Income Disclosure forms, and registration and filing of the submitted forms approved by the State Great Hural. The failure to timely submit and to register their Assets and income disclosure forms or the falsification of their assets and income data can subject any of these officials to dismissal, resignation, release or suspension from his/her office (13.5).

The asset and income declarations of high level public officials are publicized in the "Turiin Medeelel" magazine. Pursuant to Article 14.1 of the Anti-Corruption Law, these officials include:

"14.1.1 The President of Mongolia;
14.1.2. The State Great Khural Speaker, Deputy Speaker and members;
14.1.3. The Prime Minister, Cabinet members, ministers and deputy ministers;
14.1.4. The Chairperson, Deputy Chairperson and members of the Constitutional Court;
14.1.5. The Chief Justice of the Supreme Court, judges of the State Supreme Court, the Executive Secretary of the Court General Court Council;
14.1.6. The Prosecutor General and the Deputy Prosecutor General;
14.1.7. The President, 1st Vice President and Vice President of Mongol Bank;
14.1.8. The Secretary of the National Security Council;
14.1.9. The Head of the Prime Minister's Cabinet Secretariat;
14.1.10. The Head of the President's Chancellery;
14.1.11. The General Secretary of the State Great Khural Secretariat;
14.1.12. The Chairperson and the Deputy Chairperson of the Independent authority against corruption;
14.1.13. The Chairperson and members of the Financial Coordination Committee, and the Chairperson and members of the Control Council;
14.1.14. The Chairperson and Deputy Chairperson of the National Statistical Bureau;
14.1.15. The Chairperson and members of the National Human Rights Commission;
14.1.16. The Chairperson and Secretary of the General Election Committee;
14.1.17 The Chairperson and members of the Government Service Council;
14.1.18. The Auditor General and Deputy Auditor General;
14.1.19. The Directors of Government agencies;
14.1.20. The Chairperson of aimag and the capital city Citizens' Representatives' Khurals;

14.1.21. The Aimag Governors and the capital city Mayor."

However, it does not appear that these provisions authorize Mongolian officials to share information collected from such sources with other States parties requiring the information for their corruption investigations, as recommended for optional consideration by Article 52(5).

Mongolia has adopted most of the measures required in accordance with UNCAC Article 52, but has not yet put all of them into practice.

3.8 Article 53

Measures for direct recovery of property

"Each State Party shall, in accordance with its domestic law:

"(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

"(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

"(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention."

a. Summary of the main requirements

Article 53 requires States Parties: *(a)* To permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through corruption offences (subparagraph *(a)*); *(b)* To permit their courts to order corruption offenders to pay compensation or damages to another State party that has been harmed by such offences (subparagraph *(b)*); *(c)* To permit their courts or competent authorities, when having to decide on confiscation, to recognize another State party's claim as a legitimate owner of property acquired through the commission of a corruption offence (subparagraph *(c)*). The implementation of these provisions may require legislation or amendments to civil procedures, or jurisdictional and administrative rules to ensure that there are no obstacles to these measures. Article 53 focuses on States Parties having a legal regime allowing another State party to initiate civil litigation for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

b. Findings and observations of the review team concerning Article 53

The legislation of Mongolia currently does not allow for the initiation of civil actions in Mongolia's courts by other UNCAC States Parties for the purpose of establishing title to or ownership of property acquired through the commission of an offence. However, if during the course of investigation, it can be established that the property in question is of foreign origin and that it was acquired through the commission of an offence as under UNCAC, according to Articles 42 and 43 of the Criminal Procedure Code of Mongolia, victims shall be identified as civil plaintiffs. Article 401 of this Code can then be used for initiating a procedural action for identifying the victim, civil plaintiff and requesting an investigation on behalf of a foreign States party/ victim. In carrying out such an action, not only the provisions provided for in the Criminal Procedure Code are to be complied with, but also international agreements, including UNCAC provisions. Overall, however, it does not appear possible for a foreign State Party to initiate a civil action in Mongolia's courts, in accordance with the principles of UNCAC Article 53(a).

Thus, it was held that a representative of a relevant organization from the foreign country may participate in implementing an instruction. If this is not possible and if international agreements do not provide otherwise, the received documents shall be returned to the foreign organization who gave the instruction stating the reasons for the non-implementation. Moreover, Article 49 of the Criminal Code authorizes the confiscation of property obtained through criminal acts, including corruption. This can then be used as a basis for confiscation, on behalf of a foreign State, when used in combination with the MLA provisions of Articles 401.1 and 401.2 of the Criminal Procedure Code, and the UNCAC. However, it remains unclear whether, as a practical matter, Mongolian courts could recognize a claim issued by a foreign States Party.

Mongolia has adopted some the measures required in accordance with UNCAC Article 53.

4. Overall findings of the review team concerning the implementation of the relevant Convention articles by Mongolia

1. How have the selected articles mentioned above been implemented in the legislation?

Mongolia has fully adopted the measures required in accordance with the provisions of UNCAC Article 46 (mutual legal assistance), particularly paragraph 13. Mongolia has adopted measures with the view to attaining continued compliance with UNCAC Article 5 (preventive anti-corruption policies and practices).

Mongolia has also adopted most of the measures required in accordance with UNCAC Article 17 (embezzlement, misappropriation or other diversion of property by a public official). However, it does not appear that there is a specific reference to such embezzlement by *public officials,* as is required by the UNCAC, though embezzlement by all individuals, implicitly including public officials, is included in the law. Mongolia has adopted most of the measures required in accordance with UNCAC Article 46, paragraph 9. In particular, Mongolia has expressed its willingness to provide MLA upon request, but there is no legislative requirement to this effect. Furthermore, Mongolia has adopted most of the measures required by UNCAC Article 52 (prevention and detection of transfers of proceeds of crime). However, it does not appear that Mongolia applies enhanced scrutiny to the accounts of domestic PEPs within the meaning of the UNCAC. Nor does it appear that Mongolia's financial disclosure provisions authorize Mongolian officials to share information collected from such sources with other States parties, as recommended for consideration by the UNCAC.

Mongolia has adopted some of the measures required in accordance with UNCAC Articles 15 (bribery of national public officials). However, it does not appear that Mongolia's active bribery legislation would cover the *promise or offer of a future benefit*, as required by the UNCAC. Nor does not appear that Mongolia's passive bribery legislation would cover *solicitation* of a bribe by a public official, as required by the UNCAC. Mongolia has similarly adopted only some of the measures required in accordance with UNCAC 25 (obstruction of justice), in that their legislation does not appear to specifically cover the coercion of *judicial and law enforcement officials* in order to obstruct justice, as is required by the UNCAC. Mongolia has also adopted some of the measures required in accordance with UNCAC Article 53 (measures for direct recovery of property). Overall, however, it does not appear possible for a foreign State Party to initiate civil action in Mongolia's courts, as required by the UNCAC. It is also unclear whether, as a practical matter, Mongolian courts could recognize a claim issued by a foreign States Party.

Mongolia has not adopted the measures required in accordance with UNCAC Article 16 (bribery of foreign public officials and officials of public international organizations).

2. How have the articles mentioned above been implemented in practice?

Though great dedication was shown by Mongolian stakeholders in the fight against corruption, much of the legislative and institutional anti-corruption framework for Mongolia is relatively new and, accordingly, not yet fully implemented. It could therefore be said that Mongolia is still in the process of implementing most of the UNCAC Articles under review in this report, though it should also be said that concrete steps forward in implementation were plainly visible and demonstrated to the expert reviewers during their on-site visit to Mongolia. Several recommendations on steps that Mongolia might consider to enhance such implementation are included in this report below.

5. Possible recommendations on the basis of the findings of the review process in Mongolia

During the country visit, Mongolia made plain that it would welcome, and was requesting, that the expert reviewers develop recommendations for enhancing their anti-corruption laws, institutions and systems. Mongolia also indicated that they were seeking recommendations on both enhancing their adoption of measures related to mandatory UNCAC provisions, as well as generally enhancing Mongolia's anti-corruption efforts.

With this in mind, the following recommendations are made:

a. *Recommendations Related to Enhanced Implementation of UNCAC Provisions under Review during UNCAC Pilot Review Programme Country Visit*

Legislative and Regulatory Enhancements

1. Consistent with UNCAC Article 15, Mongolia might consider amending its active bribery of national public officials legislation to include the promising and offering of a bribe;
2. Consistent with UNCAC Article 15, Mongolia might consider amending its passive bribery of national public officials legislation to include the soliciting of a bribe by a public official;
3. Consistent with UNCAC Article 16, Mongolia might consider amending its Criminal Code to criminalize the active bribery of international and foreign public officials;
4. Consistent with UNCAC Article 16, Mongolia might also consider amending its Criminal Code to include the optional UNCAC requirement of considering the criminalization of passive bribery by international and foreign public officials;
5. Consistent with UNCAC Article 17, Mongolia might consider expressly covering public officials in their embezzlement laws, amend relevant laws to allow the IAAC proceed investigations of this type of crime;
6. Consistent with UNCAC Article 25, Mongolia might consider expressly covering threats to justice and law enforcement officials in their obstruction of justice laws;
7. Consistent with UNCAC Article 46(9), Mongolia might consider amending its mutual legal assistance laws to *expressly* authorize the provision of mutual legal assistance in the absence of dual criminality, even though as a practical matter this is not viewed as a requirement in Mongolia;
8. Consistent with UNCAC Article 52, Mongolia might consider amending its relevant money laundering legislation and regulations to provide for enhanced scrutiny for domestic public officials;
9. Consistent with UNCAC Article 52, Mongolia might consider amending its Anti-Corruption Law to allow for the sharing of financial disclosure form information with competent authorities in other UNCAC States Parties; and
10. Consistent with UNCAC Article 53, Mongolia might consider amending its Criminal Procedure Code to allow UNCAC States Parties to appear in Mongolian courts for international asset recovery purposes, and where deemed appropriate, for compensations or damages to be granted to another UNCAC State Party.

b. *Suggestions to Generally Improve Anti-Corruption Efforts in Mongolia*

Legislative and Regulatory Enhancements

1. Consistent with enhancing the preventive strategies encouraged generally by Chapter II of the UNCAC, and specifically by Article 5, Mongolia may wish to consider implementing some form of the following legislative and regulatory measures in support of their prevention strategy:
    a. Mongolia might consider passing the proposed draft Code of Ethics and the related draft conflict of interest and confidentiality rules for civil servants;
    b. Mongolia might consider amending its laws on business licences, in order to simplify the process of obtaining permission to operate, in order to reduce the risk factors for corruption present in the current complicated system;
    c. Mongolia might consider amending its law in order to harmonize the banking laws with those relating to the fight against corruption, with particular regard to the sharing of information and evidence where it may be deemed necessary;
    d. Mongolia might consider amending its media laws to allow for more transparency and openness in identifying the owners of media outlets in Mongolia; and
    e. Mongolia might consider amending its banking and audit regulations to allow the Supreme Audit Institution of Mongolia to have access to information regarding all accounts linked to government agencies or state-owned companies, as the current regulatory regime only allows them access to accounts kept by the Central Bank of Mongolia.
2. Consistent with enhancing the criminalization and law enforcement measures encouraged by Chapter III of the UNCAC, Mongolia may to consider amending its Banking Law (adopted prior to the creation of the IAAC), to allow banks to provide information directly to the IAAC, as the current version of the Banking Law requires that banks to first seek permission from Prosecutor's Office before the information can be provided.

Institutional Capacity Building and Training

3. Consistent with enhancing the preventive strategies encouraged by Chapter II of the UNCAC, Mongolia may wish to consider implementing some form of the following preventive measures:
    a. Mongolia might consider establishing a unit within the Government Service Council for the purposes of training and educating civil servants, as well as adopting integrity tests for the hiring of civil servants, as is already required under Mongolian law, though not yet implemented on practical basis;
    b. Mongolia might consider seeking technical assistance in developing an electronic means for the management and tracking of the procurement of government contracts.
    c. Mongolia might consider creating within each ministry a black-list of companies that have previously failed to comply with Mongolia's procurement and anti-corruption requirements;
    d. Mongolia might consider assisting the private sector in creating a model code of conduct; and
    e. Mongolia might consider supporting MONEF in implementing their proposed 'Anti-Corruption Management Initiative' for private sector officials.
4. Consistent with enhancing the criminalization and law enforcement provisions encouraged by Chapter III of the UNCAC, Mongolia may wish to consider implementing some form of the following investigative and prosecutorial institutional enhancements:

a. Mongolia might consider seeking additional capacity building support for the investigators within the IAAC, including training on complex financial investigations and the use of special investigative actions, Improve the coordination between the investigation, prosecutor's supervision, and adjudication of criminal cases and connect them with the registration network, Mainly, train in the methodologies of investigations and undercover operations;
b. Mongolia might consider a system to track the results of a corruption case that has been transferred by the IAAC to another agency, including a provision allowing the IAAC to regain control of the case and investigate the matter themselves where appropriate;
c. Mongolia might consider having the General Prosecutor's Office create a cadre of specialized prosecutors who focus on corruption-related cases, and receive specialized training on prosecuting such complex financial matters;
d. Mongolia might consider creating a system of increased collaboration and cooperation between the General Prosecutor's Office and the IAAC to enhance successful anti-corruption investigations and prosecutions;
e. Mongolia might consider launching an awareness campaign under the IAAC across the country to provide information to the general public about corruption and corrupt practices, and its ill-effect on society. The Mongolian country visit revealed that there is a high percentage of the population who consider bribery as the only form of corruption; and
f. Mongolia might devise a mechanism to end the trust deficit among different stakeholders in its drive against corruption, by engaging in various activities that address the corruption

5. Consistent with enhancing implementation of the mutual legal assistance provisions of UNCAC Article 46, Mongolia might consider:
    a. requesting capacity-building support in order to train relevant judges and prosecutors on international good practices in the field of international cooperation; and
    b. creating a centralized system for the use of Mongolian government agencies to track the forwarding, receipt, and accomplishment of both in-coming and out-going mutual legal assistance requests;
6. Consistent with enhancing implementation of the prevention and detection of transfers of proceeds of crime measures of UNCAC Article 52, Mongolia might consider seeking capacity-building support in order to train relevant officials, including both the FIU and the IAAC, on sharing such information generally, and – in particular – might consider seeking capacity-building support and the preparation, dissemination, and use of Suspicious Transaction Reports (STRs) as investigative tools in anti-corruption investigations;

6. Possible Action Plan formulated in cooperation with Mongolia on the basis of the recommendations

[It is recommended by the Secretariat that this section should be developed by the expert reviewers only after Mongolia approves the recommendations contained in section 5, and that it be developed in close coordination with Mongolia.]