

LEGAL ENVIRONMENT OF THE PUBLIC COUNCIL AT ANTICORRUPTION AGENCY

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An effective “Anticorruption law”, which is approved in 1996, in order to strength activities towards combting corruption, is annuled and an amended law is adopted on 1st date of November, 2006. Main goal of the new law is establishing an independant, individual body dealing with combating anticorruption in Mongolia.

Consequently, special individual governmental authority, The Anti-corruption Agency is established with functions to carry out works for public education against corruption, for prevention corruption and revealing corruption crime, criminal record and prosecution and to check asset and income disclosure of employees of governmental institutions.

This law stated “A Public Council on staffing not permanent (hereinafter called the Council) with purpose to involve public in combating corruption, to transfer public opinion to, and to provide advises on conditions and implementation of the Anticorruption Law will function at the Anticorruption Agency”.

It is settled as said in this law, the Public Council consists of 15 councilors, and the President of Mongolia must appoint impune citizens capable to represent civil society as members of the Council¹. The President of Mongolia must approve operation procedure of the Council².

Then, the President of Mongolia ratified composition and Regulation of Activities of Public Council (hereinafter called the Regulation) by Decree in 2007. One can consider this Regulation set operation procedure of the Council in detail.

This regulation defines main purpose of activities of the Council as “to support Anticorruption Agent proceeding sustainable activities on behalf of mass of public in frame of direction and duties set fort in Anticorruption law”¹, and the Council has functions to:

- initiate and put forward suggestions to involve the masses actively in combating corruption
- transfer public opinion regarding combating corruption to the Anticorruption Agency,
- make conclusion proceeding investigation on corruption condition,
- develop conclusion providing a survey of implementaion of the Anticorruption Law.

In order to meet the functions above, the Council must have two sub-councils for public relations and for investigation and assessment.

Public Relation Sub-council has to:

- keep the public informed or make the public aware social dangers of corruption and establish view to abstain from corruption,
- organize meetings, conferences, trainings and propaganda regarding combating corruption and prevention,
- harmonize activities of Non-Governmental Organizations oriented combating anticorruption and civil voluntary activities and movements with operation of Anticorruption Agency,
- collaborate with international organizations, foreign countries, governmental and nongovernmental organizations in project development and implementation in sphere of the capital city, regional and country sides

Investigation and Assessment Sub-council has to:

- evaluate implementation of anticorruption law and regulations and corruption circumstances and make corresponding conclusion;
- give comments and recommendations on investigation of corruption level and trends executed by the Anticorruption Agency;
- provide recommendation and comments on enhancement of legal environment of combating corruption;
- appeal to the public and organizations for joint fighting corruption, in order to ensure implementation of anticorruption law and regulations, and address motto to.

The regulation in whole, tends towards to making the Council an unit supporting the Anticorruption Agency.

While the reference in the law describes purpose of the Council as advising, on behalf of the public, on implementation of precepts of the law, the regulation states differently as the Council's purpose is to support the Anticorruption Agency.

From institutional point of view, the Council must become an institution carrying out civil society supervision over the Anticorruption Agency's activity, and supporting the Anticorruption Agency for holding a course on independent and transparent principle¹ in operation. Reason of that is governmental imperative pressure or coercive institution is not enough, from one side, for combating corruption and civil society support and involvement is necessary for ensuring transparent governance. From the other hand, Mongolian version of establishment of powerful supervising institution for fighting corruption requires to have civil society watchdog proceeding assessment and overseeing fairness and transparency of the organisation.

However, the regulation defines power of the Chairman of the Council and its members as follow.

- Chairman of the Council entitled to powers:
 - Communicate Anti-corruption Agency and other organizations on behalf of the Council,
 - Organize and lead meetings of the Council and appoint a time,
 - Hand over recommendations issued by the meeting to Head of the Anticorruption Agency and explain backgrounds of the recommendations
 - Answer for result and efficiency of activities in front of the Anticorruption Agency, projecting activity plan of the council.
- Head of the Sub-council is entitled to rights as follow:
 - To organize and lead meetings appointing a time;
 - Put into agendas issues of discussion based on permission, submitting the issues to the Chairman of the Council;
 - Get information and data related to the issues not forbidden by law from the Anticorruption Agency;
- Councilors shall carry out rights as follow:
 - In relation with issues, to express own views freely;
 - initiate and put forward suggestions regarding implementation of functions set forth in the Regulation;
 - Collaborate with the Anticorruption Agency towards to prevention of corruption and enlightening;
 - Not to come under urge and pressings of political parties, any of coalition and movements;
 - Participate in meetings of the Council or Sub-Council in all cases except legitimate reasons;

- Not disclose confidential information and data related to activities of the Anticorruption Agency¹.

Also, the Regulation defines rights and obligations of the Anticorruption Agency in terms of collaboration with the Council as follow.

- Deliver members meeting agenda and announcement 3 days before meetings of the Council or Sub-Council;
- Provide place for holding a meeting of the Council or Sub-Council and necessary equipment;
- Take measures to implement recommendations matching laws and regulations issued by the meeting of the Council and inform the Council;
- Render support and assistance necessary for activity of the Council and collaborate according to functions prescribed by laws and regulations;
- Ask the Council for assistance towards combating corruption on definite matters;
- Give precaution on activity not consistent in policy and combating corruption of the Council and the members;
- Provide the Council with necessary information and reports, if it is not said differently by law;
- Members of board of management of the Anticorruption Agency invited by the Council for a meeting may explain policy and activity of the Anticorruption Agency and give comments on matters of discussion at the meeting;

We think, based on functions mentioned above and the powers, the Council become just a unit for supporting activity of the Anticorruption Agency not an institution capable to implement independent supervising activities of the Anticorruption Agency and to express and protect civil society interest. In other words, the Council does not have function to supervise the Anticorruption Agency, and it made obscure reasons of why intervention from outside to the Anticorruption Agency is limited and why the Council consisting of civil society representatives is established. It does not differ from the Anticorruption Agency's division executing functions of prevention and education. Limitation made in connection with competency closes possibility of the Council to carry out checking by own initiative².

Both of the effective Anticorruption Law and the Regulation do not consider financial matters required for normal functions of the Council, in turn makes the Council dependent on the Anticorruption Agency and as an organization performing works allowed.

¹ Article 6, Regulation of activities of the Council at Anti-corruption Agency.

² Cause of this conclusion is such references as in clauses: 6.2.3 "...Get information and data related to the issues and not forbidden by law from the Anticorruption Agency", 6.3.6. "Not disclose confidential information and data related to activities of the Anticorruption Agency", 7.1.7. "Provide the Council with necessary information and reports, if it is not forbidden by law", 7.1.6. "Give precaution on activity not consistent in policy and combating corruption of the Council and the members", 8.3.2. in case of "repeated actions not compatible with policy or activity of combating anticorruption" Chairman and member shall be resigned