

**BUSINESS INTEGRITY
COUNTRY AGENDA
MONGOLIA**

2018

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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PREAMBLE

Transparency International-Mongolia (TI-M), a non-governmental organization dedicated to tackling corruption in Mongolia, was established and registered in 2003 by a group of concerned citizens representing different civil society organizations. TI-M was accredited as an official chapter of the global Transparency International (TI) movement in early 2014.

Our Vision is a country free of corruption, enabling justice, equality, and integrity at all levels of Mongolian society, for both current and future generations.

Our Mission is to combat corruption for the people of Mongolia by promoting integrity, transparency and accountability without impunity through collaboration with individuals and institutions from all sectors and at all levels of society.

ACKNOWLEDGEMENTS

The Business Integrity Country Agenda (BICA) assessment has been made possible through the dedicated work of researchers and partners. Their hard work and expertise have resulted in a comprehensive, informative and invaluable report for TI-Mongolia.

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ABBREVIATIONS

| | |
|---------------|--|
| ACL | Anti-Corruption Law |
| AFCCP | Authority for Fair Competition and Consumer Protection |
| AML | Anti Money Laundering |
| AMLFTL | Anti Money Laundering and Financing of Terrorism Law |
| APG | Asia Pacific Group on Money Laundering |
| BoM | Bank of Mongolia |
| BOD | Board of Directors |
| BCM | Business Council of Mongolia |
| CSO | Civil Society Organization |
| CRC | Communications Regulatory Commission of Mongolia |
| COI | Conflict of Interest Law |
| CoM | Constitution of Mongolia |
| CGC | Corporate Governance Code |
| CPA | Certified Public Accountant |
| CC | Criminal Code |
| EITI | Extractive Industries Transparency Initiative |
| FATF | Financial Action Task Force |
| FIU | Financial Information Unit (Bank of Mongolia) |
| FRC | Financial Regulation Commission |
| GIA | General Intelligence Agency |
| GPD | General Police Department |
| GPA | General Procurement Agency |
| ICTPA | Information, Communication Technology and Post Authority |
| IAAC | Independent Authority against Corruption of Mongolia |
| IFRS | International Financial Reporting Standards |
| IPSA | International Public Sector Accounting Standards |
| ISA | International Standard on Auditing |
| ISAE | International Standards on Assurance Engagement |
| ISRE | International Standards on Review Engagement |
| JICA | Japan International Cooperation Agency |
| LoA | Law on Accounting |
| LoAO | Law on Administrative Offences |

| | |
|----------------|--|
| LoCA | Law on Court Administration |
| LoC | Law on Competition |
| LoE | Law on Election |
| LoJ | Law on Judiciary |
| LoPP | Law on Political Parties |
| LSM | Law on Securities Market |
| LoT | Law on Tax |
| LITRI | Law on Media Freedom, the Law on Information Transparency and the Right to Information |
| MOM | Media Ownership Monitor – Mongolia |
| MOU | Memorandum of Understanding |
| MoF | Ministry of Finance |
| MP | Member of Parliament |
| ML | Money Laundering |
| MONEF | Mongolian Employers' Federation |
| MonICPA | Mongolian Institute of Certified Public Accountants |
| MNAO | Mongolian National Audit Office |
| MNCCI | Mongolian National Chamber of Commerce and Industry |
| NPCC | National Program on Combating Corruption |
| NCC | National Cooperation Council |
| NGO | Non-governmental organization |
| OSF | Open Society Forum |
| OECD | Organisation for Economic Co-operation and Development |
| PM | Prime Minister |
| PPLM | Law on Procurement of Goods, Works and Services with State and Local Funds |
| PWYP | Publish What You Pay |
| SME | Small and Medium Enterprise |
| SIA | State Inspection Agency |
| STOPP | Study of Private Sector Perceptions of Corruption |
| TI-M | Transparency International Mongolia |
| UN | United Nations |
| UNDP | United Nations Development Programme |

FOREWORD

Mongolia's economy continues to experience both growth and decline. In 2012, there was a high growth rate (12.3%) but this was lower than anticipated as the nation saw its coal exports drop significantly due to China's economic slowdown. After a sharp slowdown from 2014-16 driven by a fall in commodity prices, corruption and declining FDI, the Mongolian economy became more robust in 2017: real GDP grew by 5.1%, buoyed by strong coal exports; a recovery of FDI; and improved business sentiments. The Executive Board of the International Monetary Fund (IMF) completed its first and second reviews of Mongolia's performance under the programme supported by the Extended Fund Facility's (EFF) three-year extended arrangement. The growth outlook remains positive for 2018 and beyond. However, despite the improving outlook, structural challenges and limited export diversification remain: these could amplify the economy's vulnerability to commodity price or other shocks given its reliance on the extractive industries sector (20% of GDP).

In the boom years following 2010, poverty decreased as the economy grew. Between 2014 and 2016, however, when the non-mining economy was particularly hit by falling investment and declining private consumption, Mongolia's poverty rate rose again to the 2012 level, a worrying development. Early signs of improvement in household incomes in 2017 and fiscally sustainable labour and social protection policies are the keys to reducing poverty in the coming years. To ensure sustainable and inclusive growth and poverty reduction, Mongolia needs to strengthen governance; build institutional capacity for the efficient management of public revenues; allocate its resources effectively among spending, investment, and saving; and ensure equal opportunities for all its citizens in both urban and rural areas, all in the context of environmental protection and intergenerational equity.

Recently, populist politicians have started to have a negative impact on business, including such practices as cronyism. As political parties become increasingly corrupt and have a damaging influence on business integrity, there is a strong need for a whistleblower protection law and the amendment of the political party financing law.

The lack of independence of Mongolia's judicial system is a major concern, with many grand corruption cases risibly being dropped by prosecutors. According to the World Economic Forum's 2017 Judicial Independence report, Mongolia ranks 110 out of 137 countries, compared to its ranking last year at 101. TI-Mongolia calls for greater transparency on enforcement measures, in the belief that awareness of law enforcement acts as a strong deterrent and sets a good example.

TI-Mongolia has been working with both the public sector and civil society organizations for the past decade. Despite these efforts, many challenges still remain and TI-Mongolia recognizes the necessity of also engaging the business community in the fight against corruption. Through direct cooperation with the private sector, TI-Mongolia aims to improve corporate integrity and coalition-building to promote an open, competitive and transparent business environment.

The objective of the Business Integrity Country Agenda (BICA) is to assess the legal framework related to business integrity and associated corporate practices. After the realities of doing business in Mongolia are understood, a reform plan can be formulated, and appropriate tools and mechanisms developed in order to support companies in their efforts to operate with integrity.

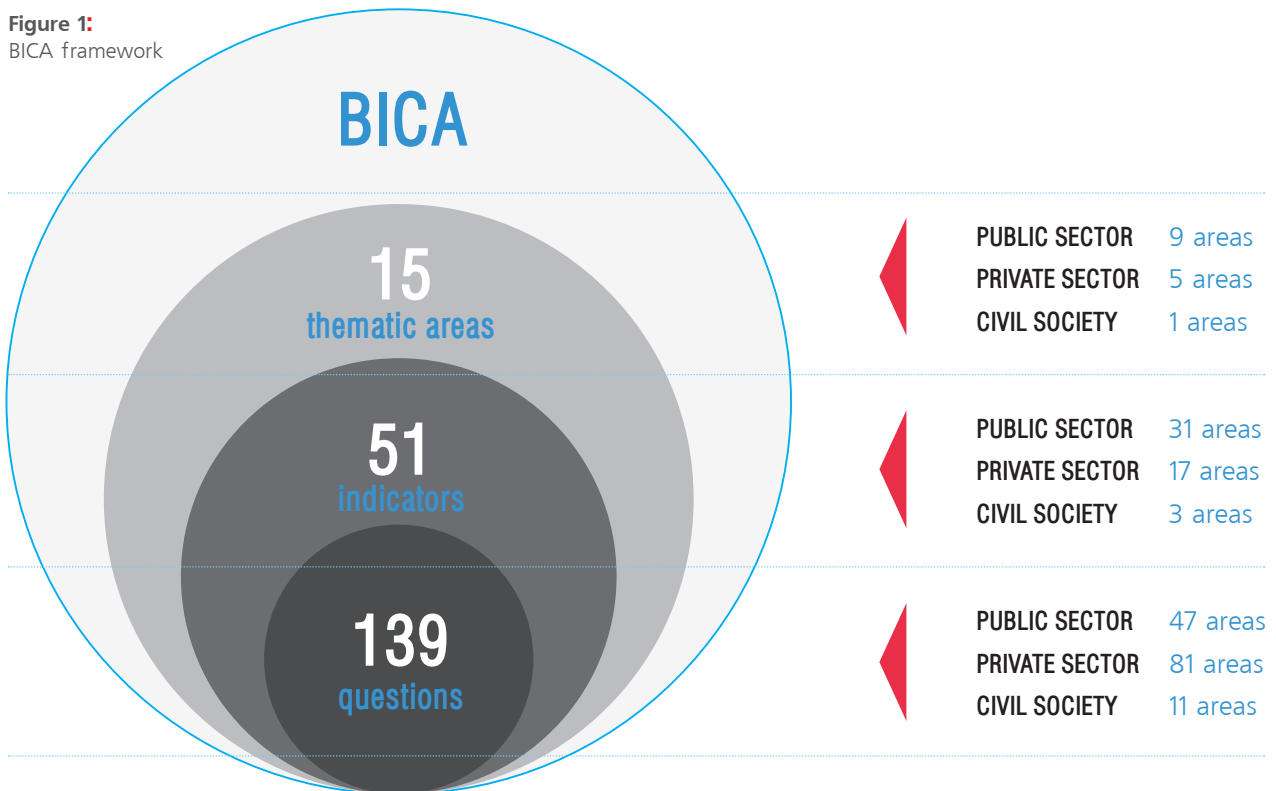
It is our hope that BICA will be used to trigger real change and grassroots improvement. The diagnosis and recommendations resulting from the BICA assessment will serve as the basis for developing a reform agenda which, we hope, will be then implemented collectively by relevant stakeholders over the coming years until real change is achieved. Therefore, we encourage the private and public sectors along with civil society to work together towards the transformation of the overall business environment in Mongolia.

BATBAYAR Ochirbat

Executive Director
Transparency International Mongolia

BICA METHODOLOGY

Figure 1:
BICA framework



The National Advisory Group (NAG) for the Mongolian BICA consisted of 10 members drawn from the major stakeholder groups, complemented by other national and international experts.

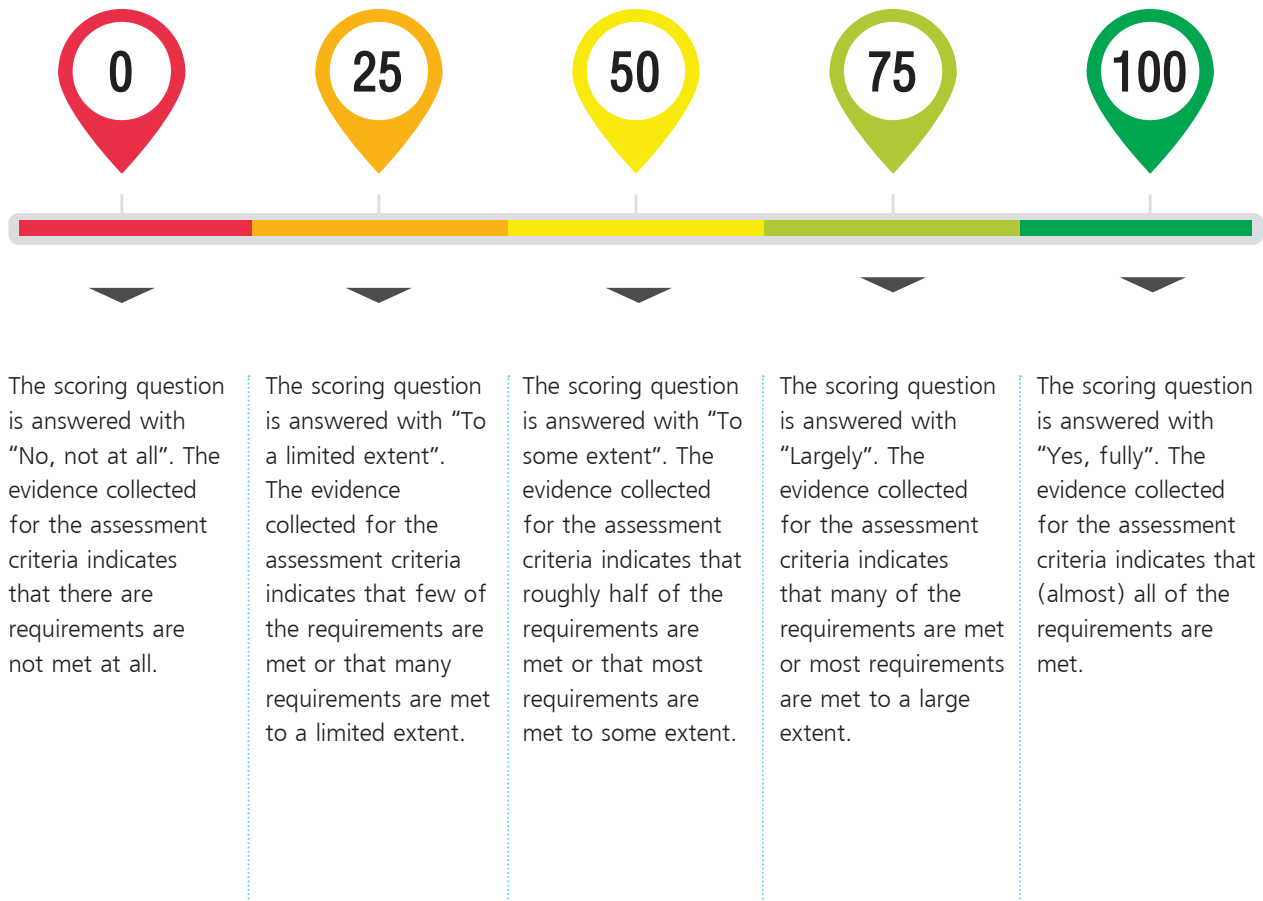
The main areas of responsibility of the NAG during the BICA assessment were:

- ◆ to review the assessment framework and propose adaptations to reflect the national context;
- ◆ to assist the external researchers in data collection and verification;
- ◆ to review and validate the scoring of indicators;
- ◆ to propose recommendations for relevant stakeholder groups; and
- ◆ to support the dissemination of assessment results after publication.

The BICA assessment process in Mongolia began in October 2017 with the establishment of the NAG. The research was conducted between October 15, 2017 and May 31, 2018. During this period, the NAG convened three times with the research team and the national chapter to outline the assessment methodology; present the preliminary results; and validate the findings/make recommendations for future collective action respectively.

Data for this research was primarily obtained through desk research, supplemented by interviews with experts from all three sectors.

Scores of BICA indicators



Qualitative judgement

COUNTRY PROFILE

Mongolia is a large landlocked country bordered by China and Russia. The country has a population of just over 3 million, making it one of the least densely populated countries in the world. A third of the population lives in the capital, Ulaanbaatar, while a significant proportion of the populace still remains in rural areas, herding livestock in the extensive pasture lands. Mongolian youth less than 30-years of age represent 55% of the population.

Mongolia is a parliamentary republic with a system of checks and balances, while separation of powers is guaranteed by the Mongolian Constitution. The highest political body of the Mongolian State is the State Great Khural, a unicameral parliament directly elected for four-year terms. The government of the State is composed of the prime minister and the cabinet. The head of state is the president elected through universal suffrage who has limited powers.

Mongolia is administratively divided into the capital city and 21 provinces. Mongolia guarantees judicial autonomy through its system of independent courts: the state Supreme Court delivers the final judgments for criminal, civil and administrative matters while the Constitutional Court oversees constitutional affairs.

Mongolia has been a member of the United Nations since 1961 and has ratified major UN conventions and treaties. In 1990, Mongolia peacefully transitioned to being a democracy, abandoning its 70-year-old Soviet-style one-party system in favour of political and economic reforms and multiparty elections. The country undertook market reforms and extensively privatized its formerly state-run economy.

Over the past 25 years, Mongolia has transformed into a vibrant democracy, tripling the level of its GDP per capita and increasing school enrolment. Simultaneously, there have been dramatic declines in

maternal and child mortality. With vast agricultural and mineral resources and an increasingly educated population, Mongolia's long-term development prospects are bright.

More than 6,000 deposits of approximately 80 minerals have been mapped in Mongolia: among these are gold, copper, coal, uranium, rare earth oxides, iron ore, oil, tungsten, molybdenum and fluorspar. Much of Mongolia's land mass has yet to be surveyed for deposits. Vast quantities of untapped mineral wealth have made it a target for foreign investors, transforming the country's tiny but fast-growing economy. Other sectors of a diversifying Mongolian economy with significant potential for growth include: renewable energy and green technologies; franchising; logistics; and internet technologies, with a focus on cyber security.

Over the last four years, Mongolia has suffered from a combination of declines in the value of its key commodity exports (coal and copper) and policy missteps. These missteps have led the Government of Mongolia (GOM) to seek financial support from an International Monetary Fund (IMF)-led group of organizations and bilateral donors to cover budget shortfalls and sovereign debts. In 2017 the GOM and the IMF reached an agreement on a comprehensive US\$5.5 billion package that will not only stave off default on Mongolia's large public debt, but also bring with it necessary disciplinary and budget reforms, as well as a detailed assessment of banking practices. Although investors recognize that the IMF programme's budget tightening will initially dampen economic growth, they praise the GOM's commitment to reforming its fiscal and borrowing practices; improving the banking sector; and completing long-delayed regulatory reforms.

Land area of about **1.6 million** sq.km.

The IMF noted that driven by strong external demand, Mongolia's economy continues to improve: key macroeconomic goals, including the reduction of the fiscal deficit and boosting of international reserves, have been achieved. The Mongolian economy strongly recovered in 2017: real GDP grew by 5.1%, buoyed by strong coal exports, a recovery of FDI and improved business sentiments. The growth outlook remains positive for 2018 and beyond. The IMF regarded Mongolia's economic outlook as "positive" in 2018 and 2019 after its working group came to evaluate the economic bail-out programme. The IMF has pitched Mongolia's GDP growth at 5.0% for 2018 and 6.3% for 2019. The current EBRD forecast for the country's Real GDP Growth in 2018 is 3.0%.

Exports rose by 38% year-on-year in the first nine months of 2017, led by coal exports to China, while imports expanded by 28%. However, Mongolia's external position remains vulnerable, with total external debt at around 229% of GDP (160%

excluding intercompany lending) as of June 2017. Mongolia is the world's 75th largest exporter, with more than 90% of Mongolian exports being shipped to or through China. Russia provides 90% of Mongolia's refined petroleum products and 20% of its electrical power.

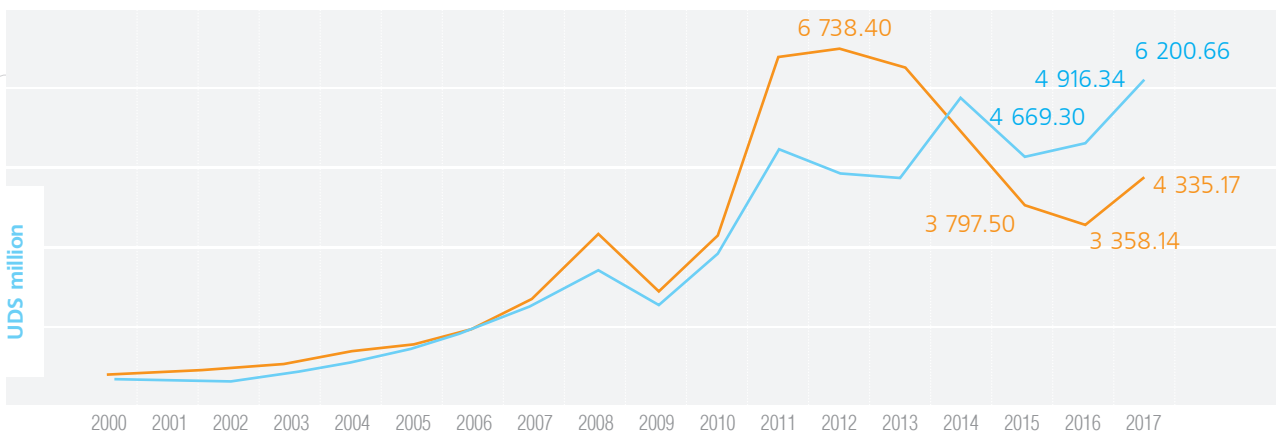
Mongolia exported US\$6.2 billion in goods and services in 2017, (compared with US\$4.91 billion in 2016 and US\$4.03 billion in 2015) and imported US\$4.335 billion (compared with US\$3.35 in 2016 and US\$3.87 billion in 2015) resulting in a positive trade balance of US\$1.781 billion.

Mongolia's top exports for 2017 were coal (US\$2.27 billion); copper ore (US\$1.61 billion); gold (US\$595 million), crude petroleum (US\$374 million); and iron ore (US\$313 million).

Its top imports are refined petroleum (US\$532 million); automobiles (US\$313 million); electricity (US\$125 million), packaged medicaments (US\$97.9 million); and telephones (US\$81.1 million). >

Figure 2: Mongolia's Exports and Imports: 2017

○ Imports ○ Exports

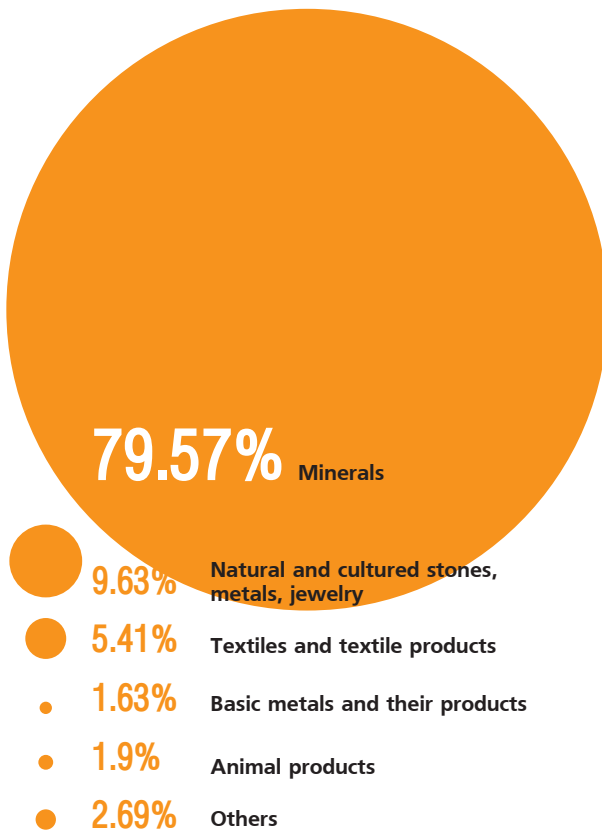


Source: National Statistics Office of Mongolia, 2017

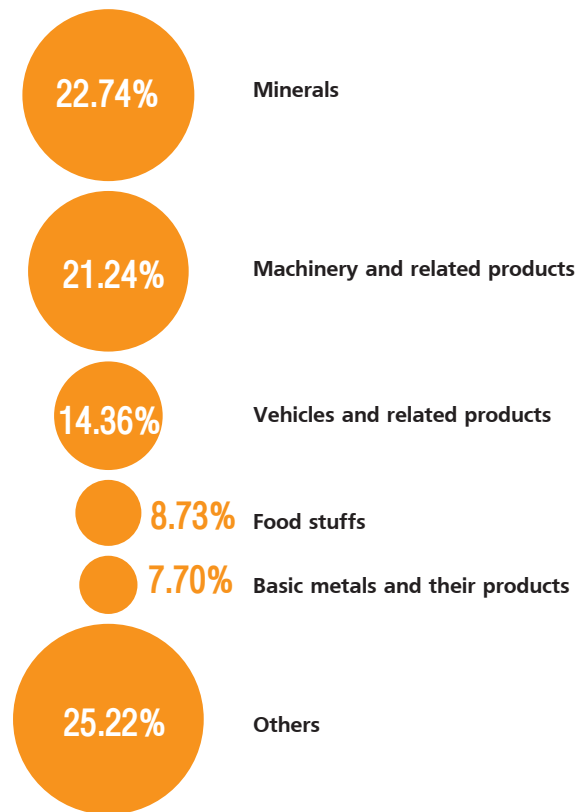
Population of just over **3.0 million**

COUNTRY PROFILE >

Top 5 EXPORT commodity groups, 2017



Top 5 IMPORT commodity groups, 2017



Source: National Statistics Office of Mongolia, 2017

As of the 4th quarter of 2016, a total of US\$447.5 million direct foreign investment had been made into the country's economy: 72.4% out of the total

investments went to the mining sector. As of the 1st quarter of 2018, a total of US\$251.4 million had entered the country, out of which 66.38% were mining investments. (\$1 ≈ MNT 2400)

Figure 3:
Foreign Direct Investment, data 2011-2016, millions of US\$

| Foreign investment by sectors | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|----------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| CONSTRUCTION | 21.2 | 32.0 | 24.6 | 26.1 | 12.7 | 14.6 |
| TRADE; MOTOR REPAIRS | 160.6 | 70.0 | 99.0 | 225.9 | 16.3 | 47.5 |
| FINANCIAL AND INSURANCE SERVICES | 39.0 | 35.2 | 46.3 | 43.5 | 23.4 | 30.8 |
| MINING, EXTRACTION | 1,409.7 | 573.4 | 486.0 | 241.5 | 185.0 | 324 |
| OTHERS | 73.7 | 111.5 | 39.6 | 54.9 | 133.3 | 30.6 |
| TOTAL | 1,704 | 821.9 | 695.5 | 591.9 | 370.7 | 447.5 |

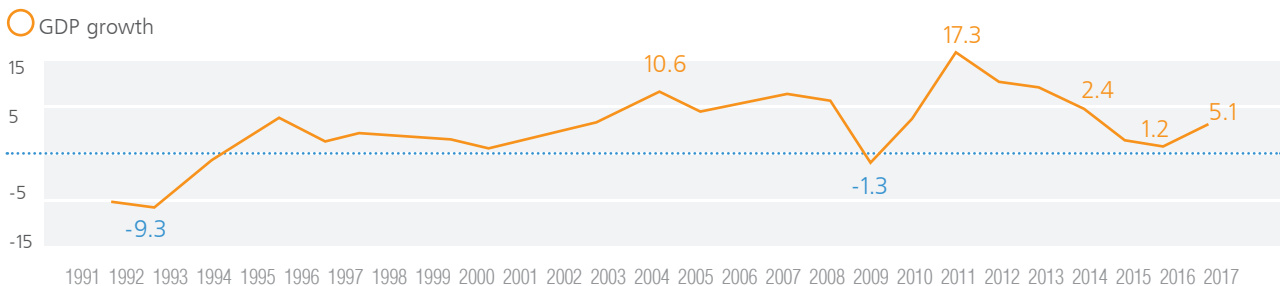
Source: National Statistics Office of Mongolia, 2017

Since 2011, however, numbers show a disconcerting trend. Foreign direct investment (FDI) into Mongolia has steadily decreased from a high of US\$4.7 billion in 2011, dropping to only US\$218 million in 2016.

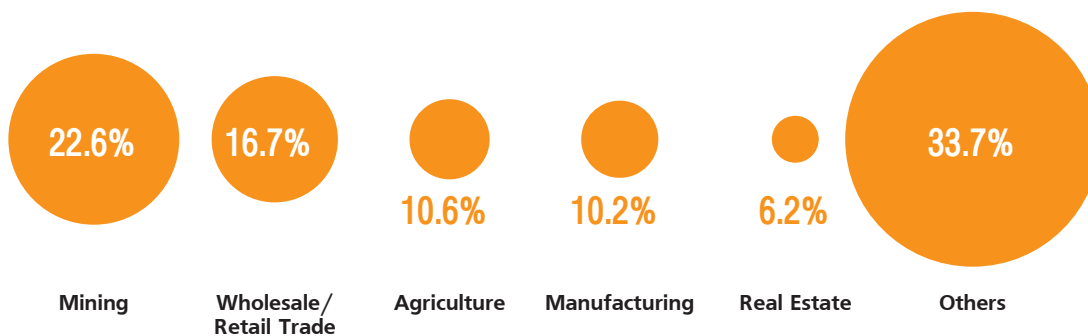
GDP growth has similarly declined since 2011 (from 17.3% to 1.0%); the official unemployment rate has increased from 4.8% to 9.1%; and public sector

debt as a percentage of GDP has ballooned from 33% to 93% over the period 2011 to 2016. Although some factors responsible for this steep downturn are beyond Mongolia’s control (for example rises in global commodity prices and China’s economic slowdown), others were self-imposed (FDI-discouraging legislation, capricious corporate tax levies and dubious prosecutions of foreign entrepreneurs).

Figure 4: Mongolian GDP growth (Annual Percent)



Top 5 Sectors in GDP (percentage): 2017



Source:
National Statistics
Office of
Mongolia, 2017 >

COUNTRY PROFILE >

Corruption outlook

Mongolia is a stable state with no serious internal threats to challenge the state's monopoly of power or existence. However, in May 2017, 61% of respondents in a survey by the International Republican Institute agreed that the country is heading in the wrong direction. The main reasons for this answer were identified as the economic instability and income inequality (36%), overall failed government policies (26%) and corruption and bureaucracy (14%), which jumped by 6 percentage points since between February and May 2017. The economic conditions in the country were evaluated as bad or very bad by 83% of the respondents.

Corruption in the country is endemic. In 2017 Mongolia ranked 103rd out of 100 with 36 points out of 100, Mongolia ranked 103 in the Corruption Perception Index by the Transparency International, which signified a 5.26% decline compared to the previous year, suggesting a worrying trend. TRACE international bribery index places Mongolia 122nd with a score of 52, further specifying 'interactions with government' and 'governmental and civil service transparency' to be the domains the major

risk factors. In 2017 9.9% of respondents considered corruption as the major problem Mongolia is facing, this is the highest since September 2010. In addition, bureaucracy also was among the top 10 major problems, which is likely also related to issues of corruption. In May 2017, 75% of respondents to a survey by the International Republican Institute (2017) answered that the government is doing a bad or very bad job at addressing corruption. Similarly, six out of 10 citizens reported that the government is doing badly in fighting corruption (61%). Citizens of Mongolia report that corruption has little effect on their personal life, to a medium extent impacts the business environment and to a high extent impacts the political life. The latter is also the area where corruption is perceived to increase since March 2014. Since 2006 roughly 90% of people agree that corruption is a common practice in the country (86.7% in 2017) but only 27.8% agree that some level of corruption is acceptable in 2017. Yet, it seems that there are also still disagreements about what constitutes a corrupt act, where donations are often declared as necessary to sustain an organization, when many of them likely have a corruption dimension to them.



Overall, while the government has developed major policies against corruption (e.g. strengthening e-procurement, improving budget expenditure reporting and creating a National Program on Anti-Corruption) there have not been significant improvements in the area of corruption.

High level corruption is pervasive in Mongolia. 46% of respondents find most or all representatives in the legislature to be corrupt and 39% report most or all government officials to be corrupt. In 2017 citizens reported that the main reason for high levels of grand corruption is the merging of political and business interests. Another fact they rated similarly high is the use of corrupt practices by large Mongolian companies and as third most important reason the lack of transparency in high levels of government.

Political parties play a major role in grand corruption. While they were ranked fifth in a ranking of most corrupt state entities in 2010, they are ranked second in 2017. Parliament is ranked fourth and the national

government fifth in 2017. People increasingly are unsatisfied with the lack of accountability within political parties. Considering the current state of democratic development, the deeply embedded corruption and cronyism in the political parties and government seriously threatens not only the rule of law but also the trust in political institutions. While some laws on political contributions are in place especially regarding elections, party financing is a very high risk for corruption as the legal system is not effective in regulating it. No sources of donations are excluded and the accounting, monitoring and auditing of party finances is only done internally. While there is an audit system in place by the state audit office, it is not leading to campaign finance transparency and therefore is a major danger for political corruption. Additionally, the close ties between business and politics are left unchecked as there is no lobbying regulation, leaving the influence non-transparent and unregulated¹.

¹ Ortrun Merkle, Transparency International, "Anti-Corruption Helpdesk" 2018, (tihelpdesk@transparency.org)



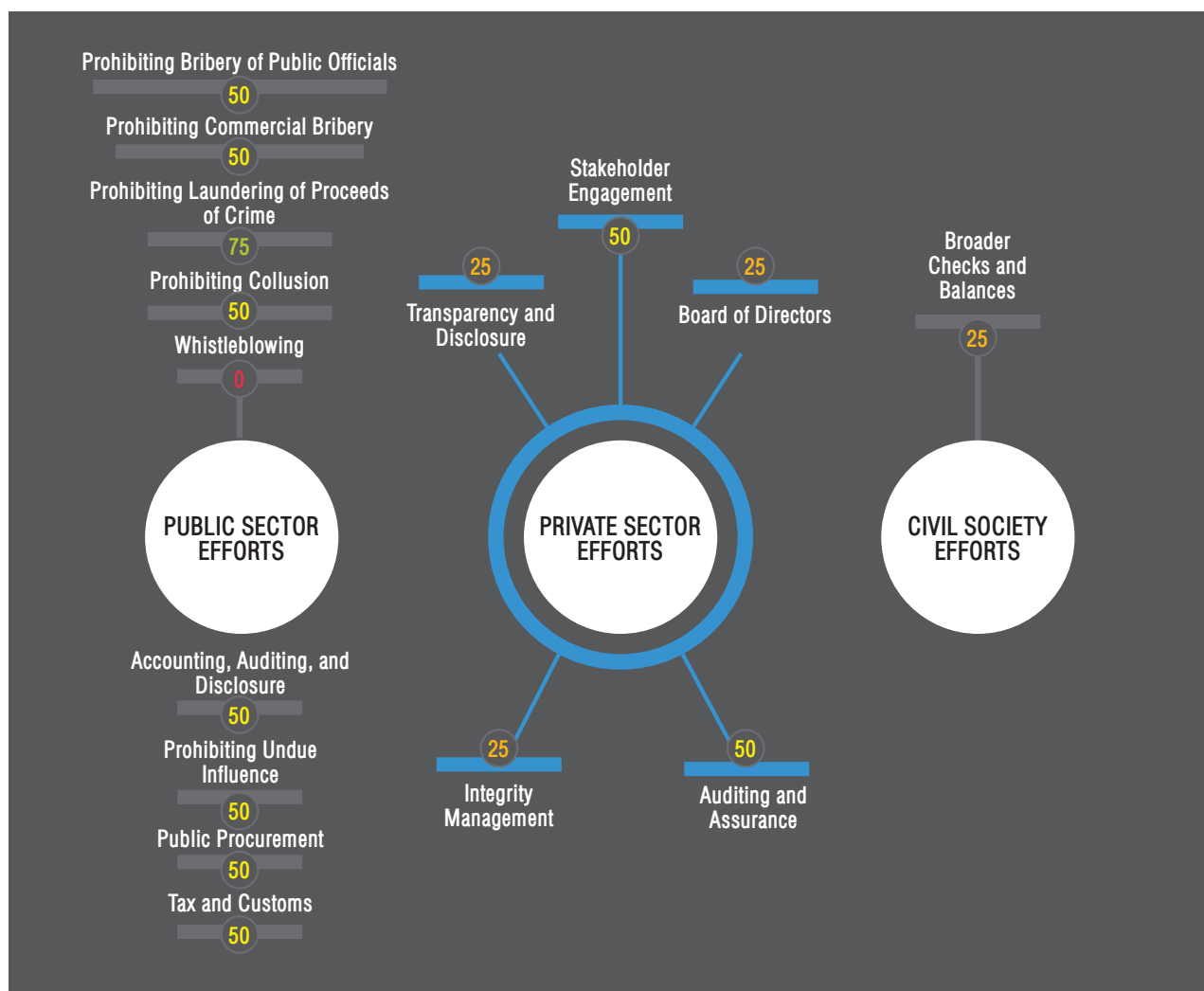
EXECUTIVE SUMMARY

The Business Integrity Country Agenda (BICA) is an initiative developed by Transparency International (TI) which seeks to reduce corruption in the business environment. BICA is based on the concept that collective action, involving government, the business sector and civil society, is more effective in promoting business integrity than stand-alone actions by individual stakeholders or groups. The initiative consists of two consecutive stages:

- 1) an assessment of a country's business integrity environment; followed by
- 2) operational reform agenda deriving from the assessment's key findings to be implemented through collective action.

BICA–Mongolia is the country's first comprehensive analysis of contributions made by all stakeholders to transparency, integrity and accountability in the corporate sector. The report identifies the contributions and shortcomings of the business sector, public institutions and civil society that play major roles in the fight against corruption. The analysis aims to strengthen all stakeholders by establishing a comprehensive reform agenda through their active engagement in advocacy activities.

THE ANALYSIS COVERS THREE MAIN SECTORS: THE PUBLIC AND PRIVATE SECTORS AND CIVIL SOCIETY.



0 – NOT AT ALL

25 – TO A LIMITED EXTENT

50 – TO SOME EXTENT

75 – LARGELY

100 – FULLY

PUBLIC SECTOR

The government of Mongolia assigns high-priority to the combat of corruption, which features in core political documents and public statements. Mongolia is a State Party to the United Nations Convention against Corruption (UNCAC) and has made considerable effort to incorporate the provisions of the instrument into its legal framework. The country has comprehensive legislation on corruption restrictions and prohibitions, conflicts of interest and asset disclosure. For most of the public sector thematic areas bribing public officials, commercial bribery, money laundering, collusion, accounting and audit, undue influence, procurement and tax administration the country has a legal framework in line with international standards.

The absence in Mongolia of legislation offering protection to whistleblowers and regulating lobbying are two of the main areas of concern, along with the issue of political party financing. The statute of limitation for offences in the Law on Anti-Corruption and Law on Competition are also insufficient. Regulations on indirect commission under the general provision of "receiving of a bribe" are also absent. There is no regulation on the so-called "cooling-off" period for corporate executives transitioning to senior public offices and posts. Information on the sanctioning of public officials regarding their post-employment period is not available.

Mongolia has a strong anti-corruption institution the Independent Agency against Corruption (IAAC) which deals with both the prevention and investigation of corruption. The independence of the institutions responsible for the prevention and investigation of corruption, collusion, undue influences in public and business sectors (namely the IAAC, Agency of Fair Competition and Consumer Protection, National Audit

Office) remains susceptible to political influence. In particular, the appointment of the heads of these institutions is heavily influenced by the ruling political party, resulting in instability in both management and human resources.

Despite the robust legal environment, enforcement is still problematic and an ongoing challenge for the country. According to the reports of organizations like the Asia Foundation (September 2015) and GCR (2015-2016) companies find existing laws ineffective for the prevention and prosecution of corruption, with the main focus of concern among businesses being identified as the Specialized Inspection Agency, local authorities and the Customs Authority. They also indicate political and family connections to be highly influential in public tender results: in other words nepotism and cronyism are rampant.

Incentives for the promotion of business integrity are very weak. The Public Procurement Law mandates all government purchases of goods and services to be conducted through tender selection, and the use of e-procurement is rapidly expanding. However, the existing legislation and standards for bidding documents do not require companies to have codes of conduct or anti-corruption policies. The debarment system and its implementation are also vague.

There are many reasons for weak implementation. National public officials continue to enjoy excessive immunities. Mechanisms for horizontal monitoring are absent. Information on the enforcement of laws for non-adherence to accounting and auditing standards is not available publicly, while data on beneficial ownership is only available to regulators. Transparency requirements for political parties pre- and post-election are not complied with at all and

EXECUTIVE SUMMARY >

the full financial reports of elections are not publicly disclosed.

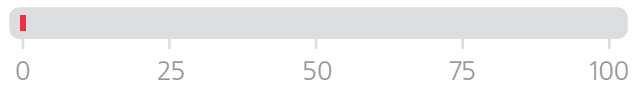
Although the internal audit control bodies of tax and customs authorities and other implementing agencies may be efficient, adequate data on outcomes and

outreach are not visible in their reports. The Judicial General Council of Mongolia, the State General Prosecutor's Office of Mongolia and other affiliated organizations fail to highlight statistics and indicators on corruption in their reports.

The lowest score

(thematic areas)

0



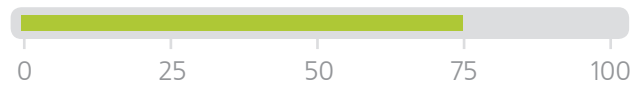
0/100 Whistleblowing



The highest score

(thematic areas)

75



75/100 Prohibiting Laundering Proceeds of Crime



PRIVATE SECTOR

Mongolia’s efforts in promoting integrity in the private sector need to be intensified. As in other developing countries, SMEs in Mongolia make up 98% of all enterprises, three-quarters of which are microenterprises. Therefore, currently the attainment of high standards for business integrity throughout the sector may be regarded as impractical. However, taking into account awareness by all stakeholders of the strong negative influence of corruption on the country’s overall economic growth, stricter integrity standards need to be set for large- and medium-sized enterprises.

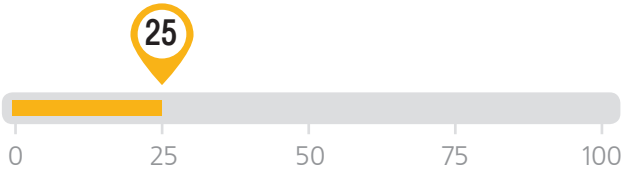
Government involvement in the private sector to assist companies and business associations in assessing integrity risks and methods of corruption prevention in business operations needs enhancement. Joint projects and initiatives to collectively fight corruption are not visible. Requirements for anti-corruption programmes, policies and procedures for members by Mongolian National Chamber of Commerce and Industry, Stock Exchange of Mongolia, Financial Regulatory Commission of Mongolia and Professional business associations remain weak.

Despite reporting low effectiveness of government anti-corruption efforts, companies are reluctant to introduce their own initiatives. The existence of corporate anti-corruption programmes and/or policies is rare and very few companies express their commitment to comply with related laws and regulations. Existing programmes lack comprehensive coverage of all aspects of potential corruption risks, with no reflection of business specifics. The number of active or influential associations in this area is insufficient.

Having an internal audit function is not a common corporate practice and there are no assurance audit reports on internal audits. Lack of knowledge on whistleblower culture results in little or no protection for informants. Companies do not disclose their political contributions; do not name their beneficial owners; and very few report information on their shareholders. Laws do not require the recording and disclosure of beneficial owners of legal entities.

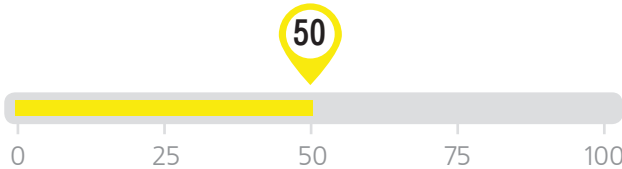
The law does not assign to Boards of Directors (BODs) their entire fundamental functions, thus BODs are not mandated to monitor their companies’ anti-corruption policies and/or programmes.

The lowest score (thematic areas)



- 25/100** Integrity Management
- 25/100** Transparency and Disclosure
- 25/100** Board of Directors

The highest score (thematic areas)



- 50/100** Auditing and Assurance
- 50/100** Stakeholder Engagement

CIVIL SOCIETY

Mongolia has a strong civil society and is praised as an “oasis of democracy” among other post-communist Central Asian countries. Civil society organizations (CSOs) have been active since the 1990s. The history of their initiatives has focused largely on the public sector and human rights. Civil society’s business integrity watchdog role is not well developed. The areas of clear improvements are public procurement and extractive industries. Monitoring of state-owned enterprises is in place.

The assessment indicates a weak history of successful monitoring and prevention of corruption in the business sector by CSOs. CSOs are part of the public procurement process and this is to be commended. However, most of the companies surveyed for the report experienced corruption in public tendering and contracting. Bribes and irregular payments are commonly exchanged in connection with the awarding of public contracts and licenses. Public perception of the high corruption risk in public procurement and the lack of visible success in corruption cases and attempts to stop corrupt tenders by CSOs lead to the

conclusion that the involvement of CSOs is inefficient. Further capacity building of CSOs’ monitoring of private sector business integrity and labour force rights is therefore essential.

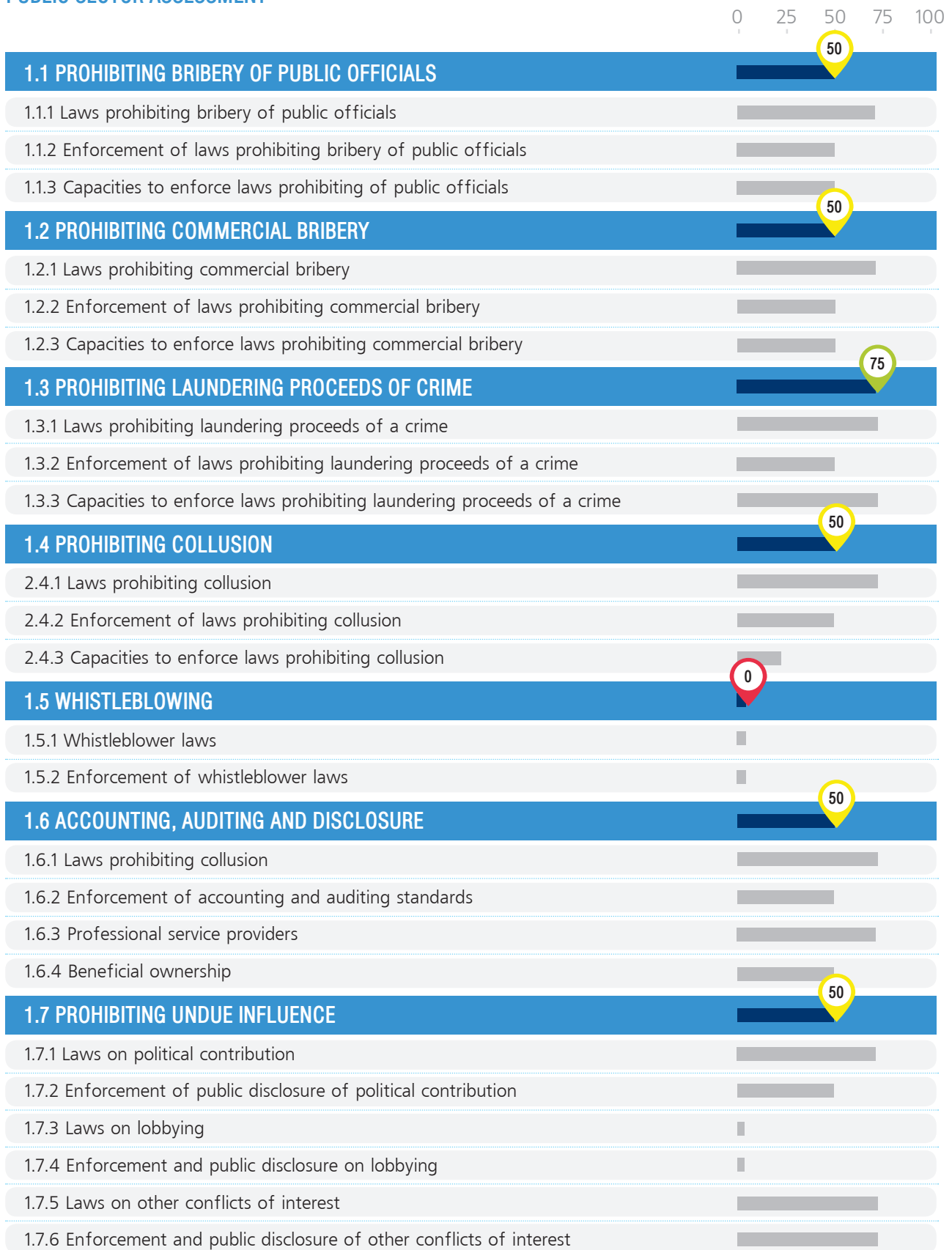
The monitoring of private sector business integrity is problematic. The majority of companies have no codes of conduct and/or policies. When they do exist, violations of such codes are not sanctioned by the law but dealt with internally.

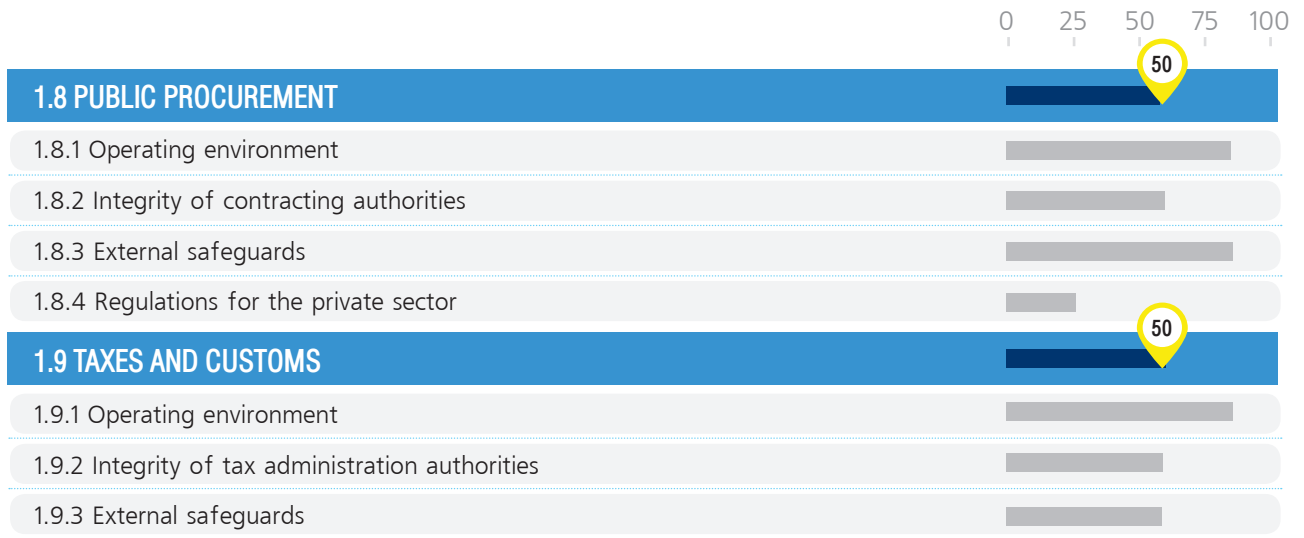
Media independence indicator findings show a troubling tendency. The poor transparency and disclosure of media financing and ownership has led to greater concentrations and monopolies in the sector. The majority of media outlets have political affiliations. In the light of this, the media is regarded by the public as an integral part of the political system rather than as a public watchdog. Existing regulations impose heavy monetary sanctions on individual journalists and media entities for slander; and freedom of information is stifled by unjustified defamation lawsuits.



PUBLIC SECTOR ASSESSMENT

PUBLIC SECTOR ASSESSMENT





0 – NOT AT ALL

25 – TO A LIMITED EXTENT

50 – TO SOME EXTENT

75 – LARGELY

100 – FULLY

1.1 PROHIBITING BRIBERY OF PUBLIC OFFICIALS

50

THE COUNTRY HAS COMPREHENSIVE LEGISLATION PREVENTING PUBLIC SECTOR CORRUPTION. HOWEVER, PUBLIC OFFICIALS ENJOY EXCESSIVE IMMUNITY; FINES ARE LOW AND NOT SUFFICIENTLY DISSUASIVE; THE STATUTE OF LIMITATION IS TOO SHORT FOR OFFENCES; NO MECHANISMS EXIST FOR HORIZONTAL MONITORING; AND INSTITUTIONS REMAIN SUSCEPTIBLE TO POLITICAL INFLUENCE.

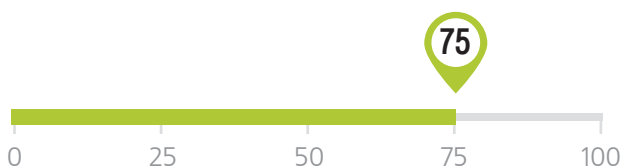
1.1.1 LAWS PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Scoring question

Do the country's laws prohibit bribery of national and foreign public officials?

Bribery of public officials in Mongolia is regulated by the Anti-Corruption Law (ACL), Conflict of Interest Law (COI), Criminal Code (CC), and the Law on Administrative Offences (LoAO). The ACL is applicable to public sector officials of all levels as well as private sector personnel.

Active bribery under the Criminal Code (CC) explicitly covers indirect commission¹; however, no such provision is made for passive bribery². The separate offence of intermediation in bribery³ was repealed in 2012. Under the new CC, the general provision of "Receiving of a bribe" does not cover indirect commission .



Passive bribery is defined in the CC as material or non-material benefits gained from abuse of official power⁴.

With regard to the liability of foreign officials, the CC makes two separate provisions: abuse of power⁵; and active and/or passive bribery by foreign officials and/or international organizations⁶.

Regardless, of this, national public officials still enjoy excessive immunities, with no proper procedures for them to be lifted in case of need. Under the Constitution of Mongolia as well as various other laws, the majority of high-level government officials are given immunity⁷.

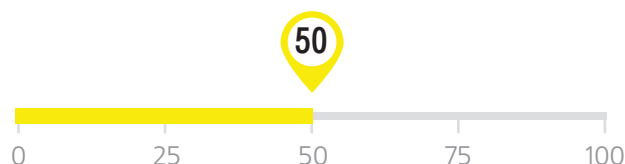
Although bribes, kickbacks and illicit payments are not listed as permissible deductions in tax laws, neither are they explicitly prohibited⁸.

Gifts are largely covered by corruption-related laws while facilitation payments remain a grey area, with no legal provision covering these.

1.1.2 ENFORCEMENT OF LAWS PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Scoring question

Are sanctions and incentives applied in practice to deter bribery of public officials?



Mongolia (IAAC) reports on its annual inspection of all ministries, agencies and a total of 99 public entities on the implementation of anti-corruption legislation. The results have given rise to concern, as corruption levels among all public sector ranks was assessed as “serious”⁹.

Under the National Anti-Corruption Programme, the Independent Authority against Corruption of

The IAAC receives around 600 general complaints per annum. Table 1 below shows the complaints on violations.

Table 1: Complaint on offences made to the IAAC, by numbers

| # | COMPLAINTS ON OFFENCES | 2017 | 2016 | 2015 |
|----|---|-------------------------------|------|------|
| 1 | NO. OF VIOLATIONS REPORTED | 658 | 998 | 440 |
| 2 | NO. OF CASES INVESTIGATED | 658 | 427 | 440 |
| 2. | NO. OF CRIMINAL CASES | 174 | 83 | 92 |
| 3 | NO. OF CASES INVOLVING PUBLIC OFFICIALS | 545 | 375 | 375 |
| 4 | NO. OF PRIVATE ENTITIES INVESTIGATED | 109 (statistics include NGOs) | 34 | 33 |

Source: IAAC’s Annual Report 2015-2017

In 2016, out of the total of 41,408 criminal cases processed by the General Prosecutors Office, 199 (0.4%) were corruption cases¹⁰.

First instance court decisions between 2013 the first half of 2017 on active, passive bribery show below results in number of people who received sentences¹¹.

Table 2: Active and passive bribery statistics, 2013-2017, by numbers

| Year | Active bribery | Passive bribery |
|--------------|----------------|-----------------|
| 2013 | 7 | 17 |
| 2014 | 60 | 13 |
| 2015 | 7 | 10 |
| 2016 | 4 | 20 |
| 2017 | 27 | 19 |
| Total | 105 | 79 |

Source: Public Council of the IAAC, 2018

1.1 PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Sanctions for corruption offences in the CC are not proportionate and fines are not sufficiently dissuasive: the maximum fine applicable for acting as an intermediary is US\$5,500 (MNT 13.2 million) or up to 3 months imprisonment¹². There is a provision for mandatory confiscation of profits in a very limited number of aggravated offences and the same sanction is provided for bribery involving large or substantially large amounts. In 2017 the Judicial General Council reported confiscation of property equal to US\$90,750 (MNT 217,8 mln) in 7 cases related to provisions 22.4 and 22.5 of the new CC¹³.

In Mongolia, the statute of limitations is linked to the specific category of crime based on its gravity. For the majority of corruption cases, the statute of limitation ranges from 1 to 5 years. For serious/grave

crimes, such as money laundering and embezzlement of property, the period applicable is increased to 20 years¹⁴. There is a need to increase the statute of limitation for corruption violations in general. Interviews conducted with the IAAC indicated various obstacles to enforcing the law in cases of conflict of interest and abuse of power: the discovery of the violation usually occurs well after it has taken place through the organization's annual audit, thus allowing cases to be dismissed due to the expiry of the statute of limitations¹⁵.

Effective mitigation incentives are included in the CC. For example, when a voluntary confession is made the briber is no longer subject to criminal sanctions. In addition, the tender contract/customs taxes or any services are left intact¹⁶.

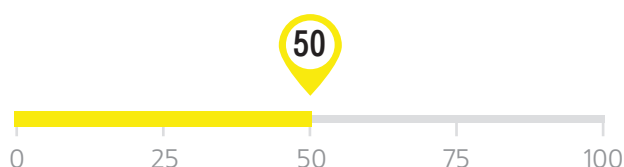
1.1.3 CAPACITIES TO ENFORCE LAWS PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Scoring question

Do relevant public authorities possess adequate capacities for enforcing laws prohibiting bribery of public officials?

As indicated in the annual reports, the scope of the IAAC's activities requires ongoing, extremely diverse efforts. However, there are no mechanisms in place for horizontal monitoring.

When the figures for 2017 are compared with those for the previous year, the number of complaints handled per inspector can be seen to have increased by an average of 68% and criminal case investigations by 6.1%¹⁷. However, there has been no corresponding



increase in the number of employees over the last 3 years, particularly in number of investigative officers¹⁸.

The 2017 Judicial General Council report gives no indication of the number of corruption cases handled by each judge¹⁹, and neither is information on the workload of prosecutors handling corruption cases available²⁰.

Legal mechanisms ensure independent and adequate funding for IAAC²¹ and the organization's budget increases annually²². However, Article 29.3 prohibiting the downsizing of the agency's budget was repealed in 2015. In the same year, Article 28.5 of the Law on Judiciary (LoJ) prohibiting the downsizing of the judiciary's budget was also repealed²³ while the Judicial General Council's operational budget proposal

was cut by 50% in 2016²⁴. This is indicative of the fact that the country's overall economic situation cannot sustain increases in operational costs.

The operational independence of the judiciary is guaranteed by the Law on the Court Administration²⁵. However, in practice the judiciary remains susceptible to political interference. The President and parliament control the IAAC's organizational structure and appoint senior staff²⁶. Parliament's power to dissolve the agency²⁷ and the dependence of the Public Council on the President's appointments make it impossible to act beyond the sphere of political influence.

The reports of the General Prosecutor's Office, IAAC, General Police Department, General Customs Authority, the Capital City Customs Office and other government bodies show collaborative investigation

on corruption cases and training on a regular basis²⁸. For example, in 2017 the General Prosecutor's Office in collaboration with the IAAC provided training for 520 prosecutors on the prevention of conflict of interest²⁹.

The IAAC has reported on its ongoing cooperation with a significant number of international and foreign authorities, primarily involving technical assistance, training and cooperation agreements. However, there is just one instance of and virtually no information available on joint investigations and/or legal assistance from foreign bodies³⁰.

The Ministry of Justice has reported on the establishment of cooperation agreements with 20 countries: for example, the latest agreement with Hong Kong sets out a framework for mutual legal assistance³¹.

¹ CC, 2015, Provision 22.5.1 (revised version)

² CC, 2015, Article 22.4 (revised version)

³ CC, 2002, Article 270 (former)

⁴ CC, 2015, Provision 22.4. (revised version)

⁵ CC, 2015, Provision 22.4 (revised version)

⁶ CC, 2015, Provision 22.3, Provision 22.6 (revised version)

⁷ CoM, 1992, Article 42

⁸ LoT, 2008, Article 3, Article 9 (revised version)

⁹ Medee news, Burmaa B, "The IAAC is in operation to secure the illegally earned assets of four prominent officials", February 27, 2018, <http://medee.mn/main.php?eid=103858#>

¹⁰ TI-M, GPO, Official letter No.2/1628 of April 25, 2018.

¹¹ Public Council of the IAAC, Active and Passive Bribery statistics, January 10, 2018

¹² OECD, Anti-Corruption Reforms in Mongolia assessment and recommendation report, 2014, <http://www.oecd.org/corruption/anti-bribery/MONGOLIA-MonitoringReport-EN.pdf>

¹³ The Judicial General Council of Mongolia, Statistics of cases of the provisions 22.4 and 22.5 of the new CC, June 12, 2018

¹⁴ CC, 2015, Article 1.10 (revised version)

¹⁵ Expert Interview 11

¹⁶ CC, 2015, Article 22 (revised version)

¹⁷ IAAC, "Annual Report-2017", February 14, 2018 <http://www.iaac.mn/news/awligatai-temtsekh-gazriin-2sh17-onii-uil-ajillagaanii-towch-tailan?menu=59>

¹⁸ TI-M, the IAAC Official letter No.03/4432 of May 24, 2018

¹⁹ The Judicial General Council of Mongolia, Court report 2017, February 07, 2018 http://www.judinstute.mn/statistic_report/225--2017-.html

²⁰ The Office of the Prosecutor General of Mongolia, Annual report 2017, March 19, 2018 <http://prokuror.mn/index.php?do=cat&category=service>

²¹ ACL, 2006, Article 29. (revised version)

²² State Budget Policy, Planning Agency of Mongolia, 2017 <http://www.iltod.gov.mn/wp-content/uploads/2016/11/04.Budget-2017-11-01-v280-final-value.pdf>

²³ LoJ, 2012. Provision 28.5.

²⁴ The Judicial General Council of Mongolia, "Annual report-2016", 2017 <http://www.judcouncil.mn/tailan2016.html>

²⁵ LoCA, 2012, Article 27

²⁶ ACL, 2006, Article 17 (revised version)

²⁷ ACL, 2006, Article 15.3 (revised version)

²⁸ IAAC, Annual report of 2015, 2016, 2017, <http://www.iaac.mn/category/138?menu=59>

²⁹ TI-M, GPO, Official letter No.2/1628 of April 25, 2018

³⁰ IAAC, IAAC monthly reports, 2015, 2016, 2017 <http://www.iaac.mn/category/138?menu=59>

³¹ Jargal Ts. Gereg.MN, "Daily News No.21663 -There is hidden opportunity to bring the hidden assets from the offshore zone", April 10, 2018 <http://gereg.mn/news/21663/>

1.2 PROHIBITING COMMERCIAL BRIBERY

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THE MAIN AREAS OF CONCERN FOR BUSINESSES HAVE BEEN IDENTIFIED AS THE SPECIALIZED INSPECTION AGENCY, LOCAL AUTHORITIES AND THE CUSTOMS AUTHORITY. POLITICAL AND FAMILY CONNECTIONS (NEPOTISM) INFLUENCE PUBLIC TENDER RESULTS. THE NUMBER OF PROSECUTIONS FOR COMMERCIAL BRIBERY IS LOW, WHILE SANCTIONS DO NOT APPEAR TO BE PROPORTIONATE.

1.2.1 LAWS PROHIBITING COMMERCIAL BRIBERY

Scoring question

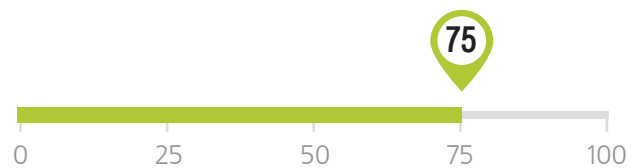
Do the country's laws prohibit commercial bribery?

The existing legislative framework covers active and passive commercial bribery involving a private sector entity individual as described in indicator 1.1.1.

Undue advantage from private sector entities is not limited to financial benefits or other material goods as described in indicator 1.1.1.

The new corporate criminal bribery provision with fines to the company of between US\$50,000 and US\$166,000 was added to the CC in 2017¹.

Bribes, kickbacks, and illegal payments are not listed as permitted tax deductions. As per the ACL and the



Anti-Money Laundering and Financing of Terrorism Laws such payments will be confiscated and criminal proceedings will be instituted².

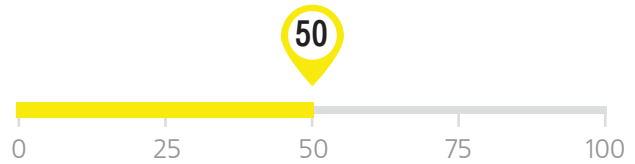
Multiple reviews of corruption in Mongolia indicate that it is increasing. For example, the Asia Foundation study of Private Sector Perceptions of Corruption (STOPP) 2016 sets out the perceptions of 330 Mongolian CEOs and senior managers. The main areas of concern for businesses were identified as Tax Office, Specialized Inspection Agency, local authorities and Customs Authority. More than half of the respondents also pointed out that political and family connections (nepotism and cronyism) influence public procurement results³.

It should be noted that Public Council of the IAAC has no representatives from the business sector.

1.2.2 ENFORCEMENT OF LAWS PROHIBITING COMMERCIAL BRIBERY

Scoring question

Are sanctions and incentives applied in practice to detect commercial bribery?



In spite of a comprehensive legal framework covering commercial bribery and the overall perception of corruption in the private sector in relation to the public sector, the number of prosecutions for commercial bribery is extremely low. The IAAC report shows an increase in the number of private sector cases. In 2017, the agency reported 109 cases (including NGOs) in comparison to 34 cases in 2016 and 33 cases in 2015⁴.

The Asia Foundation’s 2016 STOPP study assessed the existing legal environment as “not effective at all” in dealing with corruption in business, a negative assessment which has increased from 19.1% of respondents in 2012, to 39.8% in 2016⁵.

In 2017, the Mongolian National Chamber of Commerce and Industry (MNCCI) conducted a study among 1,573 entities nationwide to evaluate

the country’s current business environment. On the issue of corruption, 57% of businesses indicated that agencies issuing technical or special permits and tender are the top recipients of bribes, with 25% believing that the bribes involved are extremely high⁶.

In 2017 a department head of the National Auto Transportation Center received a bribe amounting to US\$23,960 (57.5 million MNT) for a license. The primary court sanctioned him imposed a fine of US\$2,700 (6.5 million MNT). However, the bribe giver (a private entity) was fined US\$50,000 (120 million MNT)⁷. Such sanctions do not appear to be proportionate as described in indicator 1.1.1⁸.

As discussed earlier, the statute of limitations for the majority of corruption cases is from 1 to 5 years.

Effective mitigation incentives are also in place as described in indicator 1.1.1. It is of note that after the granting of limited immunity to those paying smaller bribes, the reporting of bribes increased in Mongolia⁹. No MOUs have been signed with private entities by the IAAC. The agency cooperates with business associations on advocacy as mentioned in indicator 2.4.3 of Business Sector Assessment¹⁰.

1.2.3

CAPACITIES TO ENFORCE LAWS PROHIBITING COMMERCIAL BRIBERY

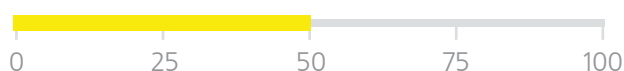
Scoring question

Do relevant public authorities possess adequate capacities for enforcing laws prohibiting commercial bribery?

The IAAC is the principal agency responsible for investigating commercial corruption cases, although the Organized Crime Department of the National Police Agency also investigates such cases.

In response to public criticism of the lack of visible results of investigations and subsequent court proceedings, the IAAC began holding periodic press conferences¹¹. In addition, the IAAC increased its public awareness and prevention efforts through activities such as distributing educational materials and conducting outreach visits to the provinces. However, the IAAC's proposal of establishing regional offices was not supported by parliament.

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The IAAC's preference is to cooperate with business associations rather than individual private entities: indeed, these associations report strong cooperation on advocacy with the IAAC¹².

In November 2016, parliament approved the National Programme to Combat Corruption. This came just months after Mongolia had initiated its second National Action Plan under the Open Government Partnership in June the same year. The action plan aims to reflect anti-corruption principles in contracts between private and public sector organizations¹³.

The funding and independence of authorities and their cooperation with other domestic authorities are described in indicator 1.1.1. Rather regrettably, information on international cooperation on the investigation and legal enforcement of commercial bribery cases is not available.

The IAAC's annual reports¹⁴ do not show individual cases of commercial bribery.

No information is available on cooperation, MOUs and confidentiality agreements with business entities¹⁵.

¹ CC, 2017, Provision 22.5.3 (revised version)

² PwC, Bribes, kickbacks, and illegal payment, December 31, 2017 <http://taxsummaries.pwc.com/ID/Mongolia-Corporate-Deductions>

³ The Asia Foundation, Study private sector perceptions corruption (STOPP) survey 2016, <https://asiafoundation.org/publication/study-private-sector-perceptions-corruption-stopp-survey-2016/>

⁴ IAAC, "Annual Report-2017", February 14, 2018 <http://www.iaac.mn/news/awligatai-temtsekh-gazriin-2sh17-onii-uil-ajillagaanii-towch-tailan?menu=59>

⁵ The Asia Foundation, Study private sector perceptions corruption (STOPP) survey 2016, <https://asiafoundation.org/publication/study-private-sector-perceptions-corruption-stopp-survey-2016/>

⁶ MNCCI, Mongolian business environmental research, 2017, p.25-26, https://www.mongolchamber.mn/bundles/uploads/MNCCI_2017_Business_Orchinii_Sudalgaa_final_website.pdf

⁷ IAAC, Monthly news-May, May 25, 2018 <http://www.iaac.mn/news/3505?lang=mn>

⁸ CC, 2015, Article 22.4, Article 22.6 (revised version)

⁹ U.S State Department, Mongolian Human Rights Practice for 2016 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section4>

¹⁰ Expert Interview 6

¹¹ IAAC, "Annual Report-2017", February 14, 2018 <http://www.iaac.mn/news/awligatai-temtsekh-gazriin-2sh17-onii-uil-ajillagaanii-towch-tailan?menu=59>

¹² TI-M, BICA Mongolia, Stakeholder Engagement 2.4.3, 2018

¹³ Government of Mongolia, "The National Program on Combating Corruption – Action Plan" 4.1.6.3, April 12, 2017

¹⁴ IAAC, Annual report 2017, February 14, 2018 <http://www.iaac.mn/files/6e396b8e-a4cd-41d6-8a42-535892425542/ATG%202017%20tailan.pdf>

IAAC, Annual report 2016, February 07, 2017 <http://www.iaac.mn/files/b5df9fb0-b545-4181-893f-1c8498b279f8/Tailan-2016-iaac.pdf>

IAAC, Annual report 2015, January 08, 2016 http://www.iaac.mn/old/pdf/tailan/iaac_2015_tailan.pdf

¹⁵ IAAC monthly reports, 2015, 2016, 2017 <http://www.iaac.mn/category/201>

1.3 PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

75

THE CRIMINALIZATION OF MONEY LAUNDERING IS IN FULL COMPLIANCE WITH INTERNATIONAL STANDARDS. THE AML NATIONAL PROGRAMME HAS BEEN ADOPTED. THE FATF-REQUIRED AMENDMENTS TO THE AMLFTL HAVE BEEN SUBMITTED TO PARLIAMENT, WITH A DECISION STILL PENDING. THE LACK OF RISK-BASED AML SUPERVISION FOR FIS OUTSIDE THE BANKING SECTOR IS A PRIMARY CONCERN.

1.3.1 LAWS PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

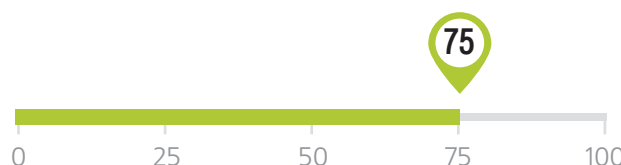
Scoring question

Do the country's laws prohibit laundering of proceeds of crime?

Mongolia is a member of the Asia Pacific Group on Money Laundering (APG), with the Bank of Mongolia (BoM) acting as the national representative. In 2013 parliament ratified an independent Anti-Money Laundering and Financing of Terrorism Law (AMLFTL)¹.

Extensive legal reforms from 2011 to 2014 have ensured Mongolia's compliance with international standards, while new terminology, such as politically exposed persons (PEPs), beneficial owners and shell banks, are now defined in the law.

"Money laundering" is defined as the acquisition, possession, conversion or transfer of assets in full knowledge that the aforesaid assets are the proceeds



of crime. The AMLFTL prohibits the concealment or disguise of the illicit origin of such an asset, transfer of ownership rights of the asset, the conversion of the true nature and/or location of the asset for the purposes of making the asset appear legal².

Organized crime, conspiracy and attempts to commit and/or aid such crimes are prohibited and sanctioned by the CC³.

The current criminalization of money laundering was evaluated by the FATF (Financial Action Task Force) in the Anti-Money Laundering and Counter-Terrorist Financing Measures in Mongolia Report (2017) as fully compliant with international treaties, conventions and standard requirements⁴.

The Panama Papers revealed that numerous Mongolian high-ranking officials, their affiliated parties and politicians were linked to offshore companies⁵. In April 2017 parliament approved various amendments to the COI, regulating sanctions for public officials

1.3 PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

who hold offshore accounts: around 38,000 public officials and their family members were affected⁶.

In response to FATF's recommendations, the government approved an implementation plan. The

required amendments to the AMLFTL have been submitted to parliament; preliminary discussions have been conducted; and currently the final decision is pending⁷.

1.3.2 ENFORCEMENT OF LAWS PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

Scoring question

Are sanctions and incentives applied in practice to deter laundering of proceeds of crime?

The BoM, Financial Regulation Commission (FRC) and Financial Information Unit (FIU) of the Bank of Mongolia are permitted to supervise and conduct inspections related to AML requirements under the relevant legislation. The FIU received over 6.5 million reports over the eight-year period 2008-2016, out of which 1,208 were suspicious transaction reports. The FIU conducted 66 onsite examinations of banks during this same period⁸ with the results being disclosed to local law enforcement organizations and foreign FIUs to assist in combating money laundering.

The head of the FIU has special enforcement powers to freeze a transaction for up to 3 days⁹. The FIU also has a right to receive an individual or legal entity's property registration information, social insurance, cross-border transaction information between banks and investment inquiries from the authorities¹⁰.

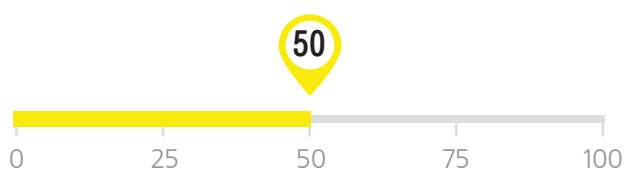
The BoM regulates and supervises commercial banks whilst other financial institutions in Mongolia are

regulated and supervised by the FRC. To date, the FRC's AML/CFT supervisory actions have been rule-based and are limited in number and scope, with no sanctions imposed for AML/CFT breaches. The lack of risk-based AML/CFT supervision is the primary factor leading to negligible awareness of and compliance with AML/CFT obligations by Financial Institutions in the non-banking sector.

Currently, the FRC is working on amendments on risk-based supervision.

Money laundering sanctions vary in accordance with the gravity of the crime. The CC imposes imprisonment for a period of from 6 months up to 5 years for individuals. For organized crime, sanctions of up to 12 years are applied¹¹. However, the amended CC is yet to be applied in practice.

The crimes of money laundering and financing of terrorism are investigated by the General Intelligence Agency (GIA) and General Police Department (GPD) under the CC. In 2017 Mongolia adopted a national AML programme¹². However, law enforcement agencies lack internal directives and comprehensive guidance to prioritize the investigation of money laundering offences: only 46 money laundering investigations have resulted so far, with only two



cases being prosecuted and both convictions imposed by lower courts being overturned by the Supreme Court¹³. In corruption cases sent to a court, money is laundered through banks under names of close relatives, friends and even children. The lack of regulations on the beneficial owner and politically exposed persons allows such violations to take place¹⁴.

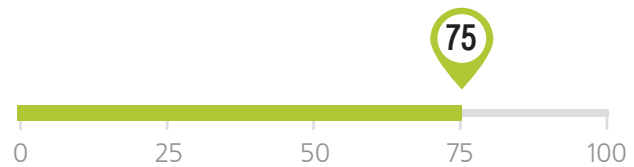
The statute of limitation for a money laundering offence is adequate: depending on the gravity of the case it can be as long as 20 years¹⁵. Mitigation incentives are technically in place for utilization within the existing legal framework: However, there is no evidence of their application in many cases.

1.3.3

CAPACITIES TO ENFORCE LAWS PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

Scoring question

Are adequate enforcement capacities available for enforcing laws prohibiting laundering of proceeds of crime?



The Head of the FIU has full discretion over budget spending; however, the FIU’s structure, strategic plans and budget must be approved by the Governor of the BoM¹⁶.

The GPD is an independent organization under the direct supervision of the Ministry of Justice. The budget of the department is guaranteed by the State. The FRC is directly appointed by and reports to parliament. The Prosecutor’s Office is an independent authority¹⁷ and the General Prosecutor’s Office is responsible for monitoring the GPD’s activities in terms of fulfilling its responsibilities¹⁸.

Mongolia has a national cooperation and coordination mechanism for its AML regime. The National Cooperation Council (NCC) is responsible

for ensuring the implementation of the AMLFTL¹⁹ consists of representatives of the Ministry of Foreign Relations, Ministry of Finance (MoF), Ministry of Justice and Internal Affairs, Prosecutor’s Office, BoM, FRC, General Police Department, General Intelligence Agency, General Tax Department, General Customs Authority and the FIU²⁰. Experts from law enforcement authorities can be seconded to the FIU for a fixed time to strengthen cooperation on information exchange and investigation. In 2014, the Judicial General Counsel organized a workshop on “Principal understanding of money laundering offences and its legal basis”, attended by more than 250 criminal court judges. 15 judges were trained as teacher-trainers in 2015. Additionally training has also been organized with foreign judges²¹. The FIU reports joint trainings with 70 organizations over the period 2008-2016.

Mutual legal assistance (MLA) on criminal offences, extradition of suspects and transfer of prisoners is legally regulated by the Criminal Procedure Code²². Mongolia has signed bilateral MLATs with 17 countries; extradition of suspects agreements with 5

1.3 PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

countries; and transfer of prisoner agreements with 5 countries²³.

As of 2017, Mongolia's FIU is working with 18 counterparts through MOUs. Furthermore, it has the capacity to exchange information with 160 countries through the Egmont Group network²⁴.

¹ Law on Combating Anti Money Laundering and Terrorist Financing, 2013

² AMLCFT, 2013, Article 3 (revised version)

³ CC, 2015, Section 18 (revised version)

⁴ The Asia/Pacific Group, Anti-money laundering and counter-terrorist financing measures Mongolia, Mutual evaluation report, September 2017
<http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mongolia%20MER%202017%20-%20published%20version.pdf>

⁵ International Consortium of Investigative Journalists, Lkhagva E., Panama Papers helps break new reporting group ground in Mongolia, August 4, 2016
<https://www.icij.org/blog/2016/08/panama-papers-helps-break-new-reporting-ground-mongolia/>

⁶ The UB Post, Bayarbat T., Parliament approves amendments to the law on conflict of interest, April 17 2017,
<https://www.pressreader.com/mongolia/the-ub-post/20170417/281530815893677>

⁷ BoM, Batchuluun Kh, Back to the implementation of FATF of Mongolia, March 07, 2018
<https://www.mongolbank.mn/news.aspx?tid=2&id=1874>

⁸ BoM, FIU of Mongolia activity Statistics, IV quarter 2016
<https://www.mongolbank.mn/documents/cma/news/201604e.pdf>

⁹ AMLCFT, 2013, Provision 11.1 (revised version)

¹⁰ AMLCFT, 2013, Article 18 (revised version)

¹¹ CC, 2015, Provision 18.6 (revised version)

¹² The Government of Mongolia, Resolution No.143 of 2017. May 17, 2017

¹³ FATF, Mongolia's measures to combat money laundering and terrorist financing, 2017
<http://www.fatf-gafi.org/countries/j-m/mongolia/documents/mer-mongolia-2017.html>

¹⁴ BoM, Mongolia national risk assessment of money laundering and financing of terrorism, Oct 2016
https://www.mongolbank.mn/documents/cma/20170515_NRA_report.pdf

¹⁵ CC, 2015. Article 1.10. (revised version)

¹⁶ BoM, Mongolia National Risk Assessment of Money Laundering and Financing of Terrorism, October 2016
https://www.mongolbank.mn/documents/cma/20170515_NRA_report.pdf

¹⁷ Law on Prosecutor, 2017, Article 42 (revised version)

¹⁸ CC, 2015, Article 16. (revised version)

¹⁹ AMLCFT, 2013, Article 22 (revised version)

²⁰ AMLCFT, 2013, Provision 22.2 (revised version)

²¹ The Judicial General Council of Mongolia, Trainings information

²² FATF, Mongolia's measures to combat money laundering and terrorist financing, 2017
<http://www.fatf-gafi.org/countries/j-m/mongolia/documents/mer-mongolia-2017.html>

²³ BoM FIU, "Anti-money laundering and counter-terrorist financing measures Mongolia" Mutual Evaluation Report, 2017
<http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mongolia%20MER%202017%20-%20published%20version.pdf>

²⁴ BoM FIU, FIU's Director Interview, December 15, 2017
<https://www.mongolbank.mn/news.aspx?tid=2&id=1800>

1.4 PROHIBITING COLLUSION 50

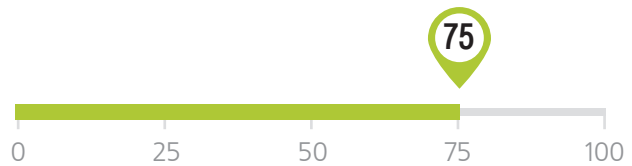
THE LAW ON COMPETITION MAKES NO CLEAR DISTINCTION BETWEEN HORIZONTAL AND VERTICAL ANTI-COMPETITIVE AGREEMENTS. THE DEFINITION OF THE DOMINANT POSITION LACKS SOME IMPORTANT QUALITATIVE CHARACTERISTICS. THE AVAILABLE AFCCP DATA PROVIDES NO INFORMATION ON OR VISIBLE RESULTS OF COLLUSION CASES. THE AFCCP SIGNIFICANTLY DEPENDS ON DECISIONS, POLICIES AND VIEWS OF PUBLIC OFFICIALS. SINCE 2005 THE AGENCY HAS CHANGED ITS HEAD SEVEN TIMES. THERE IS NO EVIDENCE FOR COOPERATION WITH INTERNATIONAL LAW ENFORCEMENT AGENCIES ON INVESTIGATION AND ENFORCEMENT.

1.4.1 LAWS PROHIBITING COLLUSION

Scoring question

Do the country's laws prohibit collusion?

Collusion is regulated by the Law on Competition (LoC). The law broadly covers general prohibitions on price fixing, artificially dividing markets, bid-rigging and the imposing of restrictive quotas. The law is equally applicable to legal entities and government/local administrative organizations and also covers illicit overseas activities. Article 11 provides a sufficient legal basis for anti-money cartel enforcement. It explicitly prohibits horizontal agreements among competitors (price-fixing and market allocation by territory, type of product/service and customers). A separate



provision prohibits bid-rigging in public procurement¹. Mongolia's Law on the Procurement of Goods, Works and Services with State and Local Funds is also instrumental in regulating collusion. It links the procurement process to violations resulting from restrictions on competition².

However, the LoC makes no clear distinction between horizontal and vertical anti-competitive agreements³. A more precise definition of "cartels" and "anti-competitive agreements" was recommended by a 2012 United Nations (UN) voluntary peer review of Mongolia's competition laws and policies. The definition of the dominant position is based on market share⁴. In addition, it provides for the possibility of establishing a dominant position by an entity with a lower market share. However, it lacks some important

qualitative characteristics, such as the extent to which such prices can exceed competitive levels and the maintainability of such prices; the sustainability of dominance; and entry/expansion possibilities⁵.

The Law on Administrative Offences regulates violations of business activities under the LoC if a breach thereof does not constitute a criminal offence⁶.

1.4.2 ENFORCEMENT OF LAWS PROHIBITING COLLUSION

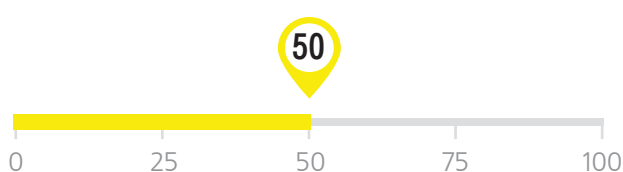
Scoring question

Are sanctions and incentives applied in practice to deter collusion practices?

According to the LoAO, the main types of sanctions are 'fines' and 'detention'. The law imposes a fine of up to 4-6% of the products' sales revenue from the previous year, and confiscation of all income and property for fixing prices⁷. If it is impossible to calculate the sales revenue of a product or if there have been no sales, a fine of up to 5% of the property can be imposed⁸. The LoAO provides for a detention of a maximum of 30 days and allows for either a "penalty" or "detention" (but not both) to be imposed for specific violations.

In addition to restriction of movement⁹, the CC imposes from 240 to 720 hours of social service for crimes in contravention of the monopoly laws¹⁰.

The damages recovered are transferred to the State Treasury. The legislation does not provide explicitly for the possibility of private damage claims, although Mongolian citizens and legal persons can apply to the Civil Court for anti-trust damages.



Legislation encompasses the possibility of implementing a corporate leniency programme for the purposes of cartel investigations. If the enterprise voluntarily admits to committing a breach of the law, administrative charges can be reduced by up to 100%. If the enterprise admits its guilt within 30 days of the start of the inspection, administrative charges can be reduced by up to 50%¹¹.

In 2017 AFCCP proposed certain amendments to the existing law, including extending the statute of limitation in the Law on Competition by up to 3 years. The proposal has not yet been debated by parliament¹².

In 2017 the Consumer Data Centre (Hotline 1284) was established under the Authority for Fair Competition and Consumer Protection (AFCCP). However, in that same year 79% of calls were seeking advice and/or offering suggestions, with only 21% being for filing official complaints¹³.

Cases of collusion increased up to a total of 21 in 2016 in comparison with 6 in 2015. However, the figure again decreased to 5 in 2017. Available AFCCP data provides no information or visible results on collusion cases.

The agency's high-profile cases for 2012, 2013 and 2017 involved fuel importers in. In 2012 the AFCCP

attempted to impose a penalty of US\$7 million, (MNT 17 billion), accusing 8 companies of price fixing and collusion; however, the case was dropped in court. Then in 2013 another case of price fixing against a

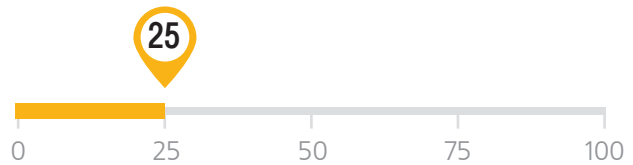
major fuel importer met the same fate. Similarly, a request by the AFCCP to suspend the importing rights of one company for creating an artificial shortage was refused by the Ministry of Mining.

1.4.3

CAPACITIES TO ENFORCE LAWS PROHIBITING COLLUSION

Scoring question

Are adequate enforcement capacities available for enforcing laws prohibiting collusion?



The AFCCP is the government agency that directly engages in the enforcement of competition law and policy implementation. It is an autonomous entity, fully financed by the State. There is a prohibition on its annual budget being cut to less than that for the previous year. In practice, the agency largely depends on decisions, policies and views of government officials. The Head of the AFCCP is appointed and dismissed by the government and the agency is subordinated directly to the Deputy Prime Minister¹⁴. Since 2005 the agency has changed its head seven times. In 2012, the UN voluntary review

highlighted the AFCCP staff's lack of experience in conducting investigations, dawn raids and collecting forensic evidence, as well as inadequate planning of investigations and the brevity of the legal timeframe provided for these¹⁵.

Information on collaboration and effective cooperation among and between the IAAC, prosecution officers and tax authorities is scarce. However, the AFCCP reported on discussions organized among related organizations in "Business Development Based on Consumer Wellbeing" (2016).

Since 2014 the AFCCP has been cooperating with the Japan International Cooperation Agency (JICA) and the Japanese Fair Competition Committee, with AFCCP inspectors and judges annually attending training in Japan¹⁶.

No evidence for cooperation with international law enforcement agencies on investigation and enforcement was found.

¹ LoC, 2010, Provision 11.1.14 (revised version)

² LoC, 2010, Article 55 (revised version)

³ LoC, 2010, Article 4 (revised version)

⁴ LoC, 2010, Article 5 (revised version)

⁵ UN, UNCTAD, "Voluntary peer review of competition law and policy", 2012 http://unctad.org/en/PublicationsLibrary/ditcclp2012d2_Mongolia_report_en.pdf

⁶ LoAO, 2017, Article 10.7 (revised version)

⁷ LoAO, 2017, Article 10.7, Provision 1.3 (revised version)

⁸ LoAO, 2017, Article 10.7 (revised version)

⁹ CC, 2015, Provision 18.1 (revised version)

¹⁰ CC, 2015, Provision 18.1 (revised version)

¹¹ LoAO, 2017, Article 10.7 (revised version)

¹² MNCCI, Draft LoC, 2017

<https://webcache.googleusercontent.com/search?q=cache:G1-ZgE1WEvgj:https://www.mongolchamber.mn/bundles/uploads/%25D2%25AF%25D0%25B7%25D1%258D%25D0%25BB%2520%25D0%25B1%25D0%25B0%25D1%2580%25D0%25B8%25D0%25BC%25D1%2582%25D0%25BB%25D0%25B0%25D0%25BB.docx+&cd=1&hl=en&ct=clnk&gl=mn>

¹³ AFCCP, 2017 quarterly journal, №02(04) 2017

¹⁴ LoC, 2010, Article 14, Provision 14.2 (revised version)

¹⁵ UN, UNCTAD, "Voluntary peer review of competition law and policy", 2012 http://unctad.org/en/PublicationsLibrary/ditcclp2012d2_Mongolia_report_en.pdf

¹⁶ The Government of Mongolia, The AFCCP news, 2017 <https://zasag.mn/m/afccp>

1.5 WHISTLEBLOWING



NO LAWS OR REGULATIONS EXIST IN MONGOLIA.

1.5.1 WHISTLEBLOWER LAWS

Scoring question

Do the country's laws provide for protection to public and private sector whistleblowers regarding corruption?

Presently the country does not have any whistleblower protection laws: an attempt to submit a draft law on the Protection of Criticizers failed in 2015.

In the absence of any legal protection for whistleblowers, the reporting of corruption offences by public officials is mandatory. The ACL requires the persons specified in the law to immediately report to the IAAC any corruption-related information obtained while performing their official duties¹. In addition, the law permits² a legal person/entity to submit corruption-related complaints or information to the IAAC.



The National Programme on Combating Corruption (NPCC) aims to submit the draft Law on Whistleblowing by 2019³.

Within the scope of the NPCC, parliament issued a decree to approve the operation of both online and hotlinemethods for the submission of information on corruption. These aim to incentivize and create a protecting environment for whistleblowers, including journalists⁴. However, no results are available yet.

The importance of having a whistleblower protection system has been emphasized not only by civil society representatives⁵ but also by the IAAC, particularly following the adoption of a whistleblower law in Kyrgyzstan⁶.

The President of Mongolia has proclaimed 2018-2019 to be years for the protection of corruption witnesses and informants⁷. The decree was initiated by the Public Council under the IAAC⁸.

1.5.2 ENFORCEMENT OF WHISTLEBLOWER LAWS

Scoring question

To what extent does the public sector enforce laws protecting whistleblowers in the public and private sector?



The legal environment for ensuring the comprehensive legal protection of whistleblowers in both the public and private sectors is currently absent. Best practices indicate that whistleblower protection laws should offer stand-alone, dedicated whistleblower protection that extends to both public and private sector personnel, including contractors and consultants, with specific measures for whistleblowers who have been victimized or harassed.

¹ ACL, 2006, Article 8 (revised version)

² ACL, 2006, Provision 9.1 (revised version)

³ Government of Mongolia, "The National Program on Combating Corruption – Action Plan" 4.1.5, April 12, 2017

⁴ National Program on Combating Corruption, 2016, the Parliament decree #51, Provision 4.1.5.5 and 4.1.5.6

⁵ Expert Interview 2

⁶ IAAC, Interview on necessary of "whistleblower's law", October 14, 2016
<http://www.iaac.mn/news/awligiin-esreg-shugel-uleegch-iig-khamgaalsan-khuuli-shaardlagatai>

⁷ The President of Mongolia, Decree No.38 of 2018, April 11, 2018

⁸ Expert Interview 1

1.6 ACCOUNTING, AUDITING AND DISCLOSURE

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IFRS, OR IFRS FOR SMES, HAVE BEEN THEORETICALLY ADOPTED FOR ALL PRIVATE ENTITIES. HOWEVER, IN PRACTICE, MANY ENTERPRISES DO NOT COMPLY DUE TO THE COST AND DIFFICULTY OF CONVERSION. THE LAW PERMITS BUT DOES NOT REQUIRE COMPANIES TO DISCLOSE THEIR FULL ANNUAL AUDITED FINANCIAL STATEMENTS OR SUMMARIES THEREOF. THE LAW DOES NOT PROVIDE ANY LIMITATION ON AUDIT FIRMS PERFORMING NON-AUDITING SERVICES: THIS IS NOT COMPLIANT WITH INTERNATIONAL STANDARDS. INFORMATION ON BENEFICIAL OWNERSHIP IS ONLY AVAILABLE TO REGULATORS.

1.6.1 ACCOUNTING AND AUDITING STANDARDS

Scoring question

Does the country's accounting and auditing regulatory framework adhere to internationally recognized standards (for example, International Financial Reporting Standards)?

The Law on Accounting (LoA) requires entities to submit their annual financial statements to the relevant state regulatory agency, both quarterly and annually, in accordance with specific forms approved by the Ministry of Finance¹. The financial statements are expected to be prepared in accordance with the International Financial Reporting Standards (IFRS), IFRS for SMEs and the International Public Sector

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Accounting Standards (IPSAS) for public entities².

The law prohibits abuse of position, conflict of interest, and breach of confidentiality for accountants. Failure to keep books, records and accounts, or omissions and/or falsification thereof, can be prosecuted³.

Business entities are required to maintain accurate and authentic accounting records and prepare financial statements. The standards for primary accounting documents of preparing entries for each movement and change of assets and liabilities in all stages of business activities are covered. The law explicitly forbids any transaction without a primary accounting document⁴.

The law requires financial statements to be prepared by professional accountants. Chief accountants of state-owned enterprises or partially state-owned

companies are required to hold a national CPA qualification⁵. The management of the company is responsible for internal controls and may appoint an internal auditor to ensure accounting supervision⁶.

Most companies are required to have their accounts externally audited. The requirement covers, inter alia, all listed/to be listed companies; entities with capital assets of at least US\$20,830 (MNT 50 million); entities that are publicly bidding their capital; state-

owned enterprises; foreign-invested entities; banks, non-bank financial institutions; and insurance organizations⁷.

State-owned enterprises must publicly report their audited financial reports⁸. The Law on Banking also requires banks to publicly disclose their audited financial statements in the media and on related websites⁹. Apart from banks and state-owned enterprises, the requirement to disclose audited financial statements and auditor’s opinions remains unclear.

1.6.2 ENFORCEMENT OF ACCOUNTING AND AUDITING STANDARDS

Scoring question

Is the adherence of the country’s accounting and auditing regulatory framework enforced in practice?

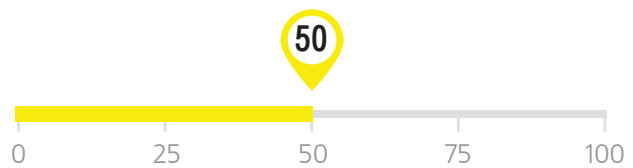
Several sector-specific laws and regulations are in place to regulate auditing activities in Mongolia. The Law on Auditing, Company Law, Banking Law, Law on Insurance and State Audit Law all set out audit requirements. IFRS, or IFRS for SMEs, have been theoretically adopted by all private entities. However, in practice many enterprises do not comply due to the cost and difficulty of doing so. Listed companies, companies operating in the fields of exploration or mining, and companies classified as ‘large’ by the MoF are among those required to be fully compliant with IFRS¹⁰.

Under the State Audit Law, the Mongolian National

Audit Office (MNAO) is an independent agency, which reports directly to parliament. The MNAO is responsible for the audit of the annual financial statements of all government entities, including state-owned enterprises. In 2017 the MNAO reported audits of 4,307 state organizations and companies. As a result, violations totaling US\$1.1 million (MNT 2.6 billion) were recorded; and 447 officials were faced with sanctions, 87 of these being transferred to related law enforcement agencies¹¹.

The FRC reported on the monitoring of 2,125 entities, organizations (including listed companies), insurance and securities-related entities, non-banking financial organizations and other entities. However, the report does not specify the nature of the violations uncovered or the sanctions imposed¹².

Enforcement of existing regulations in Mongolia’s banking sector seems to be robust and is reviewed regularly by the BoM. However, information on private company audits and the enforcement of



laws for non-adherence to accounting and auditing standards is not available publicly. Audit companies are bound by confidentiality agreements while regulations do not explicitly require public disclosure. The law permits, but does not require, companies to disclose their full annual audited financial statements or summaries thereof¹³.

Violations of standards can be prosecuted under the law, with penalties being imposed on responsible

individuals and entities. Liquidation by court decision can be applied for failure to submit financial reports¹⁴. However, no specific provisions are applied to failure to keep financial statements of the required standard with the objective of concealing corruption.

Enforcement activities connected with major tax violations are publicly announced. However, the well-known cases mainly involve foreign-invested companies¹⁵.

1.6.3 PROFESSIONAL SERVICE PROVIDERS

Scoring question

Are the country's professional service providers (for accounting, auditing, rating or other related advisory services) required to comply with internationally recognized standards?

The Law on Auditing assigns responsibility to the Mongolian Institute of Certified Public Accountants (MonICPA) for the determination of auditing principles. It is a member of IFAC and the Confederation of Asian and Pacific Accountants. The law defines the International Auditing standard as the principle and standard for auditing in Mongolia¹⁶.

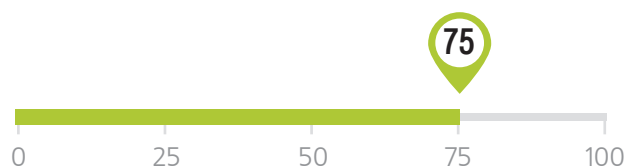
Legislation explicitly stipulates that only licensed audit companies can conduct audits¹⁷, with a list of these being on the MoF website. There are 115 licensed audit companies as of February 2018¹⁸. The firms also have to be registered with the FRC in order to be able

to audit insurance companies and listed/to be listed companies¹⁹.

Under the law, an auditor must be independent of the audited agencies, companies and organizations. Interference of any kind with the auditor's activities by business entities, organizations and/or officers is prohibited²⁰. The law also prohibits the annual audit of clients by an auditing firm if it has already provided consultations on reevaluation, tax preparation and/or accounting to that client in the same fiscal year²¹.

The law does not provide any limitation on audit firms performing non-auditing services: this is not compliant with ISA, International Standards on Review Engagement (ISRE), and International Standards on Assurance Engagement (ISAE). Therefore, many audit firms are currently in situations involving conflict of interest²².

In order to establish oversight of audits that are mandated by the MNAO, the MonICPA has signed an MOU with the FRC and the BoM to review the



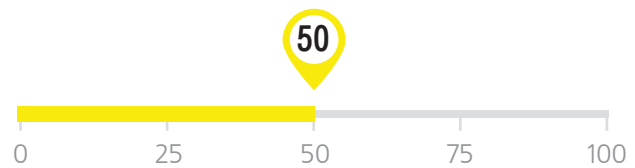
quality of audit work on entities regulated by the respective institutions. The MonICPA operates an investigative and disciplinary system for its members and its procedures are outlined in the institute’s Code of Ethics²³.

The FRC reported the monitoring and evaluation of 49 audit companies in 2017. The MoF order No.52 reported the termination of licenses of six audit companies in 2018 for non-compliance. The order also instructs the Accounting Department of the MoF to complete the audit of all auditing entities²⁴.

1.6.4 BENEFICIAL OWNERSHIP

Scoring question

Do the country’s laws require public information on beneficial ownership for companies, trusts and other legal structures?



The Law on Securities Market (LSM) requires ultimate beneficial owners to disclose their ownership positions only when requested by the securities issuer: they are under no obligation to make the disclosure public. The information on beneficial ownership is only available to regulators. Therefore, the machine-readability of the information cannot be confirmed²⁵. There is a general administrative proceeding whereby a security issuer can seek to obtain information on beneficial ownership. A potential investor can approach the FRC with a report on noncompliance with the disclosure requirement on ownership structure and seek remedial action.

The jurisdiction of Mongolia does not follow the common practice and makes no distinction between de facto and de jure ownership. The ultimate layer or beneficiary information required to be disclosed includes: owner’s name, family names, registration

number, residential address, telephone number, email, corresponding tax office, family situation, number of children, financial resources, copy of ID, in case of legal entity, the signatory.

In terms of verifying the accuracy of the information disclosed, various regulatory approaches can be identified: ensuring the correctness, reliability, timing and accuracy of the information by imposing liability for failure to comply with the disclosure rules and regulations²⁶.

Beneficial ownership information is disclosed by entities licensed to provide custodian services to the securities issuer, or upon the request of the central depository. The nominee account holder or trustee is responsible for the accuracy of information on beneficial ownership²⁷. Information on control structures is publicly available. In Mongolia, general sanctions are applied to non-compliance with disclosure rules and requirements of ownership²⁸.

In 2017, the Mongolian parliament approved several amendments to taxation and other relevant laws (effective as of 1 January 2018). The amendments represent the first attempt by Mongolia’s tax law to tax beneficial owners rather than immediate holders. However, the changes are applicable only to companies holding mineral licenses and land rights.

1.6 ACCOUNTING, AUDITING AND DISCLOSURE

The consequences of failure to comply with the new tax obligations are severe: land rights and mineral licenses will be revoked by the respective authorities if the taxpayer intentionally provides incorrect information on beneficial owner details²⁹.

¹ LoA, 2001, Article 13 (revised version)

² LoA, 2001, Article 16 (revised version)

³ LoA, 2001, Article 20 (revised version)

⁴ LoA, 2001, Article 7 (revised version)

⁵ LoA, 2001, Article 17 (revised version)

⁶ LoA, 2001, Article 18 (revised version)

⁷ LoAud, 2015, Article 10 (revised version)

⁸ Glass Account Law, 2014, Article 6

⁹ Law on Banking, 2010, Article 6. (revised version)

¹⁰ KPMG Asia Pacific Tax Centre, "Mongolia Tax profile", 2016
<https://home.kpmg.com/content/dam/kpmg/xx/pdf/2016/09/country-tax-profile-mongolia.pdf>

¹¹ MNAO, "Annual report-2017", March 18, 2018,
<https://www.audit.mn/wp-content/uploads/2018/03/UAG-Uil-ajillagaani-tailan-2017.pdf>

¹² FRC, "Annual report-2017", 2018
<http://www.frc.mn/b/uatailan>

¹³ LoA, 2001, Provision 12.5 (revised version)

¹⁴ LoA, 2001, Article 23 (revised version), LoAO, 2017, Provision 11.18 (revised version)

¹⁵ Oyu Tolgoi LLC, <http://ot.mn/>, SGS LLC,
<https://www.sgs.mn/>.

¹⁶ LoAud, 2015, Article 5 (revised version)

¹⁷ LoAud, 2015, Provision 4.1 (revised version)

¹⁸ MoF, "Registered Audit insurance companies' list", February 22, 2018
<https://mof.gov.mn/article/entry/audit-performance-2018-02-22>

¹⁹ Company Law, 2011, Article 76 (revised version)

²⁰ LoA, 2001, Article 7 (revised version)

²¹ LoAud, 2015, Provision 1.10 (revised version)

²² The World Bank, "Report on the observance of standards and codes (ROSC) Mongolia", March 10, 2018
<https://openknowledge.worldbank.org/bitstream/handle/10986/8055/465380ESW0P10811a0rosclaa1mongolia.pdf?sequence=1&isAllowed=y>.

²³ MonICPA, "Code of Ethics for Professional Accountants", 2010
<https://www.ifac.org/publications-resources/2010-2>

²⁴ MoF, Order No.52, March 12, 2018

²⁵ LSM, 2013, Provision 58.3 (revised version)

²⁶ OECD, "Disclosure of Beneficial Ownership and Control in Listed Companies in Asia", 2016
<https://www.oecd.org/daf/ca/Disclosure-Beneficial-Ownership.pdf>

²⁷ LSM, 2013, Article 58 (revised version)

²⁸ LoAO, 2017, Provision 4.15 (revised version)

²⁹ EY of Mongolia, "Tax Alert - Mongolia introduces rules to tax indirect transfer of land rights and exploration and mining licenses", January 29, 2018
[http://www.ey.com/Publication/vwLUAssets/EY-new-tax-alert-on-land-rights-and-exploration-and-mining-licenses/\\$FILE/EY-new-tax-alert-on-land-rights-and-exploration-and-mining-licenses.pdf](http://www.ey.com/Publication/vwLUAssets/EY-new-tax-alert-on-land-rights-and-exploration-and-mining-licenses/$FILE/EY-new-tax-alert-on-land-rights-and-exploration-and-mining-licenses.pdf)

1.7 PROHIBITING UNDUE INFLUENCE



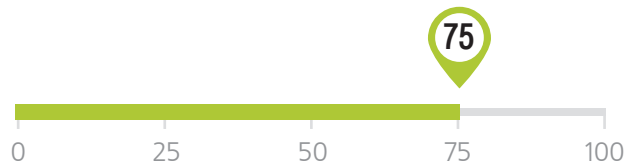
FINANCIAL REPORTING PRIOR TO ELECTION DAY OR DISCLOSURE OF PARTY FUNDS AND/OR EXPENDITURES PRIOR TO AN ELECTION IS NOT REQUIRED. THE LAW PROVIDES FOR THE PUBLICIZING OF PARTY FINANCING AND FINANCIAL REPORTS, BUT DURING THE REPORTING PERIOD NO INFORMATION WAS AVAILABLE. THE FINES THAT CAN BE IMPOSED ARE LOW. LOBBYING IN MONGOLIA IS NON-TRANSPARENT AND UNREGULATED. THERE ARE NO REGULATIONS ON “COOLING-OFF” PERIODS FOR CORPORATE EXECUTIVES TRANSITIONING TO SENIOR PUBLIC OFFICES AND POSTS. INFORMATION ON THE SANCTIONING OF PUBLIC OFFICIALS REGARDING THEIR POST-EMPLOYMENT PERIOD IS NOT AVAILABLE.

1.7.1 LAWS ON POLITICAL CONTRIBUTIONS

Scoring question

Is undue influence in the form of political contributions from the private sector to political parties and/or individual candidates prohibited by law?

Election campaign finance is regulated by the 2015 consolidated Law on Elections (LoE) and the Law on State Audit. Restrictions on certain types of donations, such as anonymous contributions¹ as well as caps on individual and legal entity donations are in place². All donations should be made by bank transfer and in-kind donations should be appraised³. Political parties, coalitions and independent candidates are required



to submit campaign income and expenditure reports to the General Election Committee within 30 days after the holding of an election⁴. However, financial reporting and/or the disclosure of party funds or expenditures prior to an election is not required.

The legal framework foresees election administration to be non-partisan and safeguards the use of State resources either in favour of or against political parties and individual candidates. However, as reported in 2017 there have been incidents of possible misuse of administrative resources. Therefore, the legal framework should provide clear mechanisms to distinguish campaign activities from administrative functions of public officials⁵.

Political party financing is a high-risk area for corruption as the current legal environment fails

to effectively regulate this. The 2017 presidential election clearly demonstrated citizens' mistrust of political parties, with the so-called "White Ballot" vote a refusal to select any of the candidates amounting to 8% of the total.

The 2005 Law on Political Parties⁶ (LoPP) defines financing sources. Article 18 imposes ceilings on donations from members and supporters and regulates the frequency of donations to be no more than twice a year. However, the sources of donations are not prescribed, leaving loopholes for undue influence.

Although the law requires political party financing and accounting to be audited and monitored, the process is internal. There are provisions for publicizing party financing and financial reports, but during the reporting period no information was available in either hard or soft copy formats. LoPP, Article 19, permits quarterly public funding of US\$4,200 (MNT 10 million) for each parliamentary seat from the State Budget. In addition a party receives a government subsidy based on the number of votes after receiving the seats.

1.7.2 ENFORCEMENT AND PUBLIC DISCLOSURE ON POLITICAL CONTRIBUTIONS

Scoring question

Is the prohibition of undue influence in the form of political contributions from the private sector to political parties and/or individual candidates monitored in practice?

The MNAO is responsible for auditing campaign finances. However, the MNAO only carries out quality control of the audited reports. The last two parliamentary and presidential elections highlighted the need for the MNAO's mandate to be further strengthened, with increased sanctioning authority for campaign finance violations⁷.

Currently, sanctions for campaign finance violations depend on their severity: fines that can be imposed



are low, and only the failure to submit a financial report in the required timeframe would lead to the prohibition of the party, coalition or individual on running in the next election. Furthermore, there are no requirements to publish detailed results of these audits, even after the election. Consequently, the MNAO audit of a candidate and party expenditures, as presently in place, is a futile exercise, failing to provide sufficient transparency for campaign financing⁸.

Information on the financing of political parties during elections is published on the Glass party website www.shilennam.mn⁹. However, the monitoring of 2016 Mongolian Parliament Election Campaign Financing Monitoring by Open Society Forum (OSF) concluded that campaign financing of the election was non-transparent with poor monitoring at all levels¹⁰.

There is a total failure by political parties to comply

with both pre- and post- election transparency requirements. Thus, party finances remain a dark area. Existing basic provisions on party finances are not enforced and are easily circumvented in practice. LoPP¹¹ requires an annual audit, the publication thereof and access to information on party donations¹². However, until now no information on any political party’s annual audited financial reports is available for review and no public institution has been assigned to monitor and supervise party finances. Penalties for such violations are extremely low, averaging less than US\$200 (MNT 480,000).

Both the Law on Information Transparency and Right to Information (2011) and Law on Glass Account guarantee access to information for all, including media. They also provide citizens’ rights and access to information on all public institutions, including state-funded NGOs¹³.

However, political parties, as independent bodies, are not governed by existing legislation on information transparency. This conflicts with the overall concept of the legal framework, as political parties with parliamentary seats are subsidized and funded by tax payers¹⁴.

1.7.3 LAWS ON LOBBYING

Scoring question

Is undue influence in the form of lobbying by the private sector prohibited by law?



Lobbying in Mongolia is non-transparent and unregulated. The influence of lobbyists is masked and is of increasing concern, with no mandatory register of lobbyists. The absence of regulations is

believed to lead to corruption in the corporate sector: in particular, it encourages companies to develop so-called “legal corruption”, trading in influence through revolving doors between public and private sectors.

A current issue of major concern is the lack of transparency, accountability and integrity in parliament and among its members. There is no mandatory code of conduct, addressing such key factors as conflict of interest, for parliamentarians. The “legislative footprint” procedure for legislators’ contact with lobbyists is not required by any regulation¹⁵.

1.7.4 ENFORCEMENT AND PUBLIC DISCLOSURE ON LOBBYING

Scoring question

Is the prohibition of undue influence in the form of lobbying by the private sector monitored in practice?

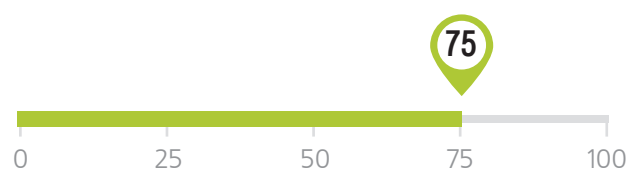


The complete absence of lobbying regulations necessarily means the lack of an independent body mandated to manage lobbying activities. No online information is available on lobbyists.

1.7.5 LAWS ON OTHER CONFLICTS OF INTEREST

Scoring question

Is undue influence in the form of other conflicts of interest between the private and the public sector prohibited by law?



received from any party, including private sector entities or individuals, are covered by separate articles²¹. The law prohibits senior civil servants or affiliated parties from being shareholders, owners or partners, and from assuming paid positions in private sector entities involved in the provision of services to the public sector and from being beneficiaries of such entities²². However, the law makes no reference to assuming unpaid positions, such as unpaid advisory board member, unpaid consultant, in such entities.

The law requires a two-year “cooling off” period for the officials referred to above before transitioning to the private sector after retirement from their official positions. A former public official is prohibited from taking up employment, concluding agreements, seeking licenses and representing an entity. The law explicitly prohibits any of the above-mentioned relationships explicitly for companies or entities where the former official had supervised, monitored or signed contracts or was in receipt of services in

The categories of public officials and senior civil servants who are obliged to submit declarations are defined in the ACL¹⁶, COI¹⁷ and Annex to the Parliament’s Resolution¹⁸. The IAAC publishes declarations of high-ranking officials through weekly newspapers and on its website¹⁹. The declarations are open to anyone upon request²⁰.

The law requires public officials to declare their assets annually. Any significant changes in the declaration should be reported within 30 days. The statements include financial investments in companies, shares, patents and licenses. Gifts, benefits and donations

relation to the official’s duty. The transfer of any assets is prohibited from such entities for a period of two years²³.

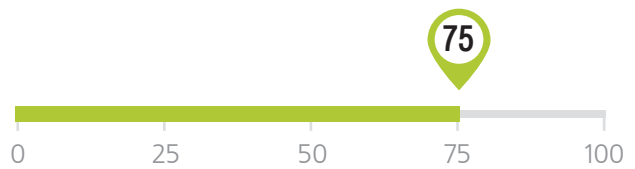
On the other hand, there are no regulations on a “cooling-off” period for corporate executives transitioning to senior public offices and government posts as a pre-employment requirement.

1.7.6 ENFORCEMENT AND PUBLIC DISCLOSURE OF OTHER CONFLICTS OF INTEREST

Scoring question

Is the prohibition of undue influence in the form of other conflicts of interest between the private and the public sector monitored in practice?

The collected declarations on conflicts of interests of public officials are verified and monitored by parliament’s Standing Committee on Legal Affairs and Sub-committee on Ethics as well as the IAAC. The IAAC oversees the submission and monitoring of private interest declarations by public officials (approximately 47,000), including MPs acting as cabinet members²⁴. Parliament’s Ethics Committee investigates citizens’ complaints in regard to MPs’ conflicts of interest²⁵.



Private interest declarations cover public officials’ relationships with the private sector. The recent practice of the IAAC shows an increase in the number of cases related to violations of conflicts of interest, or failure to fully submit information²⁶. Regular declaration is required by the law. The declaration contains information on shares and investments in private companies. Although paid positions in any private entity are prohibited, unpaid positions are not referred to as potential conflicts of interest. Gifts and hospitality are monitored as described in indicator 1.7.5.

Information and/or data on the monitoring and/or sanctioning of public officials regarding their two-year post-employment ‘cooling off’ period is not available. There are no known public cases of the implementation of legal requirements or violations thereof. >

1.7 PROHIBITING UNDUE INFLUENCE

The IAAC report on collection and monitoring of declarations²⁷:

Table 3: The IAAC's statistics on collection and monitoring of declarations

| STATISTICS | 2015 | 2016 | 2017 |
|---|--------|--------|--------|
| TOTAL NUMBER OF OFFICIALS REQUIRED TO DECLARE | 38,423 | 39,853 | 39,742 |
| NUMBER OF SUBMITTED DECLARATIONS | 28,422 | 28,850 | 39,739 |
| NUMBER OF SANCTIONED OFFICIALS | 47 | 77 | 43 |

Source: IAAC's annual report 2015-2017

¹ LoE, 2011, Provision 39.7.5 (revised version)

² LoE, 2011, Provision 39.1(revised version)

³ LoE, 2011, Provision 39.5 (revised version)

⁴ LoE, 2011, Provision 40.2 (revised version)

⁵ OSCE/ODIHR Needs assessment Mission report on Mongolia Presidential Election, February 21-24, 2017 <https://www.osce.org/odihr/elections/mongolia/313571?download=true>

⁶ LoPP,2005, Chapter 4, Article 16 (revised version)

⁷ OSCE/ODIHR Needs assessment Mission report on Mongolia Presidential Election, February 21-24, 2017 <https://www.osce.org/odihr/elections/mongolia/313571?download=true>

⁸ OSCE/ODIHR Needs assessment Mission report on Mongolia Presidential Election, February 21-24, 2017 <https://www.osce.org/odihr/elections/mongolia/313571?download=true>

⁹ Shilen Nam efunding <http://shilennam.mn/efunding>

¹⁰ OSF, "2016 Mongolian Parliament Election Campaign Monitoring", 2017 https://www.forum.mn/res_mat/2017/Election%20Campaign%20Financing.pdf

¹¹ LoPP,2005, Article 20.3 (revised version)

¹² LoPP, 2005, Article 18.4 (revised version)

¹³ Globe International Center NGO, Media Freedom Report 2012-2014, 2015 <http://www.globeinter.org.mn/images/upld/Hevleliinerhcholoos2015english.pdf>

¹⁴ Sosormaa Ch. Baabar.mn, "Glass Account and glass party" article, March 12, 2018.

¹⁵ TI Global, "Controlling Corporate Lobbying and Financing of Political Activities", 2009 http://transparency.ee/cm/files/lisad/corporate_lobbying.pdf

¹⁶ ACL, 2006, Article 4

¹⁷ Conflict of Interest Law, 2012, Article 23

¹⁸ Parliament of Mongolia, Annex No.5, Resolution No.5 of 2012

¹⁹ Official Website www.xashom.iaac.mn

²⁰ ACL, 2006, Article 14

²¹ ACL, 2006, Article 16

²² ACL, 2006, Article 20

²³ Law on Conflicts of Interest, 2006, Article 21

²⁴ LoRACIPO, Article 28

²⁵ LoRACIPO, Article 26

²⁶ Expert Interview 11

²⁷ IAAC, Annual Report of 2015, 2016, 2017 <https://www.iaac.mn/category/138?menu=59>

1.8 PROCUREMENT



PUBLIC PROCUREMENT INTEGRITY PACTS ARE NOT EXERCISED IN MONGOLIA. THE GPA'S SCOPE OF PROCUREMENT HAS BEEN GRADUALLY DIMINISHING. THERE ARE NO ESTABLISHED SAFE MECHANISMS FOR ANONYMOUS WHISTLEBLOWERS. THERE IS NO INFORMATION ON REMUNERATION FOR PROCUREMENT POSITIONS. COMPLAINT PROCEDURE IS A SIDE ACTION, NOT AN INTEGRAL ELEMENT OF THE COMPREHENSIVE E-PROCUREMENT SYSTEM. DISCLOSURE OF BENEFICIAL OWNERS IS NOT IMPOSED AS A TENDER REQUIREMENTS. THE DEBARMENT SYSTEM AND ITS IMPLEMENTATION IS VAGUE. THERE ARE NO INCENTIVES FOR COMPANIES WITH EFFECTIVE ANTI-CORRUPTION PROGRAMMES.

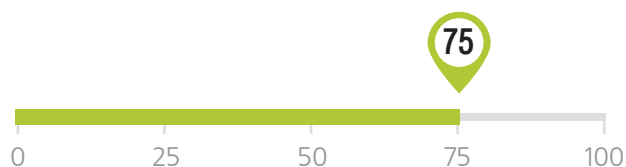
1.8.1 OPERATING ENVIRONMENT

Scoring question

To what extent do the country's public procurement processes ensure that contracts are awarded in a fair and impartial manner?

Public procurement is regulated by stand-alone legislation (PPLM) and by other laws such as the Constitution of Mongolia, Civil Code, Law on Information Transparency and Right to Obtain Information, Glass Account Law and Budget Law.

PPLM mandates the disclosure of procurement information. The Law on Information Transparency defines the state's obligations with respect to



transparency in its procurement of goods and services. Bid invitations and documents are available in an easily accessible manner, as well as information on the selection of the winning bidder¹. The procuring entity announces its tender invitation through nationwide daily newspapers and other mass media, as well as on the website www.tender.gov.mn. The information on planning, bidding, evaluation, implementation and monitoring can be found on the following websites: www.tender.gov.mn; www.shilendans.gov.mn and www.butgel.gov.mn. Moreover, the government has issued an order to regulate the planning, bidding and evaluation in a timely manner on www.tender.gov.mn². As a result, the Ministry of Education, Culture, Science and Sports announced that all the Ministry's procurement would be conducted via the e-procurement system by 2018³.

The legal administration processes limit the discretion of both the procurement committee and bidders, with a clear chain of responsibility for reporting and monitoring. All the bids above the defined thresholds are organized by the Evaluation Committee of each relevant institution⁴.

The standard contract approved by the MoF (2013) requires public officials participating in the process to comply with anti-corruption obligations⁵. Legislation prohibits those who have been convicted by court on a corruption charge during the previous 3 years from being bidders⁶.

PPLM favours an open-type tender procedure. The law also provides for the possibility of using limited tender selection, the comparison method and direct contracting. However, the use of such procurement methods is conditioned by a limited number of circumstances. In 2015, around 77% of all public procurement was conducted by open procurement procedure⁷.

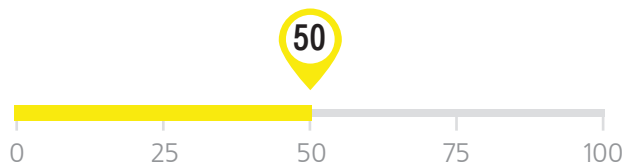
There are no Integrity Pacts signed in public procurement in Mongolia.

1.8.2. INTEGRITY OF CONTRACTING AUTHORITIES

Scoring question

To what extent do the country's contracting authorities and their employees adhere to internationally recognized standards of integrity and ethical behaviour?

Mongolia's public procurement system is semi-decentralized and most high-value procurements are conducted by the General Procurement Agency (GPA), line ministries and other public institutions. The Code of Conduct for GPA employees was approved in 2017 in accordance with ACL, COI and other related laws. The GPA Ethical Committee was established to oversee the implementation of the Code of Conduct: this committee is fully authorized to proceed with legislation, receive complaints, deliver decisions on



the imposition of certain disciplinary sanctions and, when required, transfer a case to a law enforcement agency⁸.

In 2017, the IAAC and the MoF jointly organized trainings for GPA staff on public disclosure of failed procurement contracts. Together with the GPA, training was organized on effective methods of implementation of e-procurement and the black-listing of failed contractors⁹. In 2012, more than 170 employees were involved in four training sessions organized by the GPA in cooperation with the IAAC. The National Programme for Development of Purchasing Human Resources 2013-16 emphasized transparency in state purchase under citizen and public supervision, with the objective of eliminating tender conflicts, corruption and bribery¹⁰.

Since 2014, the GPA has randomly selected NGO representatives for evaluation committees: they sign

a contract with the GPA and commit to abstention from conflicts of interest. Additionally, citizens and NGOs are selected through competitive bidding to monitor progress and/or performance, evaluation and auditing of the activities of a procuring entity¹¹. The GPA’s scope of procurement has been gradually diminishing, with procurement increasingly returning to line ministries where control is weaker; vested interests are stronger; and, as a result, undue interference is more likely. The head of GPA reported in 2017 that the organization was in charge of only 0.7% of public procurement, with the remaining 99.3% being conducted directly by ministries, agencies, local administration and stated-owned companies¹².

To ensure a certain degree of procedural fairness, an internal audit is undertaken biannually by officers in charge of overseeing the legal and supervision divisions of the GPA¹³.

There are no established safe mechanisms for anonymous whistleblowers and the current legal environment does not provide any protection.

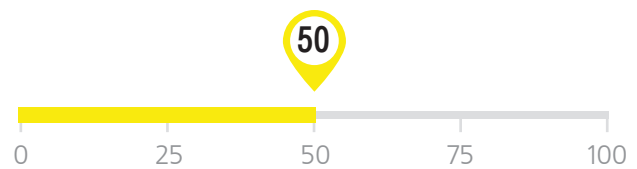
Under the new amended CC of 2017, abuse of power is criminalized without requiring material damage¹⁴: in other words, any discretionary procurement decision or action in favour of a related party involving conflict of interest would be considered as a crime.

No information is available on remuneration of procurement positions: the Procedure on Evaluation Committee approved by the MoF mentions hourly remuneration for private sector entities and NGOs¹⁵. A civil society interviewee mentioned that many civil society representatives complain about the absence of remuneration (no data). Their concern also relates to the lack of control mechanisms to prevent pocket NGOs. NGOs are required by law to have codes of conduct¹⁶. It would be preferable if a license were given to NGOs meeting this requirement. Evaluation committee members work in a locked room; are prohibited from removing documents from that room; and have to check 3 or 4 companies’ multiple-page tender documents a day. There is no standard workload, therefore the quality of monitoring maybe suffering¹⁷.

1.8.3 EXTERNAL SAFEGUARDS

Scoring question

To what extent do the country’s public procurement processes include external safeguards for detecting and reporting violations?



MoF state inspectors are in charge of external monitoring of decisions by evaluation committees.. PPLM fully covers the responsibilities and authorities of a State Inspector. Audit reports are submitted in a timely manner. The State procurement inspector is entitled to inspect the procurement process; put violators on the blacklist; make recommendations on the dismissal of public officers for violations;

1.8 PROCUREMENT

and terminate contracts which contain violations¹⁸. However, there is no information publicly available on state inspectors, audits and follow-up measures related to public procurement.

The MoF, IAAC and AFCCP directly deal with procurement-related complaints: the MoF reports monthly on these. As of February 2018, there were 76 procurement appeals under investigation by the ministry. The law ensures clear appeal processes for aggrieved bidders. The complaint should be received in writing within 5 days of knowledge of the violation. The content of the complaint should be made known to all parties involved¹⁹. Statistics for 2013-2015 show that the majority of complaints were addressed to the MoF (156 out of a total 187); 17 to AFCCP; 4 to the IAAC; and 10 to the Courts²⁰.

However inherent weaknesses are that the complaint mechanisms are not independent of the government; and the appeal process takes a considerable amount

of time and has to go through a large number of bodies for review. The MoF is not given proper inspection powers; and the complaint procedure is a side action, instead of being an integral part of the comprehensive e-procurement system²¹.

For voluntary disclosure, companies or involved parties can use the CC mitigation incentives²² mentioned in 1.1.2.

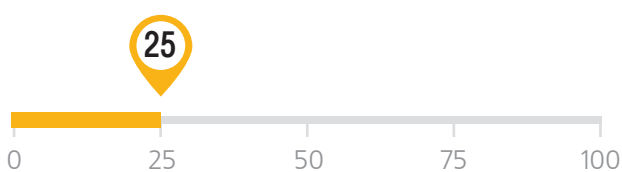
In most instances, the participation of civil society organizations is guaranteed. The evaluation committee consists of a minimum of two representatives from professional associations, private sector or NGOs. Locally, a citizen from the Citizens` Representative Khural (Meeting) and an official from the Office of the Governor are appointed as members of the evaluation committee²³. Local purchase with value of up to US\$8,300 (MNT 20 million) must be undertaken with community participation²⁴.

1.8.4 REGULATIONS FOR THE PRIVATE SECTOR

Scoring question

To what extent do the country's public procurement processes require integrity measures in bidding entities?

The PPLM does not require the implementation of code of conduct criteria for preparing general requirements. The MoF's standard for bidding documents²⁵ does not require companies to submit



their codes of conduct or any other policies reflecting their commitment to strict anti-corruption policies. Bidders are considered to be ineligible if they have been convicted by the courts on a corruption offence as specified in the Anti-corruption Law, Law on Competition and CC within the previous 3 years.

The ownership structure is not clear in the majority of companies and public disclosure of company ownership is not required by existing legislation. Disclosure of beneficial owners, including the ultimate beneficiary of associated or parent companies, is only

available to regulators. The requirement to have this in place is not imposed in tender requirements.

Provisions for sanctions against companies or their representatives are in place. However, the fines imposed by law for breaching such provisions are inadequate in comparison to losses sustained by the country's economy or particular purchasing institutions. The debarment system and its implementation is vague and does not complement criminal penalties for corruption and other prohibited practices²⁵. Information on debarred companies should be placed in the public domain. The GPA reports on only three companies blacklisted in the previous three years, a status which lasts for three years²⁷.

Settlement mechanisms and procedures are in place, with a set timeframe for compiling complaints and

official feedback. The signing of the contract is postponed until the conflict is resolved, unless otherwise decided upon by the procuring organization²⁷. Complaints on limitation of competition can be filed against the procuring organization to the AFCCP. The AFCCP handles complaints prior to opening the bid. AFCCP and MoF procedures can be instigated only for contracts which have not yet been signed²⁹.

There are no provisions or procedures offering genuine incentives for companies which have effective anti-corruption programmes in place. The margin of preference offered in the PPLM does not mention codes of ethics, anti-corruption programmes or companies' proven commitment to fighting corruption externally and/or internally³⁰.

1 PPLM, 2005, Article 21

2 The Government of Mongolia, Resolution No.337 of 2017. December 13, 2017

3 Ministry of Education, Culture Science and Sports, <https://meccs.gov.mn/category/83/>

4 PPLM, 2005, Article 8, Article 47

5 Minister of Finance, Order No.213 of 2013, September 25, 2013

6 PPLM, 2005, Provision 14.1.7

7 MoF, "Annual report on public officials, 2015

8 PCSP, Code of Conduct, Article 5. <http://www.pcsp.gov.mn/uploads/388ef34e70edd5e21e66a27eaf3ac003.pdf>

9 IAAC, "Annual Report-2017", February 14, 2018. <http://www.iaac.mn/news/awligatai-temtsekh-gazriin-2sh17-onii-uil-ajillagaanii-towch-tailan?menu=59>

10 The Parliament Resolution No.89 of 2013, March 07

11 PPLM, 2005, Provision 47.4

12 Undesnii Shuudan, "Interview of Head of GPA", January 16, 2018 <http://www.undesniishuudan.mn/content/read/155138.htm>

13 OECD, "Anti-Corruption Reforms in Mongolia", 2015 <http://www.oecd.org/daf/anti-bribery/Mongolia-Round-3-Monitoring-Report-ENG.pdf>

14 CC, 2015, Provision 2.1 (revised version)

15 MoF, "Evaluation Committee regulation procedure", 2014 <https://www.tender.gov.mn/mn/rules/dtl/1485253196235/3>

16 ACL, 2005, Provision 6.1.5

17 Expert Interview 7

18 PPLM, 2005, Article 52

19 PPLM, 2005, Article 54

20 OECD, "Anti-Corruption Reforms in Mongolia", 2015 <http://www.oecd.org/daf/anti-bribery/Mongolia-Round-3-Monitoring-Report-ENG.pdf>

21 MoF, PAGE, UNEP, "Review of the public procurement legal framework of Mongolia, 2016" http://www.un-page.org/files/public/mongolia_legalreview_final_1.pdf

22 CC, 2015, Provision 22.5 (revised version)

23 PPLM, 2005, Provision 47.4

24 PPML, 2005, Provision 7.2

25 The Minister of Mongolia, Resolution No.232/216 of 2012

26 OECD, "Anti-Corruption Reforms in Mongolia", 2015. <http://www.oecd.org/daf/anti-bribery/Mongolia-Round-3-Monitoring-Report-ENG.pdf>

27 Public Procurement System, "Black list of entities" 2018 <https://www.tender.gov.mn/mn/bidder/blacklist>

28 PPLM, 2005, Article 54

29 PPLM, 2005, Article 55, Article 56

30 PPLM, 2005, Article 10

1.9 TAXES AND CUSTOMS

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THE MAIN IDENTIFIED OBSTACLE FACED BY COMPANIES IS BUREAUCRACY WITHIN THE GENERAL AGENCY FOR SPECIALIZED INSPECTION. ALTHOUGH THE INTERNAL AUDIT CONTROL BODIES OF TAX AND CUSTOMS AUTHORITIES MAY BE EFFICIENT, SUFFICIENT DATA ON OUTCOMES AND OUTREACH ARE NOT VISIBLE IN THEIR REPORTS. THE MOF ANNUALLY CONDUCTS MONITORING AND EVALUATION OF TAX AUTHORITIES. THE CC PROVIDES LEGAL INCENTIVES FOR VOLUNTARY CONFESSION. THE ACTUAL APPLICATION OF THE NEW PROVISION IN RELATION TO TAX AND CUSTOMS IS UNKNOWN.

1.9.1 OPERATING ENVIRONMENT

Scoring question

Are the country's tax and custom administrations utilizing processes in accordance with internationally recognized standards?

Mongolia has a comprehensive tax and customs legal framework. Tax and customs reporting, payment and collection processes are standardized by their organic laws and related legislation. The General Taxation Law describes in detail the types of taxes, taxable incomes, principles on tax discounts and exemptions, rights and duties of taxpayers and the processes for tax complaints and appeal mechanisms. The Law on Customs Tariff and Duties provides separate

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0 25 50 75 100

regulations on the declaration of customs duties and procedures. In other words, the overall system is transparent.

The transfer of tax reporting to online has limited in-person interaction between tax payers and tax officials. Even in cases of minor violations, such as discrepancy and late submissions, the interaction takes place online <https://e-tax.mta.mn/>. Complaints are dealt with within 24 hours. Companies face only some obstacles with district or local tax authorities due to the lower capacity of tax inspectors in such instances¹.

Customs has an integrated database which is linked not only to border customs offices but also to regional tax offices. The customs authority has introduced customs filing and declaration systems at cross-border customs offices. The current website

of the organization provides full information on the process www.customs.gov.mn/en/. After the 2012 amendments the Law on Customs now requires only four documents. Foreign trade product categories are set out in three languages on the website: www.customs.gov.mn/btkus/. Tax and customs payments can be made over the internet and via mobile phones. However, more than 50% of the 1,573 companies surveyed reported finding export/import documents challenging². The main obstacle identified is the bureaucracy of the General Agency for Specialized Inspection (GASI), which is viewed as having excessive discretionary powers, and then the customs agency.

The tax and customs authorities report frequently on revenue collection and annually identify the exemplary tax payers. Information on all major tax legislation, related changes, decisions and procedures is publicly available on the websites of the tax authority (www.mta.mn), CA (www.ecustoms.mn) and the Ministry of Finance (www.mof.gov.mn) as well as being accessible to taxpayers through newspapers and official government publications such as “State Information” brochure.

In 2008 and 2015 Mongolia introduced tax amnesty programmes to regulate issues arising from the one-time exemption of some entities from tax

and social insurance debts, payments, criminal and administrative liability and criminal sentences³.

Table 4:
Statistics of revealed income and tax amnesties, MNT

| Year | Revealed income | Tax amnestied |
|------|-----------------|---------------|
| 2008 | 4.5 trillion | 431.6 billion |
| 2015 | 34.7 trillion | 8.3 trillion |

Source: Mongol Advocates, 2016⁴

Tax losses in the infrastructure and extractive sectors can be carried forward and deducted from taxable income for from four to eight fiscal years following that in which the loss was incurred. Specific royalty regimes apply to extractive industries. A limited number of incentives are available for businesses operating in the agricultural and manufacturing sectors. The Investment Law allows the stabilization of the tax environment and the possibility of entering into an investment agreement with the Government of Mongolia for qualifying projects. A tax stabilization certificate can be used to stabilize the percentage rates of corporate income tax, customs duty, value-added tax and royalties for up to 27 years.

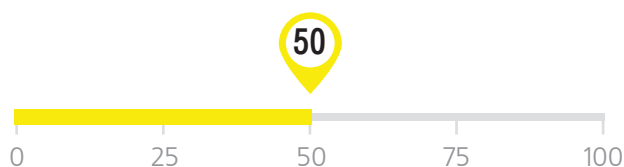
1.9.2 INTEGRITY OF TAX ADMINISTRATION AUTHORITIES

Scoring question

Are the country's tax and custom administrations and its employees committed to internationally recognized standards of integrity and ethical behaviour?

The code of conduct for tax and customs employees explicitly prohibits active and passive bribery, including intermediation and conflict of interest. Hospitality from taxpayers should be reported to the authority for its permission, including hospitality from international organizations and trips abroad. Immediate reporting of bribery attempts is implied⁵ and the ethics committee is in charge of monitoring and enforcement⁶. The 2009 Customs Officer Code of Conduct applies to conflicts of interest; provides for gifts above the threshold to be reported in the asset income statements; and prohibits abuse of power. Employees receive regular training on anti-corruption policies⁷. In 2016, the IAAC developed guidelines for working with the overall tax and customs sector on advocacy. Under the scope of these guidelines, a total of 272 provincial and 582 Ulaanbaatar city tax officials have participated in 30 days online and 3 days classroom training by the IAAC⁸.

The internal control units of the tax and customs authorities are operational. The tax authority reports various sanctions for violations by employees: reprimands for 15 cases; fines in 31 cases; and



termination of the contracts of 4 employees, as of the first quarter of 2017. The Ethics Committee procedure has been updated⁹. In 2017, the tax authority established the Risk Committee to handle its risk management, while in 2015 the Customs Authority established a Violation and Legal Unit¹⁰. All customs offices have an official responsible for violations. Although the internal audit control bodies may be efficient, sufficient data on outcomes and outreach are not available in their reports. The corruption perception of businesses for tax and customs authorities still tends to be high.

Penalties in the customs and tax administration form a part of those for all public servants involved in corruption: there are no specific provisions for this group. Penalties include disciplinary actions, salary reduction, dismissal, demotion and warnings¹¹. In general, the sanctions under the Law on Administrative Offences and the CC on anti-corruption are also applicable to private sector individuals.

Whistleblowers are not protected by law. No assurance of anonymity is provided by the existing tax and customs procedures. The law ensures the monthly remuneration of tax officers based on merit, with the provision that the monthly remuneration should not exceed the monthly salary of an inspector¹². Customs officers are eligible for quarterly remuneration which is approved by the government. For exceptionally high volumes or vital cases uncovering organized, long-term violations, the remuneration is decided by the government decree¹³.

1.9.3

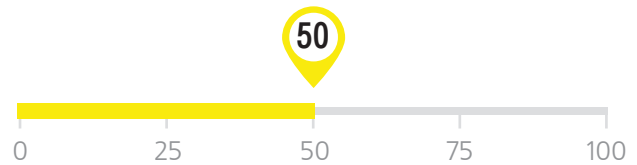
EXTERNAL SAFEGUARDS

Scoring question

Are the country's tax and revenue collection processes integrating external safeguards for detecting and reporting violations?

A single taxpayer number is used to identify taxpayers¹⁴; thus, tax and customs require a single ID number. The Law on Electronic Signatures requires fully or partially state-owned companies to use only digital signatures to transfer and transit electronic documents¹⁵.

The MoF, the MNAO and the IAAC ensure the external control and audit functions of tax and customs authorities. The MoF annually conducts monitoring and evaluation of tax authorities. The



2016 assessment of the implementation of the tax authority's annual plan was graded B, or 89.3%. General information on tax and customs is included in the reports of the Audit Office, the IAAC and MoF. Both tax and customs provide channels to report complaints: follow-up actions are reported to the MoF. The independent channels include telephone hotlines, email and written submissions.

The new CC enacted in May 2017 provides legal incentives for voluntary confessions. The briber can be released from sanctions. Tender contract is not cancelled even though bribery occurred; the company or person will not pay additional money to customs even when bribery or other violations are proven as they made a voluntary report about the corruption¹⁶. However, the actual application of the new provision in relation to tax and customs remains unknown.

¹ Expert Interview 12

² MNCCI, "Mongolian Business Environment survey 2017", 2017 https://www.mongolchamber.mn/bundles/uploads/MNCCI_2017_Business_Orchinii_Sudalgaa_final_website.pdf

³ Parliament of Mongolia, "Minister's Time – MoF Ms. Bolor B. and head of GDT, February 25, 2016 <http://www.zaluu.com/read/401d828a>

⁴ Mongol Advocates, "Law on Promotion of Economic Transparency", 2015 <http://advocate.mn/news/119/single/145>

⁵ GDT, "Code of Ethics of tax employee", Provision 2.5.7, 2002

⁶ The Head of GDT, Order No.175 of 2002

⁷ GDT, "1st quarter report of 2017", 2018 <http://www.mta.mn/app/f?id=6061&tid=11655>

⁸ GDT, "Evaluation of Anti-Corruption plan-2017", 2018 <http://www.mta.mn/app/f?id=6061&tid=11655>

⁹ GDT, "1st quarter report of 2017", 2018 <http://www.mta.mn/app/f?id=6061&tid=11655>

¹⁰ MCGA, Decree A/48 <http://www.customs.gov.mn/en/>

¹¹ LoT, 2008, Article 73 (revised version); LoCust, 2008, Article 284 (revised version)

¹² LoT, 2008, Provision 38.3 (revised version)

¹³ LoCust, 2008, Article 280 (revised version)

¹⁴ GDT, Order Annex to Order No.527 of 2009, November 24, 2009

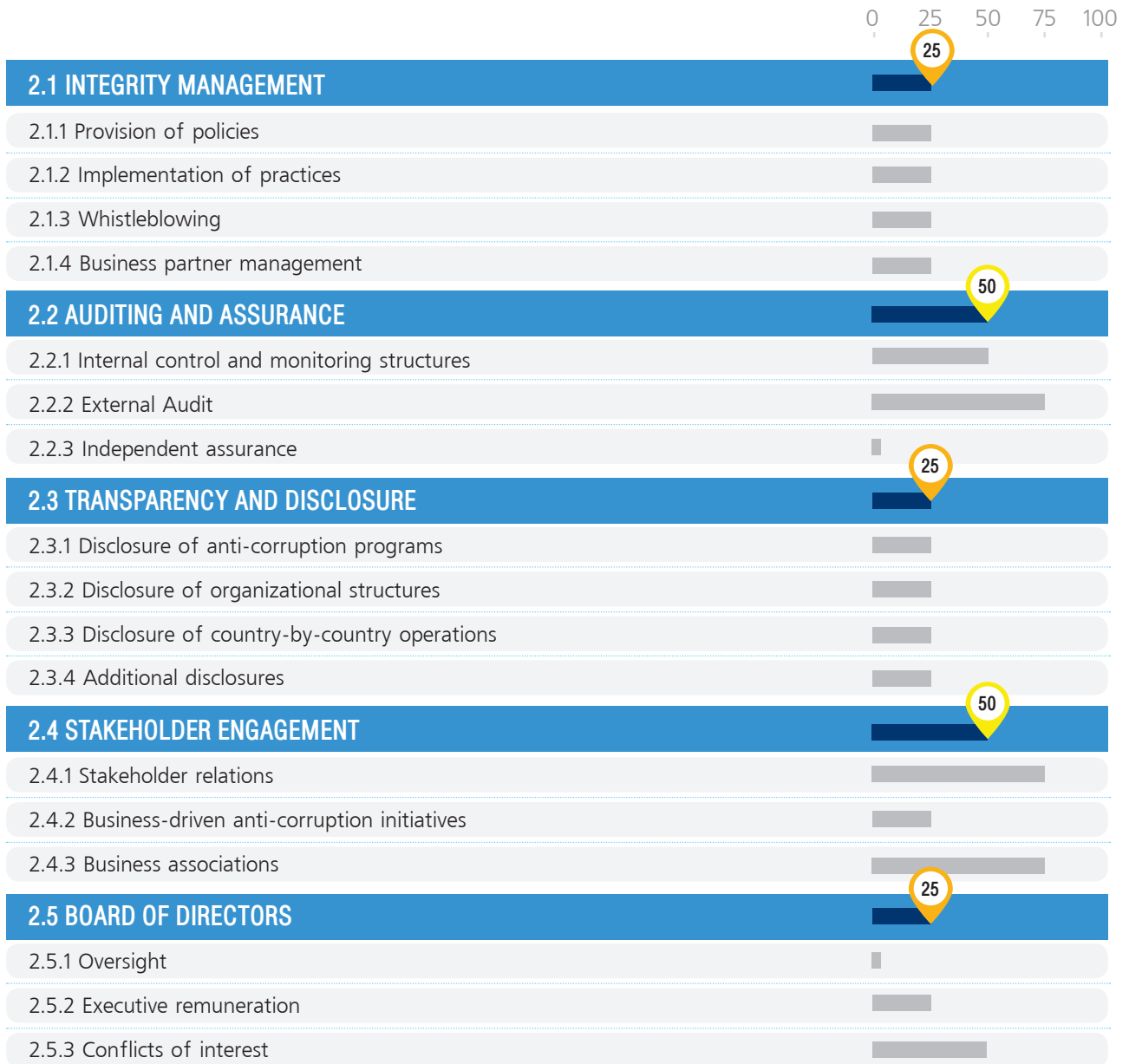
¹⁵ LoES, 2011, Provision 6.3

¹⁶ CC, 2015, Article 22 (revised version)



BUSINESS SECTOR ASSESSMENT

BUSINESS SECTOR ASSESSMENT



0 – NOT AT ALL

25 – TO A LIMITED EXTENT

50 – TO SOME EXTENT

75 – LARGELY

100 – FULLY

2.1 INTEGRITY MANAGEMENT



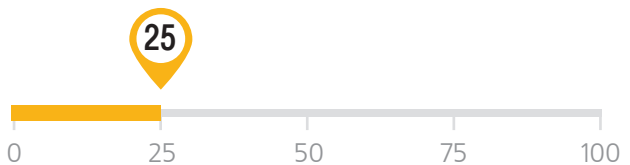
THE EXISTENCE OF PROGRAMMES/POLICIES IS RARE. THE EXISTING PROGRAMMES LACK DETAILED COMPREHENSIVE COVERAGE OF ALL ASPECTS OF POTENTIAL CORRUPTION RISKS, WITH NO REFLECTION OF BUSINESS SPECIFICS. ONLY A FEW FOREIGN INVESTMENT COMPANIES REQUIRE THEIR SUPPLIERS AND CONTRACTORS TO ADHERE TO THEIR OWN CODES OF CONDUCT. THE PERCENTAGE OF COMPANIES REVIEWING AND EVALUATING THEIR PROGRAMMES IS EXTREMELY LOW. MINIMAL KNOWLEDGE OF WHISTLEBLOWER CULTURE RESULTS IN LITTLE OR NO PROTECTION FOR INFORMANTS.

2.1.1 PROVISION OF POLICIES

Scoring question

To what extent do companies establish formal policies to counter corruption?

In Mongolia, SMEs make up 98% of all enterprises, three-quarters of which are microenterprises¹. A STOPP Survey was conducted among 330 CEOs of completely Mongolian-owned companies, showing that 78% of them do not have any written policy or ruling on dealing with corruption within the organization². Only a few top companies have visible and distinct anti-corruption policies. Out of 100 companies, only 15 companies have policies which include an anti-corruption element (indicator 2.3.1). State-owned companies are required to publicly



disclose their anti-corruption programmes and their implementation, with the latter being reported annually to the IAAC³. It should be noted that state-owned companies' existing programmes tend to use uniform formats, leading to a lack of reflection of business-specific issues.

Foreign-invested companies such as Oyu Tolgoi LLC (partially state-owned company) and MSM Group LLC have codes of conduct emphasizing zero tolerance of corruption⁴.

As mentioned previously, the existence of programmes/policies is rare and they tend to lack detailed comprehensive coverage of all aspects of potential corruption risks. Conflict of interest is well understood by the majority of companies as it is regulated by law. However, out of eight state-owned

companies, only four have programmes which refer to conflict of interest. Three companies indicated a plan to create a list of positions which have a high-risk of bribery, but there is no follow-up or further information on the topic.

Gifts and hospitality expenses are topics of debate. The acceptance of these is very much a cultural norm and none of the eight state-owned companies refer to this issue in their programmes. Only foreign-invested companies and banks tend to regard such gestures as violations.

Political contributions, money laundering and collusion are regulated by legislation, but no programmes/policies make mention of these crimes. Charitable contributions and sponsorships are not regulated by codes of conduct or anti-corruption policies. Additionally the complete absence of lobbying

regulations means that companies do not have to report on such activities. The issue of political contributions by companies is addressed only on the Glass Party website www.shilennam.mn.

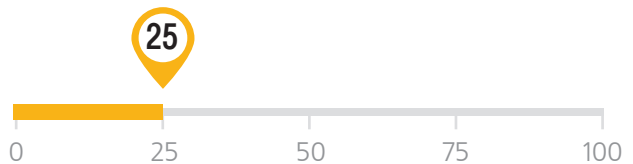
Only state-owned companies and a few private companies make their policies visible to the public. Two companies belonging to one corporate group in the TOP-100 list reported officially in writing on having anti-corruption programmes, but only for internal use (Shunkhlai LLC). Only foreign-invested companies require their suppliers and contractors to adhere to their own codes of conduct. Oyu Tolgoi LLC has a separate code of conduct for their suppliers and contractors. Adherence to policies is usually stated as mandatory for all employees; however, the scope and level of adherence is vague, in particular compliance by top executives and board members⁵.

2.1.2 IMPLEMENTATION OF PRACTICES

Scoring question

To what extent do companies have anti-corruption programmes in place?

State-owned companies disclose their anti-corruption programmes and annually report to the IAAC on their implementation. The programmes follow the National Anti-Corruption Programme format, and therefore they tend to be generic rather than reflecting the specifics of their particular business risks, circumstances and culture. An exception is Oyu Tolgoi LLC's specific code of conduct for suppliers



and procurement department staff which reflects the specifics of their business risks and circumstances, including suppliers, contractors and business partners.

The absence of publicly available programmes results in difficulty in making assumptions on monitoring. There is no information on whether senior executives or owners are directly involved in implementation. Out of the 100 companies surveyed, only 8 disclosed such programmes, of which 4 have appointed individuals to specific positions to ensure consistency and implementation. These positions include heads of HR, administration or legal departments. The remaining 4 companies do not specify a person in charge, and no company has assigned duties to the CEO or shareholders⁶.

2.1 INTEGRITY MANAGEMENT

Apart from XacBank and Oyu Tolgoi LLC, no private companies report having risk-based programmes covering a broad range of anti-corruption areas. XacBank has adopted an e-learning tool in their internal HR on-board procedure: this is a training module covering international concepts of corruption⁷.

As such practices are still new, there are no well-established patterns and methods for the comprehensive implementation of such programmes. If there is an existing policy on anti-corruption, domestic companies tend to apply it to all employees. However, legislation is vague on compliance by board members and shareholders with such programmes and/or policies. Therefore, it can be assumed that compliance may not directly include these two groups.

Companies tend to deal with violations internally. Thus, they do not provide any information on resulting sanctions applied, although it can be assumed that they follow the labour regulations: i.e. a fine amounting to 20% of monthly salary, deducted for three months in aggravated cases, with the severest punishment being dismissal.

The percentage of companies reviewing and evaluating their programmes is extremely low: only 1 out of 100 companies (1%) reported doing this⁸.

There is no information on companies filing complaints with the court in relation to their employees, board members or shareholders for corruption within the company: they prefer to deal with such issues internally.

2.1.3 WHISTLEBLOWING

Scoring question

To what extent do companies provide secure and accessible channels to raise concerns and report violations (whistleblowing) in confidence and without risk of reprisal?

There is no legal framework for the protection of whistleblowers. Companies use traditional channels as complaint mechanisms: boxes, hotlines, complaint/ethics committees etc. The security, confidentiality and accessibility of such channels for all stakeholders remain unclear due to the lack of details. Companies



may have internally operated channels, but neglect to make these publicly known.

In the survey of TOP-100 companies, only nine disclosed information on the availability of specific channels and only one multinational company reported having dedicated software for whistleblowing which ensures the total confidentiality of the informant and thus protection from retaliation.

The absence of national whistleblower protection regulations; the lack of publicly available information on companies' internal affairs; and minimal knowledge of whistleblower culture all combine to provide little or no protection for informants. No information is publicly available on the successful/unsuccessful protection of informants. The National Labour Union statistics do not specify whistleblowing cases. Only

three companies (MCS Holding LLC, XacBank and Oyu Tolgoi LLC) in the survey specifically prohibit retaliation in their code of conduct⁹.

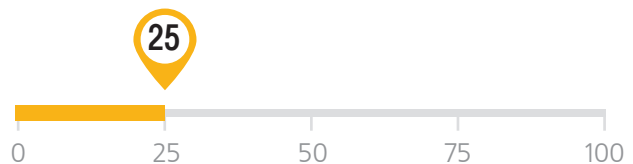
Company mechanisms and processes to handle reports from a whistleblower/informant are unclear, referring only to Ethics Committees or Complaints Committees as instruments for their evaluation.

In practice such committees are chaired by HR department personnel or corporate legal advisors who may not have complete authority or may be under the influence of senior executives. Banks reportedly deal with such information through their internal audit units which report directly to the BOD. The time frame for feedback and reporting responsibilities fully lies with the companies' internal procedures.

2.1.4 BUSINESS PARTNER MANAGEMENT

Scoring question

To what extent do companies apply their anti-corruption programme to relevant business partners?



Companies are becoming more conscious of their subsidiaries' anti-corruption policies as they feel the need to monitor through policies with little or no direct involvement. In TRAC survey a group company applied all its anti-corruption policies and codes of conduct to its five affiliated businesses. As 98% of the companies in Mongolia are SMEs, there is a very small sample that can be used to define tendencies among corporate groups.

The number of existing and/or disclosed policies and programmes is very low, with the quality of the

policies requiring improvement. Therefore, there is low expectation of any active attempts to influence or impose an equivalent programme on their significant business investments, not to mention significant business relations.

Corporate due diligence is becoming a much more common practice, with the task of assessing potential new business relationships, including mergers, acquisitions and investments, being outsourced to legal and audit firms.

Fully consolidated subsidiaries are required to submit their financial statements to the head company for consolidation¹⁰.

The secretary of the BOD has the duty of providing primary bookkeeping records and other information when required by a shareholder. The documents can be copies, unless stated otherwise in the law prohibiting public disclosure¹¹.

1 The World Bank, Policy Workshop for Development of SME and Venture Business in Mongolia discussion, 2018
<https://www.adb.org/news/events/policy-workshop-development-sme-and-venture-business-mongolia>

2 The Asia Foundation, Study of Private Sector Perceptions of Corruption 2017, 2017
https://asiafoundation.org/wp-content/uploads/2018/02/Study-of-Private-Sector-Perceptions-of-Corruption_STOPP-2017_Eng.pdf

3 ACL, 2006, Provision 6.1.14

4 TI-M,BICA Mongolia, TRAC analysis 2.3.1, 2018

5 TI-M,BICA Mongolia, TRAC analysis 2.3.1, 2018

6 TI-M,BICA Mongolia, TRAC analysis 2.3.1, 2018

7 Expert Interview 8

8 TI-M,BICA Mongolia, TRAC analysis 2.3.1, 2018

9 TI-M,BICA Mongolia, TRAC analysis 2.3.1, 2018

10 Company Law, 2011, Provision 6.4 (revised version)

11 Company Law, 2011, Provision 98.2 (revised version)

2.2 AUDITING AND ASSURANCE

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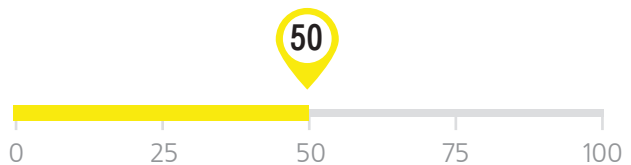
AN INTERNAL AUDIT FUNCTION IS NOT A COMMON PRACTICE AMONG COMPANIES. ALL LISTED COMPANIES, BANKS AND COMPANIES ABOVE THE THRESHOLD ARE REQUIRED TO BE AUDITED EXTERNALLY BY LICENSED AUDITORS OR AUDITING FIRMS. THERE ARE NO ASSURANCE AUDIT REPORTS ON INTERNAL AUDIT. THE LAW ON AUDITING TREATS BOTH AUDIT SERVICES AND NON-AUDITING SERVICES AS "AUDITING OPERATIONS". WITH THE EXCEPTION OF BANKS, THERE IS NO REQUIREMENT FOR COMPANIES TO PUBLICLY DISCLOSE THEIR AUDITED FINANCIAL STATEMENTS AND AUDITORS' OPINIONS. IT IS NOT POSSIBLE TO VERIFY THE IMPLEMENTATION OF IFRS REQUIREMENTS.

2.2.1 INTERNAL CONTROL AND MONITORING STRUCTURES

Scoring question

To what extent do companies establish internal control and monitoring structures that seek to detect and prevent corruption?

The Accounting Law requires all entities to keep accurate books and records according to the model approved by the MoF's minister's order¹. Business entities should keep accounting documents and financial statements for not less than ten years unless otherwise stated in the Law on Archives². A joint stock company must submit its financial statements to the FRC and the MSE along with additional information



required by the foregoing organizations within the fixed date and inform the public accordingly³.

Article 19 of the LoA covers internal control for accounting. Accordingly, companies develop internal audit policies for approval. In addition, companies are recommended and banks are required to establish an internal audit function. However, having an internal audit function is not a common practice among Mongolian companies: the high cost, lack of expertise and low awareness of its significance combine to delay companies' adoption of the practice. The Company Law allows for an extraordinary audit of the financial state of a company with the authority of the board, its audit committee and/or any shareholder holding above 10% of shares⁴.

The National Internal Auditors Association is a branch of the USA IIA Global. The organization promotes the importance of internal control and audit; supports capacity development; and certifies auditors. The evaluation report on organizations' internal audit units is not available publicly.

All listed companies, banks and companies above the stated threshold are required to be audited externally every year by licensed auditors or auditing firms. Several interviewees mentioned that because of the cost involved, small scale companies are audited at a basic level: in other words, no assurance audit on function or quality of the internal audit is conducted.

Currently no assurance audit reports on internal audit are available.

It is common for corporations to have a Fiscal Committee to oversee the integrity of financial statements. The Company Law reflects fiscal control within the audit committee next to the BODs⁵.

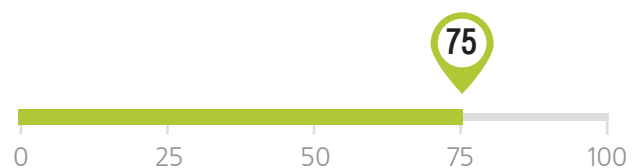
Accounting Law requires the CEO and the Head of Finance to certify by signature and stamp financial statements when presenting them to the BOD. The law also states that the executive management of a company is responsible for the reliability and correctness of the company's accounting books and financial statements⁶.

2.2.2. EXTERNAL AUDIT

Scoring question

To what extent do companies subject their financial reporting to external audits?

An annual external audit is required for all publicly traded companies; companies applying for stock exchange registration; business entities with capital assets amounting to or above US\$20,830 (MNT 50 million); business entities that plan to sell all their capital to public bidding; fully or partially state-owned entities; foreign invested business entities; banks; financial and insurance organizations; securities companies carrying out brokerage and dealer activities; and companies running investment funds⁷. The compliance of audit firms with existing standards



and regulations is monitored by the MoF and the FRC. All auditors are licensed by the MonICPA.

Audit firms must be licensed by the MoF in order to provide audit and assurance services. In addition, they have to be registered with the FRC to be able to audit insurance companies and listed/to be listed companies. State-owned companies are audited by the National State Audit Office⁸.

Auditing Law requires rotating the company's external audit service at least every five years. Furthermore, it specifies a three-year cooling-off period after rotation⁹.

The law explicitly covers the principles of independence and conflict of interest of external auditors. It refers explicitly to company senior officers, influential shareholders and their families, but not to board members¹⁰.

2.2 AUDITING AND ASSURANCE

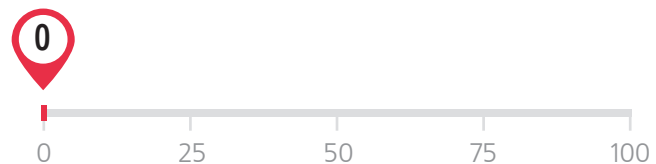
The law prohibits the annual audit of clients by an auditing firm which has already provided consultation on re-evaluation, tax preparation or accounting to the client in the same fiscal year¹. The law does not provide any limitation on audit firms performing non-auditing services. The Law on Auditing treats both audit services and non-auditing services as “auditing operations”. Many audit firms are currently in conflict of interest situations².

Apart from banks, there is no requirement for companies to publicly disclose their audited financial statements and auditors’ opinions. Most companies disclose only their balance sheets online. Therefore, it is not possible to verify whether companies are following IFRS requirements and whether financial statements have indeed been audited by an independent auditor¹³.

2.2.3 INDEPENDENT ASSURANCE

Scoring question

To what extent do companies undergo voluntary independent assurance on the design, implementation and/or effectiveness of the anti-corruption programme?



There is no information available on previously conducted or ongoing assurance on the design and/or implementation of corporate anti-corruption programmes. The majority of companies do not have such a programme and there is no legal requirement for private entities to do so. Therefore, it is unlikely that voluntary assurance is in place for such programmes. Some international audit firms, such as EY and PwC, offer various assurance services: however no information is available on the number of companies using such services.

¹ MoF Minister’s Order #347, December 05, 2017

² LoA, 2001, Provision 14.1 (revised version)

³ Company Law, 2011, Provision 95.2 (revised version)

⁴ Company Law, 2011, Provision 94.7 (revised version)

⁵ Company Law, 2011, Provision 81.4.2 (revised version)

⁶ LoA, 2001, Provision 10.5 (revised version)

⁷ Law on Auditing, 2015, Article 10 (revised version)

⁸ Law on Auditing, 2015, Article 4 (revised version), Company law, 2011, Provision 76.1.10 (revised version)

⁹ Law on Auditing, 2015, Article 8 (revised version)

¹⁰ Law on Auditing, 2015, Article 7 (revised version)

¹¹ Law on Auditing, 2015, Provision 1.10 (revised version)

¹² The World Bank, Report on the Observance of Standards and Codes (ROSC) Mongolia – Accounting and Auditing, 2008
<https://openknowledge.worldbank.org/bitstream/handle/10986/8055/465380ESWOP1081lia0rosclaa1mongolia.pdf?sequence=1&isAllowed=y>.

¹³ EBRD, Corporate Governance in Transition Economies Mongolia Country Report, p.5, 2017
<http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html>

2.3 TRANSPARENCY AND DISCLOSURE

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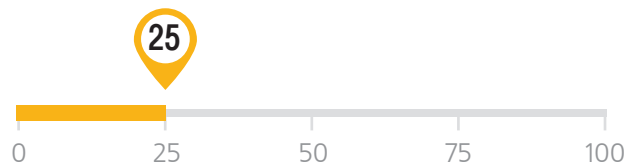
OUT OF THE 100 COMPANIES SURVEYED, 80 HAVE WEBSITES. ONLY 19 COMPANIES EXPRESS THEIR COMMITMENT TO COMPLY WITH ANTI-CORRUPTION LAWS AND LEGISLATION. ONLY 9 DISCLOSED INFORMATION ON AVAILABILITY OF SPECIFIC COMPLAINT CHANNELS. NO COMPANY DISCLOSED INFORMATION ON POLITICAL CONTRIBUTION POLICIES OR INFORMATION ON SUCH CONTRIBUTIONS. NO COMPANY NAMED THEIR BENEFICIAL OWNERS. ONLY 22 COMPANIES REPORTED INFORMATION ON THEIR SHAREHOLDERS; 22 REPORTED THEIR REVENUE/SALES AND CAPITAL EXPENDITURE PUBLICLY. NO COMPANY DISCLOSED INFORMATION ON THEIR LOBBYING ACTIVITIES.

2.3.1 DISCLOSURE OF ANTI-CORRUPTION PROGRAMMES

Scoring question

To what extent do companies report publicly on their anti-corruption programmes?

The assessment of the transparency and disclosure of corporate websites was conducted among TOP-100 companies¹ (2016). The TOP-100 companies are jointly selected every year by the Mongolian National Chamber of Commerce and Industry (MNCCI), MoF, General Taxation Authority, General Customs Office, Health and Social Insurance Office, FRC and National Statistic Committee. The data is explicitly based on information that is made publicly available on the



companies' websites: out of the 100 companies, 80 (or 80%) have websites. Internal information is not considered. The information was collected between January and April 2017. Collectively these companies pay more than 50% of the nation's tax revenues.

Only eight companies, all of which are state-owned enterprises, publicly disclosed their anti-corruption programmes in detail. A total of nineteen companies expressed their commitment to comply with anti-corruption laws and legislation. Twenty-nine have no leadership messages while the leadership messages of the other seventy-one do not specify support for anti-corruption activities.

Only two companies, namely XacBank and Oyu Tolgoi LLC, mention that their code of conduct/

2.3 TRANSPARENCY AND DISCLOSURE

anti-corruption policy explicitly applies to all employees, agents and other intermediaries, as well as contractors, subcontractors and suppliers. Nine domestic companies stated that their code of conduct and anti-corruption policies apply to all employees without covering other stakeholders. Five companies reported on the existence of regular trainings on anti-corruption and ethics. (three state-owned companies, Xacbank and MCS Group LLC).

Twelve companies mentioned appropriate and inappropriate gift-giving. Two foreign-invested companies (Oyu Tolgoi LLC partially state-owned, and MSM Group LLC) prohibit all gifts. Domestic companies tend to consider gifts as a part of good business relationships; indeed, one company's code of conduct explicitly states that the giving and receiving of gifts is acceptable when in the company's benefit/interests. Nine companies explicitly prohibit facilitation payments.

Three companies prohibit retaliation for reporting violations of the anti-corruption policy in their codes of conduct (MCS Holding LLC, XacBank, Oyu Tolgoi LLC). The companies may have internally operated

channels; however they make no information on such matters public. In our survey of 100 companies only nine disclosed information on the availability of specific channels. Only one company (Oyu Tolgoi LLC) has dedicated whistleblowing software, ensuring the total confidentiality of the informant. Eight out of nine companies have more traditional channels such as complaint boxes, telephone lines, written submissions to related committees (1 bank, 1 state-owned company and with the remaining 6 companies belonging to one corporate group).

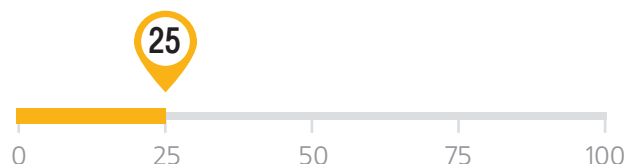
Out of 8 companies with anti-corruption programmes, 4 reported on regular monitoring of the programme, with heads of HR, legal or administration departments being assigned to these duties. The other 4 companies did not provide any information on monitoring. The law requires state-owned companies to report annually on the implementation of the programme to the IAAC.

14 companies from our list of TOP-100 made political contributions to the 2016 Parliamentary Election². However, no single company disclosed any information on policies on political contributions or related information on such contributions.

2.3.2 DISCLOSURE ON ORGANISATIONAL STRUCTURES

Scoring question

To what extent do companies report publicly on their organisational structure?



15% of companies disclosed their fully consolidated subsidiaries. By sector, this is evenly spread across agriculture, mining, communication, construction and trade. Two of these companies have foreign investment and the rest are domestic companies. 7 out of the 15 companies have information on percentages owned in their fully-consolidated subsidiaries. Although all

the fully-consolidated subsidiaries operate inside the country, this fact is not explicitly mentioned.

Two major corporate groups disclosed their non-fully consolidated subsidiaries (Tavan Bogd Group and Monnis International LLC). Only 1 of these 2 corporate groups reported their percentages in their non-fully consolidated subsidiaries, but the countries of incorporation and operation of its non-fully

consolidated subsidiaries are not explicitly disclosed.

None of the 100 companies provided the names of their beneficial owners. In total only 22 companies reported their shareholders' information. 7 banks in addition to 5 companies disclosed the percentages of each shareholder. The remaining 10 companies have very basic information on their shareholders.

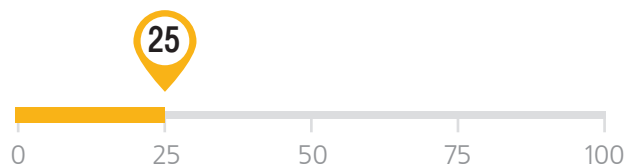
2.3.3 DISCLOSURE ON COUNTRY-BY-COUNTRY OPERATIONS

Scoring question

Do companies report publicly on their countries of operation?

Most of the 100 companies operate within Mongolia. Out of the total, 2 reported operations abroad (dedicated shops), only 1 of which disclosed financial information on these.

22 companies reported their revenue/sales and capital expenditure publicly, including 7 banks, 7 state-owned companies, 1 extractive industry and 4 trade/service companies.



16 companies provided information on pre-tax income, including 7 banks, 7 state-owned companies and 2 public companies.

22% disclosed income tax, out of which 3 explicitly disclosed their annual income tax without full financial statements.

7 companies disclosed the financial details of their community contribution. Only 2 financial reports provide detailed reports for each activity, such as community projects, programmes, scholarships, sponsorships and charitable work.

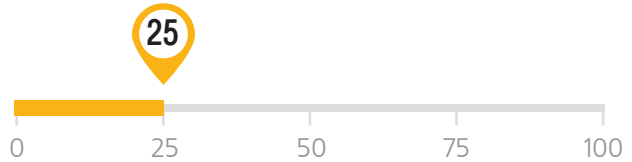
It should be noted that in some cases financial information is well-hidden behind several windows/clicks on the website: in one case the information was obtained from the minutes of a meeting.

2.3.4 ADDITIONAL DISCLOSURES

Scoring question

To what extent do companies publish information on charitable contributions, sponsorships and lobbying activities, both domestically and internationally (for example corporate reporting, or corporate social responsibility reports)?

Out of the 100 companies 22 disclosed their charitable contributions and sponsorships in the context of CSR. Out of these, only 7 companies tied this to their financial reports. However, it should be noted that some group companies included their tax payments as social contributions.



No company disclosed information on lobbying activities, which are not regulated in Mongolia. A total of 9 political parties and 17 individuals were registered to run in the 2016 parliamentary elections. In total they received donations from 448 private companies (with some companies being duplicated, giving donations to more than one political party): out of these 14 companies are from the TOP-100 list³.

The Law on Election requires public disclosure of political contributions by political parties after elections. Donations of above US\$208 (MNT 500,000) have to be disclosed⁴ and the information made available within 45 days after the holding of an election.

¹ MNCCI, TOP-100 companies of 2016, 2017 <https://www.mongolchamber.mn/mn/newsDetail/246>

² Glass Party, Election of State Great Khural - 2016, 2018 <http://shilennam.mn/efunding?year=uih&year=2016&party=&class=c>

³ Glass Party, Election of State Great Khural - 2016, 2018 <http://shilennam.mn/efunding?year=uih&year=2016&party=&class=c>

⁴ LoE, 2015, Provision 40.6

2.4 STAKEHOLDER ENGAGEMENT

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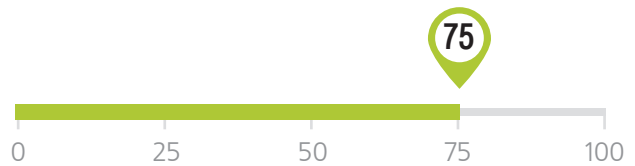
BUSINESS-DRIVEN ANTI-CORRUPTION INITIATIVES ARE RARE. DESPITE REPORTING LOW EFFECTIVENESS OF GOVERNMENT ANTI-CORRUPTION EFFORTS, COMPANIES ARE RELUCTANT TO INTRODUCE THEIR OWN INITIATIVES. THE NUMBER OF ACTIVE OR INFLUENTIAL ASSOCIATIONS IS INSUFFICIENT.

2.4.1 STAKEHOLDER RELATIONS

Scoring question

To what extent do businesses engage their own stakeholders (including shareholders) in ensuring sound corporate governance?

The Mongolian Employers' Federation (MONEF) established the Public Monitoring Sub Council of the IAAC with 21 councils nationwide. The councils are chaired by provincial governors. The council organizes joint initiatives with civil society to create a more humanitarian, compassionate, and fair business environment. The MONEF in cooperation with the American Chamber of Mongolia, Chinese Business Association of Mongolia and MNCCI has actively worked on tax, social insurance and permit legislation. The proposal for improvement was presented to the Ministry of Justice. Unfortunately, with the change of the government the initiative folded¹.



At present, the MoF is organizing consultation sessions with business sector representatives regarding tax law reforms and amendments at the MNCCI.

The Mongolian Law on Labor prohibits terminating an employment agreement for participation in negotiations to conclude a collective agreement, or for participation in a lawfully organized strike. Since 2008 the Mongolian National Labour Union has provided consultations and legal support directly to around 30,000 people on labour-related conflicts and issues. The main areas of conflict with employers include unjustified dismissal, transfers and salary cuts. The Union recently has attempted to amend the existing labour law to make it more in favour of employees in terms of dismissal. However, the proposal was rejected by parliament, as MPs considered the existing regulations to be strong enough to protect employees' rights².

MONEF has signed an MOU with the Mongolia Immigration Agency to ensure compliance with regulations and protect the rights of foreign labourers.

2.4 STAKEHOLDER ENGAGEMENT

The Corporate Governance Code (CGC) ensures the rights of shareholders to participate in making important corporate decisions; to access information on the company's operations; to monitor major transactions and those with conflict of interests³. The fundamental right of a shareholder is defined as the right to participate in the shareholders' meeting. Holders of shares equal to or above 10% can demand

an inspection by independent or third-party auditors. Company Law defines a shareholders' meeting as the highest governing authority of a company⁴. The meeting exercises exclusive rights on decision-making on fundamental and major corporate changes⁵. In addition, a shareholder eligible to vote, holding at least 10% of a company's common shares, may demand to convene a special shareholders meeting⁶.

2.4.2 BUSINESS-DRIVEN ANTI-CORRUPTION INITIATIVES

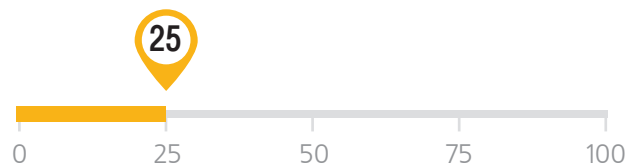
Scoring question

To what extent do companies engage in multi-stakeholder initiatives aimed at reducing corruption?

Business-driven anti-corruption initiatives are rare. Despite reporting low effectiveness of government anti-corruption efforts, companies are reluctant to introduce their own initiatives. 72.4% of 330 companies in 2016 reported that they had not taken any steps to combat fraud or corruption. Only 9.1% of respondents had reported a corruption case⁷.

The IAAC conducts advocacy work and trainings to promote awareness of corruption risks. Their work focuses mainly on state-owned companies. There are no designated national anti-corruption programmes targeting the private sector⁸.

The Mongolian Stock Exchange monitors registered companies according to the Corporate Governance Code. No anti-corruption programmes or policy



monitoring is conducted due to the absence of such requirements.

There are few examples of joint trainings, these being mainly funded by international donor organizations. For example, Capital Bank, Max Group LLC, XacBank and Khan Bank have joined IFC's Mongolia Corporate Governance Project. To date, the Project's clients have reported US\$27 million in investments facilitated by improved corporate governance practices⁹.

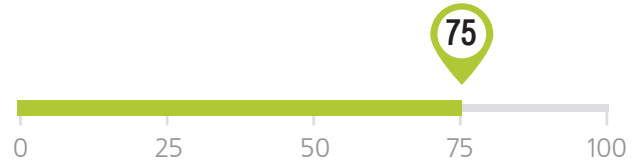
The Mongolian Business Environment Survey of 2017 conducted among 1,573 companies nationwide identified the reduction/elimination of corruption and bureaucracy, together with the improvement of fair completion as the top priorities of 21% of respondents. However, it is not clear who should drive these changes¹⁰.

Business associations are unaware of any significant cases of corporate collaboration with industry peers on the fight against corruption. The Business Council of Mongolia (BCM) members have been actively involved in the development of an exemplary whistleblowing policy for companies. Some members, such as XacBank and Wagner Asia LLC, actively participated in the development of the policy¹¹.

2.4.3 BUSINESS ASSOCIATIONS

Scoring question

To what extent do business associations support companies in fighting corruption?



There are around 2,200 business associations registered at the General Department of Taxation. However, the number of active or influential associations is far less.

MNCCI has been a member of the Global Compact since 2006. The chamber took part in the implementation of four chapters against corruption, one of which covers employees' rights. In 2011, the MNCCI established the PACI Mongolia Network involving its member organizations. The chamber joined the United Nations Convention against Corruption (UNCAC) in 2011 and biennially reports on implementation. The chamber cooperates annually with the IAAC on advocacy work. In 2015 a discussion on "Business and Corruption" was organized among 23 entities (funded by the Asia Foundation and the UNDP). Since 2017, the chamber has hosted Asia Foundation and TI-M trainings for senior managers and executives on corruption risks. These trainings have already covered a total of 16 entities and 500 people. The chamber has developed a sample training module and content, and therefore plans to continue the trainings after project completion¹².

The BCM has established the Business Integrity Committee to promote business integrity among its members. The committee held more than 20 meetings in 2017 alone in order to share best practices from

the UK, the USA and other countries in combating corruption. The council publicly announced in the media its stance on anti-corruption in the business sector in both 2016 and 2017¹³.

In April 2017 the Mongolian Association of Holding Companies publicly (via mass media) asked management of all shareholding companies to hold their annual meetings in a timely manner to ensure good corporate governance and transparency.

The BCM in 2017 offered a free e-learning tool for entities and individuals, consisting of case-based material on corruption and international practices. The tool was utilized by XacBank for the on-boarding process. The council developed exemplary policies on both gifts/hospitality and whistleblowing for its member companies. Although the BCM has more than 200 registered members, the follow-up and implementation success are both unsatisfactory.

The MONEF has twice signed an MOU with the IAAC to cooperate on advocacy and prevention. Within the scope of the MOU, the federation organized workshops and seminars reaching more than 1,000 entities. MONEF, together with the IAAC, has also introduced the corruption-free management standard. The federation also held a seminar on Corporate Governance attended by 31 shareholders, members of BODs and senior management from 30 companies¹⁴.

In partnership with the Mongolian Bankers Association, BoM and FMO, IFC has developed the Related Party Transactions Handbook for Banks in Mongolia. The handbook aims to provide bank directors and senior management with a consolidated

2.4 STAKEHOLDER ENGAGEMENT

source of best practices and also send a strong signal to all investors and stakeholders about the Mongolian banking sector's commitment to good corporate governance practices.

BCM, TI-M, the Asia Foundation, the Embassy of Canada, OESC, IAAC have organized high-profile anti-corruption training. Five international experts worked on the recommendations and presented them to MPs in 2017.

1 Expert Interview 10

2 Expert Interview 16

3 FRC Mongolia, "Corporate Governance Code", Chapter 2, 2014
http://mse.mn/uploads/images/cgc_2014_english.pdf

4 Company Law, 2011, Provision 59.1 (revised version)

5 Company Law, 2011, Article 62 (revised version)

6 Company Law, 2011, Provision 61.1.2 (revised version)

7 The Asia Foundation, STOPP 2016
https://asiafoundation.org/wpcontent/uploads/2016/11/STOPP_2016_ENG.pdf

8 Expert Interview 18

9 IFC, Corporate Governance in East Asia and the Pacific, Newsletter NO.2, p.10-13, 2013

10 MNCCI, "Mongolian Business Environment survey 2017", 2017
https://www.mongolchamber.mn/bundles/uploads/MNCCI_2017_Business_Orchinii_Sudalgaa_final_website.pdf

11 Expert Interview 8

12 Expert Interview 6

13 Expert Interview 8

14 IFC, Corporate Governance in East Asia and the Pacific, Newsletter NO.2, p.10-13, 2013

2.5 BOARD OF DIRECTORS

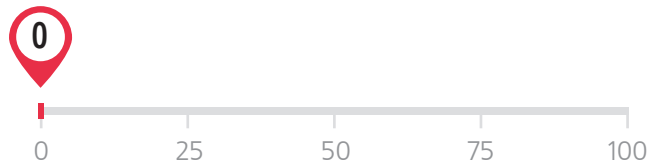


THE LAW DOES NOT ASSIGN TO THE BOD ALL ITS FUNDAMENTAL FUNCTIONS. NO COMPANY SEEMS TO DISCLOSE ANY INFORMATION ON THEIR BOARD AND COMMITTEE'S ACTIVITIES AND/OR TRANSACTIONS OF COMPANY SHARES BY DIRECTORS. INFORMATION ON POTENTIAL CONFLICTS OF INTEREST AMONG THE BOD AND OTHER SENIOR COMPANY REPRESENTATIVES IS NOT PUBLICLY AVAILABLE. NO COMPANY DISCLOSED PERFORMING REGULAR BOD EVALUATIONS.

2.5.1 OVERSIGHT

Scoring question

To what extent is the Board of Directors responsible for the oversight of their company's anti-corruption programmes?



The law does not assign to a BOD all its fundamental functions: in particular, it is not entirely clear if a BOD has authority to approve the company's strategy, budget and risk profile, all of which seem to rest with management. In contrast, the Banking Law assigns to a BOD all of its core functions¹.

The law assigns to a BOD the task of preparing evaluations of the company's annual reports containing information on its business and organization. However, the law does not require such reports to be made publicly available and therefore it is not possible to monitor implementation².

MNCCI reported having trainings on corporate anti-corruption programmes, with the BOD responsible for monitoring their implementation. The MNCCI itself has no responsibility for monitoring implementation³. There is no requirement for the BOD to comply with and/or receive appropriate training via an anti-corruption programme, as such programmes are not in place or required for the private sector. No information is available on the existence of such trainings for the BODs of state-owned companies. The law requires the BOD, along with the Board Secretary, to attend training on corporate governance and receive certification⁴. The methodology was developed and approved by the FRC and actual training was assigned to the National Committee on Company Governance which licensed 11 organizations to provide corporate governance trainings. Since 2010 around 3,000 people have undergone such training⁵, which focuses on ethical issues; the importance of corporate governance in increasing company

efficiency; and other matters. The topic of anti-corruption is not explicitly contained in the training.

BOD evaluations should be undertaken by the nomination committee once a year. However, only one company in the sample disclosed having such a committee⁶. Therefore, there is no information

available on BODs' compliance with codes of ethics or anti-corruption policies⁷. The BOD has full authority to evaluate the company's annual report and financial statements, including any programmes⁸. No information is available publicly on follow-up actions on anti-corruption activities or actions taken by the BOD.

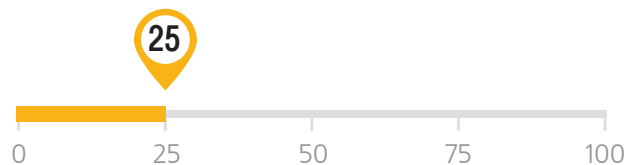
2.5.2 EXECUTIVE REMUNERATION

Scoring question

To what extent is the remuneration of BOD members and senior executives determined in accordance with good corporate governance standards?

A shareholders' meeting, being a company's ultimate authority, can approve certain transactions that contain conflicts of interest, any conflict of interest transactions specified and the amount of salaries and bonuses for BOD members⁹. However, the law does not specify the details of a remuneration package: for example whether it can include long-term incentives, stock options and pensions¹⁰.

The law determines the authority of the BOD to establish the amount of bonuses to be granted to the executive body, as well as its respective liabilities and obligations¹¹. The BOD can also establish standing and ad hoc committees in charge of a particular matter when deemed necessary internally, including



remuneration and nomination committees¹². The law requires the BOD of a joint stock company to establish audit, salary, bonus and nominating committees, with no less than two-thirds of these committees comprised of independent members¹³. CGC requires the chairs of audit and remuneration committees to be independent members¹⁴.

The law does not require the remuneration and benefit packages of BOD members and senior executives of private entities to be made public. Corporate governance trainings include making remuneration internally transparent, but there is no evidence of implementation¹⁵.

State-owned companies, following the Glass Account Law, make the remuneration of their BOD members and senior executives publicly available.

Corporate Governance trainings cover the topic of "salary and remuneration" along with the methodology for performance evaluation of employees. However, no feedback is available from organizations on the implementation of such trainings¹⁶.

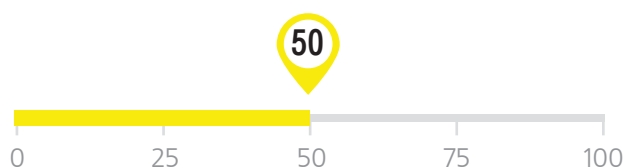
2.5.3 CONFLICT OF INTEREST

Scoring question

To what extent are safeguards in place to govern Board of Directors' conflicts of interest?

Legislation ensures that companies (specifically publicly traded companies) are organized under a one-tier board system. The law prohibits companies from combining the roles of CEO and chair of the BOD. Legal entities cannot be BOD members. At least one third of a BOD must be composed of independent directors¹⁷. The definitions of independence provided by the CGC are more comprehensive than the Company Law. Both include "non-affiliation" criteria, but without any "positive criteria". The law specifies qualification requirements for BOD members of banks and state-owned companies¹⁸.

The LSM prohibits any holders of insider information, including members of the BOD, from insider trading and also expressly prohibits market abuse, including fraudulent trading, artificial pricing and misleading clients in order to promote/prevent securities trading¹⁹. Insider trading and other abuses can be



punished with fines and imprisonment of up to three years²⁰.

No company seems to disclose information on its BOD and committees' activities; transactions of company shares by directors; or compliance with the CGC²¹. Supposedly the audit committee must be in charge of monitoring and assessing transactions involving conflict of interest. However, information on potential conflicts of interest from the BOD and other senior representatives, such as outside appointments, parallel internal positions, financial investments and employment of relatives, is not publicly available.

Listed companies are encouraged to include a corporate governance report on their compliance with the Code, but implementation is poor. The authority assigned to monitor the Code's implementation is unclear.

The Company Law requires the nomination committee to evaluate the activities of the BOD and executive body. The CGC recommends that BOD evaluation should be undertaken annually. However, none of the ten largest listed companies disclose having a nomination committee and no company disclosed performing regular BOD evaluation.

¹ EBRD, "Corporate Governance in Transition Economies Mongolia" Country Report, 2017, <http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html>

² Company Law, 2011, Provision 76.1.11 (revised version)

³ Expert Interview 6

⁴ Company Law, 2011, Provision 75.8 (revised version)

⁵ Expert Interview 9

⁶ TI-M, BICA Mongolia, TRAC analysis 2.3.1, 2018

⁷ EBRD, "Corporate Governance in Transition Economies Mongolia" country report, 2017 <http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html>

⁸ Company Law, 2011, Provision 76.1.11 (revised version)

⁹ Company Law, 2011, Article 63 (revised version)

¹⁰ Company Law, 2011, Provision 62.1.13 and Provision 62.2.4 (revised version)

¹¹ Company Law, 2011, Provision 76.1.9 (revised version)

¹² FRC, "Corporate Governance Code", Provision 5.5.2, 2014 http://mse.mn/uploads/images/cgc_2014_english.pdf

Company Law, 2011, Provision 81.1 (revised version)

¹³ Company Law, 2011, Provision 81.2 (revised version)

¹⁴ FRC, "Corporate Governance Code", Provision 5.5.4, 2014 http://mse.mn/uploads/images/cgc_2014_english.pdf

¹⁵ Expert Interview 9

¹⁶ Expert Interview 9

¹⁷ FRC, "Corporate Governance Code", Chapter 5, 2014 http://mse.mn/uploads/images/cgc_2014_english.pdf

Company Law, 2011, Article 75 (revised version)

Law on Banking, 2010, Article 33 (revised version)

¹⁸ EBRD, "Corporate Governance in Transition Economies Mongolia" country report, 2017 <http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html>

¹⁹ LSM, 2013, Chapter 7

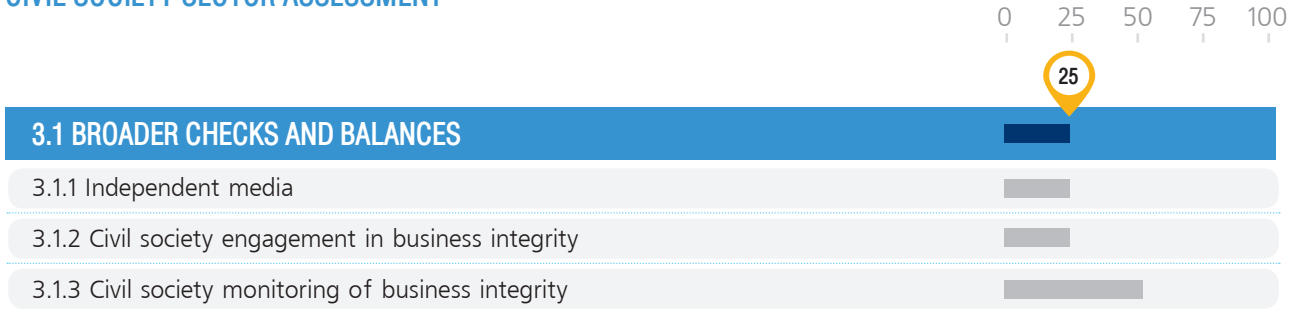
²⁰ LSM, 2013, Article 89

²¹ EBRD, "Corporate Governance in Transition Economies Mongolia" country report, 2017 <http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html>



CIVIL SOCIETY SECTOR ASSESSMENT

CIVIL SOCIETY SECTOR ASSESSMENT



0 – NOT AT ALL 25 – TO A LIMITED EXTENT 50 – TO SOME EXTENT 75 – LARGELY 100 – FULLY

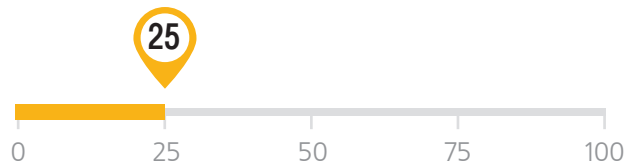
3.1 BROADER CHECKS AND BALANCES

INFORMATION ON MEDIA FINANCES AND OWNERSHIP IS EITHER NOT AVAILABLE TO THE PUBLIC OR DIFFICULT TO OBTAIN. THE MAJORITY OF MEDIA OUTLETS HAVE POLITICAL AFFILIATIONS. THERE ARE NO LEGAL REGULATIONS TO PREVENT MEDIA CONCENTRATION AND MONOPOLIES. THE LAW ON ADMINISTRATIVE OFFENCES IMPOSES HEAVY MONETARY SANCTIONS ON INDIVIDUAL JOURNALISTS AND MEDIA ENTITIES. THERE IS NO STRONG TRACK RECORD OF INITIATIVES INVOLVING PUBLIC/PRIVATE SECTORS AND CIVIL SOCIETY TO SUPPORT PRIVATE SECTOR INTEGRITY. CIVIL SOCIETY’S BUSINESS INTEGRITY WATCHDOG ROLE IS NOT WELL DEVELOPED.

3.1.1 INDEPENDENT MEDIA

Scoring question

To what extent is the country’s media perceived as being free and independent?



In the early 1990s the media went from a purely state-owned entity to a free market economy. Media freedom is guaranteed by the Constitution; the Law on Media Freedom; the Law on Information Transparency and the Right to Information (LITRI); and the Law on Public Service Broadcasting. For a potential market of 3 million people there are close to

3.1 BROADER CHECKS AND BALANCES

500 registered media outlets¹. Financial information on media companies is not publicly available. A lack of reliable data on the audience and market share of companies makes it difficult to assess the extent of their dominance. It can be assumed that most Mongolian media outlets are unprofitable and dependent on their owners' sponsorship. Thus, the engagement of owners in media businesses is mainly for the protection of their economic interests or political preferences. Information on media ownership is difficult to obtain. Media Ownership Monitor² (MOM) surveyed the top 39 media outlets. The findings suggest that 74% of these have political affiliations through their founders or owners. All but one of Mongolia's TV stations are owned by people with political affiliations³. The Action Plan of the Mongolian Government for 2012-2016⁴ attempted to require disclosure of media ownership and revenue. However, MOM results show that 89% of the media is not transparent about its ownership. Data on the ownership and financial structure of almost 50% of media companies is completely unavailable⁵. There are no legal regulations to prevent media concentrations and monopolies.

Media freedom is not complete. All licensing and registering authorities belong to the government. The regulation and monitoring of communication is done by the CRC (nominated by the government) and the Communication and Information Technology Authority (CITA) under the Office of the PM. The AFCCP also impacts upon the media sector. The Law on Radio Waves states that the government has the ownership of such waves and allocates rights for their use⁶.

Journalists are overworked and underpaid and depend on extra income. This leads to the debasing of their profession and the production of "paid content". Government agencies and businesses sign agreements of cooperation with a "non-disclosure" provision with media outlets for lump sum payments. The data is unofficial, as it is not publicly available⁷. Editorial independence is limited, and censorship is increasing. The Law on Administrative Offences imposes heavy monetary sanctions on individual journalists and media entities⁸, in particular for defamation.

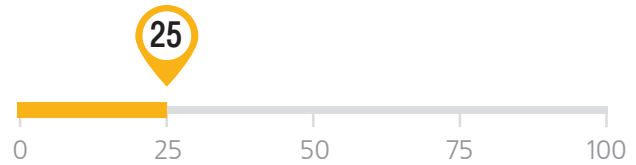
The Mongolian media still faces professional challenges. Public opinion on media responsibility and journalist ethics as reported by the Press Institute shows almost no change over a period of 7 years (2004-2011). In cases of poor journalistic performance, the public considered insufficient professional knowledge and skills along with political influence to be the causes⁹.

There are very few headlines uncovering private sector corruption. The combined power of owners, advertisers and government represents a threat to investigative reporting. In 2016 there was a major exception when journalist Lkhagva Erdene was involved in the disclosure of the Panama Papers. Many Mongolian politicians and public officials were named in the leaked documents, prompting massive debates in public and in parliament. As a result, the Law on Conflict of Interests was amended (April 2017) and now requires public officials and their affiliated parties to disclose offshore accounts to the IAAC: such accounts will then be closed, with any violations leading to dismissal from public office¹⁰. The IAAC reported a total of 20 public officials closing their offshore accounts as of April 2018¹¹.

3.1.2 CIVIL SOCIETY ENGAGEMENT IN BUSINESS INTEGRITY

Scoring question

To what extent are civil society organisations engaged with companies in order to strengthen their commitment towards integrity, accountability and transparency?



Mongolia has a strong civil society and is praised as an “oasis of democracy” among other post-communist Central Asian countries. Civil society organizations (CSOs) have been active since the 1990s, with their initiatives focusing largely on the public sector, business and human rights. A significant number of NGOs are involved in addressing extractive industry sector issues. One the most well-known organizations is the Open Society Forum (OSF).

The public procurement process requires the participation of NGOs in Evaluation Committees. Also, citizens and NGOs are selected through competitive bidding to conduct progress or performance monitoring, evaluation and auditing of the activities of the procuring entity. Locally, a citizen from the Citizens` Representative Khural (Council) and an official from the Office of the Governor are

appointed as members of the Evaluation Committee¹². The majority of local purchases (up to US\$8,300/ MNT20 million) are undertaken with community participation¹³.

To strengthen corporate governance in the extractive industries sector, the OSF in cooperation with the Ministry of Mining assessed the governance performance of nine state-owned and partially state-owned mining companies¹⁴. The results were presented publicly and directly to related government agencies via targeted group meetings.

Under the Extractive Industries Transparency Initiative (EITI) the Ministry of Mining and Heavy Industry, with the support by the OSF, has commissioned the Contract Transparency Portal www.iltodgeree.mn¹⁵.

CSOs are leading the discussion of EITI’s definition of beneficial ownership and disclosure of contracts. There have been ten discussions involving CSOs, the ministry and mining companies, with proposals and findings being submitted to a Working Group. The Mongolia EITI 2018 workplan reflects the enhanced participation of CSOs¹⁶. OSF, National Mining Association and “Publish What You Pay” Mongolia Coalition (PWYP) jointly debated the quality of the model contract on local participation. As a result, the attachment to the contract was amended¹⁷.

3.1.3

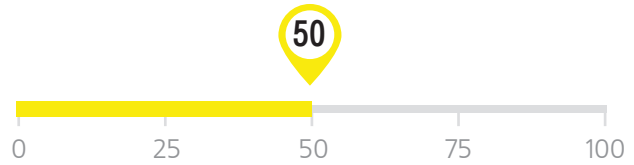
CIVIL SOCIETY MONITORING OF BUSINESS INTEGRITY

Scoring question

To what extent does the country have an active and engaged civil society monitoring private sector corruption?

Civil society's business integrity watchdog role is not well developed. Areas where there has been some degree of development are public procurement and the extractive industries. Civil society's participation in all stages of the public procurement process is described in indicator 3.1.2. OSF monitors implementation of the Glass Account Law by state-owned enterprises; the implementation of contracts affiliated to extractive companies; and other issues¹⁸.

One of the main obstacles to monitoring business sector integrity is lack of access to information, with companies being very secretive. The Law on Information Transparency and Right to Information protects business confidentiality¹⁹. Sectoral legislation reflects the monitoring role of NGOs but in practice implementation is weak²⁰. The monitoring of private sector business integrity is problematic. The majority of companies have no code of conduct and/or policies. Violations of such codes are not sanctioned by the law and dealt with internally. Therefore, CSOs use existing laws to implement their watchdog role. In 2016 an amendment to the administrative litigation procedure reflected NGOs' responsibility to file public interest litigation²¹. The methodology is based on the Environmental Public Interest Litigation (EPIL).



There are virtually no examples of high-profile, successful civil society activities on public procurement. The number of blacklisted companies is extremely low. Statistics on CSOs blocking tender processes and cases leading to the prosecution of business entities is not available. As for extractive industries, there have been several strong cases of local CSOs successfully managing to terminate licenses, the justification for doing so mainly being environmental protection.

PWYP aims to support and ensure active civil society participation in the implementation of EITI. From 2008 to 2010 PWYP Mongolia in conjunction with OSF produced its highly successful "License Watch", which analyses and publicly distributes information related to licenses. The coalition played an important role in the amendment of related legislation, with public disclosure of information on payments to the government and related sanctions being specified by law²². The Coalition, together with the Minister of Mining and related members of the Parliamentary Standing Committee organized a TV discussion, "From Mining to Efficiency".

Companies are active within the EITI. Achievements reported by EITI Mongolia are the result of closer cooperation over the past decade among the state, businesses and CSOs. Under the initiative, 10 mining companies disclosed their information and reported on the implementation of requirements²³. PWYP coalition has developed reporting templates at the local level. This has greatly enhanced civil participation and knowledge: it currently serves as a model to review reports at local administrative level.

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- 1 Press Institute of Mongolia, "Mongolian Media Monitoring – statistical annual yearbook", Press Institute, Ulaanbaatar, 2015
 - 2 Reporters without Borders and Press Institute of Mongolia, "Media Ownership Monitor – Mongolia", 2016 <https://mongolia.mom-rsf.org/mn/translation-media/>
 - 3 Reporters without Borders and Press Institute of Mongolia, "Media Ownership Monitor – Mongolia", 2016 <http://mongolia.mom-rsf.org/en/owner/individual-owners/>
 - 4 The Parliament Resolution No.37 of 2012, May 18, 2012
 - 5 Reporters without Borders and Press Institute of Mongolia, "Media Ownership Monitor – Mongolia", 2016 <http://mongolia.mom-rsf.org/en/owner/individual-owners/>
 - 6 The Law on Radio Waves, 2001, Article 4. (revised version)
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PUBLIC SECTOR

New laws:

1. Law on Whistleblowing
2. Law/regulation on Lobbying



Legal amendments:

1. Introduce a regulation on indirect commission into the general provision of "receiving of a bribe".
2. The Law on Anti-Corruption should enact a provision on "Prohibiting the downsizing of the budget of the IAAC" (the same recommendation for the Law on Judiciary for judiciary budget).
3. The statutes of limitation should be increased in the Law on Anti-Corruption and Law on Competition (offences).
4. More precise definitions of horizontal and vertical cartels and anti-competitive agreements should be added to the Law on Competition.
5. More precise qualitative characteristics on dominant position should be added to the Law on Competition.
6. Proper procedures to lift immunities of public officials are required.
7. Political parties with parliamentary seats should be included in the Law on Glass Accounts.
8. There should be a provision for a "cooling-off" period for corporate executives prior to assuming senior public offices and/or governmental posts.
9. The Public Procurement Law should reflect provisions for favorable procurement conditions for companies with effective anti-corruption programmes.
10. The debarment system in public procurement should be intensified.



Improvement of institutional independence, authority:

1. The independence of the Independent Agency against Corruption, the Authority for Fair Competition and Consumer Protection, the Judiciary, and the Mongolian National Audit Office should be strengthened.
2. The monitoring and reporting system for pre- and post- election financing of political parties should be improved.
3. There should be an increase in the transparency and decrease in the bureaucracy of the State Specialized Inspection Agency, with the transfer of services (where feasible) to e-format.

Improvement of institutional capacity:

1. The stability of the management and human resources of the Independent Agency against Corruption and the Authority for Fair Competition and Consumer Protection should be assured.
2. The Independent Agency against Corruption; the Authority for Fair Competition and Consumer Protection; the Financial Regulatory Commission; the Bank of Mongolia; and the Financial Crimes Unit of National Police Agency should all focus on investigation and legal assistance with foreign law enforcement authorities.

Improvement of law enforcement:

1. Implementation of the two-year "cooling-off" period provision for public officials should be enhanced.
2. The organizational authority and responsibility for monitoring party financing and financial statements should be more clearly defined.
3. There should be centralization of public procurement for improved monitoring.
4. Requirements for transparency of company ownership structure and beneficial ownership should be reflected in tender materials.
5. The remuneration system for procurement positions should be clearly defined.

Improvement of information transparency:

1. The Judicial General Council of Mongolia, the State General Prosecutor's Office of Mongolia and other affiliated organizations should reflect statistics and indicators on corruption in their reports: for example, workload of inspectors on corruption cases.
2. The reports of the Mongolian Tax Administration and Customs General Administration of Mongolia should reflect statistics and indicators on corruption.
3. The full financial report of an election should be publicly disclosed in a timely manner.

PRIVATE SECTOR

Legal amendments:

1. A regulation should be added to the Company Law to disclose beneficial ownership.
2. BODs should be mandated to monitor the company's anti-corruption policies and programmes.
3. Establish monitoring mechanisms to hold accountable companies certified in corporate governance.

Support of business integrity:

1. There should be intensification of requirements for anti-corruption programmes, policies and procedures for members of Mongolian National Chamber of Commerce and Industry, Stock Exchange of Mongolia, Financial Regulatory Commission of Mongolia and professional business associations.
2. Broader anti-corruption concepts in "corporate governance" should be reflected in trainings approved by the Financial Regulatory Commission of Mongolia.

CIVIL SOCIETY

Legal amendments:

1. Sanctions for slander in the law on Administrative Offences should be amended.
2. There should be regulations to prevent media concentrations and monopolies.
3. There should be regulations to ensure disclosure of media ownership.
4. Regulations are needed to ensure financial transparency of the media.

Support of business integrity:

1. Civil society should support business integrity at all levels.
2. Civil society capacity-building in monitoring the private sector should be enhanced.
3. The quality of civil society participation in public procurement should be improved.



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TI-Mongolia, BICA, Expert Interview 20.

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ANNEX 1

LIST OF NATIONAL ADVISORY GROUP MEMBERS

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| MR. BAYASGALAN GUNGAA | State Secretary, Ministry of Justice and Home Affairs |
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