

**MONGOLIA  
NATIONAL RISK ASSESSMENT OF MONEY  
LAUNDERING AND FINANCING OF  
TERRORISM**

**ULAANBAATAR CITY**

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## PREAMBLE

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Money laundering, financing of terrorism are the activities that bring deleterious economic and social repercussion that threaten the stability and integrity of financial sector in Mongolia through which the proceeds or the assets gained from the illicit activities by criminal entities, groups or organizations are exploited to exert their undue influence on the financial sector furthering their criminal activities. These types of crimes are still deemed a critical issue on a global level.

Money laundering, aside from furthering the criminal activities perpetrated on a national level in Mongolia, can also expose the country to cross-border illicit flows potentially making the Mongolian territory a transit route of such funds or used for maintaining, transferring, concealing or modifying the forms of such funds. In particular, such offences are carried out in Mongolia mainly to withdraw or transfer the proceeds derived from bribery, corruption or tax evasion.

The purpose of the national risk assessment is to identify money laundering, financing of terrorism risks in Mongolia, to assist regulatory, supervisory and law-enforcement authorities to effectively allocate the limited resources at their disposal and thus mitigating the potential risks through effective countermeasures. To this end, this national risk assessment report was prepared for the first time to develop and delineate the strategy and the plan to implement risk-based measures. It is essential for the Government, relevant regulatory, supervisory or enforcement authorities to have comprehensive knowledge and insight on the risks of money laundering, financing of terrorism so as to combat such crimes, in particular to assist them to implement countermeasures to these crimes, allocate resources and formulate policies focusing on sectors or geographical locations deemed high-risk.

Financial Action Task Force (FATF), an inter-governmental agency that developed global anti-money laundering (AML) and counter-terrorist financing (CFT) standard (40 FATF recommendations) with which countries are obliged to carry out their national risk assessment. Mongolia, through its membership in Asia Pacific Group on Money Laundering (APG) –FATF style regional body, has expressed its willingness and commitment to comply with and implement this standard.

Mongolia became the member of APG back in July 2004 and the Bank of Mongolia acts as the representative of the group. Currently, the group has 41 Asia-Pacific official members and 8 observer countries such as DPRK and Republic of Kiribati. In addition, 28 international organizations such as UN, World Bank and IMF are acting as the observers to the group. This group does mutual assessment on anti-money laundering combating the financing of terrorism system (AMLCFT) by the member countries in line with the FATF 40 recommendations on a regular basis, the results of which are published and disclosed on their website to the general public.

Due to an increasing number of attempts and cases in recent years for organized crime groups to exploit banks, financial institutions and financial infrastructures of various countries to avoid taxes or transfer funds originated from bribery to offshore zones, FATF is requesting international organisations such as APG to enhance and intensify their “Mutual Evaluation” processes. Thus, FATF aims to contribute to safety and security of global financial system by ensuring tax incomes remain in their home jurisdictions, circumventing undue influences by the organized crime groups and countering terrorism. Within this objective,

FATF imposes sanctions against countries that are non-compliant (Blacklist – DPRK and Iran) or have strategic deficiency to comply (Grey list) with the 40 recommendations by disclosing the non-compliance list to the world public.

As part of this global measure, APG has started its second Mutual Evaluation of Mongolia from early 2016 and its Mutual Evaluation report of Mongolia is expected to be discussed and finalized at the 20<sup>th</sup> APG Annual Meeting in July, 2017 to be held in Colombo, Sri Lanka.

The first and the significant criterion of Mutual Evaluation of Mongolia is this national risk assessment of Mongolia based on which the subsequent measures to mitigate risks regarding money laundering and financing of terrorism need to be taken.

## ***METHODOLOGY AND ASSESSMENT STAGE***

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On the **first stage** of a risk assessment (on October 4<sup>th</sup>, 2015), The Bank of Mongolia carried out preparation measures regarding risk assessment such as identifying cooperating authorities, setting up the working group, preparing National Risk Assessment (NRA) guideline and directive in line with internationally recognized standards, in particular FATF methodology and sent them to the participating agencies.

Furthermore, data and information collection forms were sent to the cooperating agencies to complete in order to conduct the assessment and collect the required data using the similar data collection form by the Organization for Security and Cooperation in Europe (OSCE).

Sets of data were collected from the participating agencies to identify the risks during this stage and all statistics, data and information regarding the threats on money laundering, financing of terrorism (crime), situations (legislation, structure, financial system) were collected and consolidated.

For instance, the list of legislations currently in effect in Mongolia and information on the government procurement process accumulated by the Finance Ministry, Justice Ministry (as formerly known), statistics on numbers of registered crimes, loss estimates, number and amount of confiscated assets recorded during 2010-2015 at the General police department, the Judicial general council, State general prosecutor's office, Independent authority against corruption and General intelligence agency, data on products and commodities arrived in Mongolia by Customs general administration, information regarding cases on tax violation and investigations reported by General Department of Taxation and the information on the financial sector participants by the Bank of Mongolia and Financial regulatory commission, all of which were collected and subsequently consolidated.

Results, numbers and other information collected from banking sector risk assessments carried out separately by the Bank of Mongolia, namely Supervision department and Financial intelligence unit were utilized in preparation of this NRA as well. Technical assistance on enhancing risk-based supervisory framework for banks by the IMF provided to Bank of Mongolia during 2013-2016 to assess the risk in the banking sector of Mongolia as it accounts for the most of domestic financial industry where the finalized checklist and the evaluation matrix, were used for this assessment. The checklist in accordance with this methodology was sent to banks twice and answers were collected accordingly.

Bank of Mongolia, Financial regulatory commission participated in this assessment by preparing the data on banks, financial institutions classifying them in accordance with their risk profile and conducting analysis.

In this stage, Financial intelligence unit of the Bank of Mongolia has conducted a series of trainings and workshops in April, September of 2015 and April, 2016 for the authorities and their staff that are participating in the risk assessment process with the assistance of Asian Development Bank, IMF, Australian Government and the Secretariat of APG.

In the **second assessment stage (during April-August, 2016)**, comprehensive analysis on the consolidated statistical data were conducted to determine and get better insight on the scope and impact of risks. Due to the implicit nature of money laundering and

financing of terrorism, there were some instances where the collected data, statements and other information were incorrect or insufficient to properly conduct the assessment.

Thus, in order to ensure the assessment was complete and comprehensive, perception analysis of staff and employees of private enterprises, supervisory and law enforcement state authorities who are in charge of investigating, enforcing and preventing money laundering and financing of terrorism were conducted in this assessment stage.

The interviews were taken and the surveys were conducted among employees of private sector (reporting entities and DNFBPS) to determine the risks of money laundering and financing of terrorism on private sector. For instance, a seminar was organized under the ADB technical assistance in April 2016 for 30 bank employees, 30 NBF staff, 5 real estate agents, 5 stock brokers and dealers during which the interviews and surveys (in form questionnaire) were conducted for them. In addition, meetings with the management of the Institute of certified public accountants and Chamber of Notaries were carried out in which the surveys and questionnaires were filled by 60 accountants and 22 notaries.

The verification of collected data, analysis and drafting of the NRA report were done by and with the assistance of the staff and experts from the Financial information unit, Supervision department of the Bank of Mongolia, Technology center of General police department, Economic crime bureau of the Criminal investigation department, General department of taxation and the Independent Authority against corruption. They consulted in frequent basis to ensure the validity, integrity and the reliability of data and information.

ADB had assisted the NRA drafting and assessment process by providing expertise on the risk assessment methodology.

Notwithstanding the fact that the sufficient information regarding crimes on theft, fraud and on the confiscated assets were collected from the state authorities, there were not enough information on the crimes with implicit nature such as bribery and environmental crime and nature, whereabouts of their proceeds.

The meetings were conducted in May and June, 2016 with investigators of law enforcement authorities to discuss and collect information on the unregistered crimes and their originated assets and understand their perception of hidden crimes and proceeds. For instance, several meetings were held with various state authorities' representatives to get to know their experience and outlook on the crimes including the investigators from the Independent authority against corruption on corruption, abuse of power related crimes and their proceeds, district investigators on theft, fraud, their proceeds and their placement process as well as those in charge of drugs and narcotics crime, environmental crime and organized crimes from The Criminal investigation department.

According to the investigators the actual estimates of undocumented crimes and their proceeds, such as crimes on corruption and environmental, organized (recidivism), tax, drug crimes and human trafficking, contraband are much higher than the official numbers recorded or registered at the enforcement authorities due to their latent nature. Moreover, they expressed that unless it was not detected on-site, there are hardly a follow-up on such crimes and their proceeds.

Hence, it can be gathered from the assessment that there is a need to focus more on detecting latent assets originated from the crime and their movements. Furthermore, the

assessment shows that it is essential to improve the expertise of the crime investigators, detect proceeds from the crimes and enhance their registration procedure.

**Third risk assessment stage (on August-October, 2016)** was aimed at determining the threats (probability of crimes), vulnerabilities (environmental, financial and non-financial sector), consequences (analysis based on numbers and estimates of damage, loss and freeze, confiscation) that constitute the major risks using the data, information, proof, evidences, researches and the reported cases collected during the first two stages.

In this stage the likelihood of threats and vulnerabilities occurring in each sector in question were estimated as well as preparing the risk evaluation form for rating individual crimes and their respective sectors in accordance with their risk level and subsequently assigning one of three major designated ratings - "low", "medium" and "high" to them. For each evaluated sector, the specific instruments and tools to mitigate the risks related to the sector were determined and various factors which may increase or decrease the risk ratings were also defined. Thus, after assessing the risk mitigating factors, the estimated risks were rated and ordered in accordance with their level for each sector.

Based on the risk rating, a strategy to mitigate the risks will be formulated followed by development of the action plan to implement such measures.

## EXECUTIVE SUMMARY

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This is the Mongolia's first money laundering and terrorist financing national risk assessment.

Among the crimes with the purpose of gaining profit committed during the period from 2010 to 2015 the predominant type of crime in terms of number occurrence was theft (65%), but predominant types of crimes in terms of registered harm or damage (economic) caused by a crime is fraud (35%), in terms of registered frozen property - illegal spending of budget funds (17%), in terms of confiscated property – violation of the banking legislation.

Incompletely filed or not filed crimes are still exist by reason of victim's unwillingness to report the crime and unequal ability (skills and reserves) of law enforcement agencies to achieve speedy and complete investigation of crime. For instance, theft victims report the crime immediately, whereas the corruption, crimes regarding environment, narcotic drugs are rarely reported, thus these types of crimes are very often hidden and not officially filed.

Therefore meeting with the people and officials with different occupations and professions in order to utilize their knowledge and perception to define and weigh up the scope, frequency, and social danger of hidden crimes was one of the purposes of conducting the assessment.

We have conducted a research using official statistic data and above mentioned assumptions, and concluded that among money laundering crime the most risky four crimes in Mongolia are fraud, crimes against environment, tax evasion, and corruption. Moreover, yearly increase of registered crimes of narcotic drugs, human trafficking need more attention. The violation of banking legislation is superior in terms of confiscated property in conformity with the primary court decision. Even though the number of banking crimes is low compare to other crimes the consequence of the crime involves the highest risk.

According to the assessment the most exposed sector to money laundering crime in Mongolia is a banking sector, which possesses the major share of financial sector, and the second vulnerable sector is a real estate sector. In corruption cases, which were sent to a court, culprits involve their close relatives and friends and even children to hide a profit generated from a crime. This shows that there is a need in financial sector to determine properly the beneficial owner and politically exposed persons.

Among financial sector services and products the remittance is the most risky service. Banking sector take measures to prevent money laundering and terrorism financing crime. Within these measures banks classify their customers, services and products by risk, and began to take appropriate steps to mitigate the risk. The risk of transportation of illegal funds in cash through border without customs check is high.

In addition there is certain risk in shareholding of banks, non-banking financial institutions. Due to relatively small size of the securities market, external and internal money laundering risk in this sector is low in Mongolia. However, KYC process of participants in securities and bond markets is not reliable, thus we have concluded that there is a need of control of a risk in this sector. Insurance sector services are assessed as low-risk services. Though the financial institutions other than banks compose small part of financial system, the

number of such institutions and number of services they provide is large and there is a risk related to a difficulty of conducting centralized control.

Professionals who do not work in financial sector but have an occupation with money laundering crime risk (DNFBPs), such as notary, accountant, auditor, lawyer, and an advocate are included in above mentioned assessment and we have concluded that there is moderate money laundering risk in this area. Real estate, construction sector was identified one of the highest vulnerable sector to money laundering crime risk. In this regard real estate broker businesses were assessed in this assessment. Based on the assessment it was found that real estate brokers do not handle clients cash to purchase or sell real estate and much of construction companies prefer sell their property directly to customers not using brokers services. Their role limitations during the real estate businesses process diminish their risk of exposure to money laundering purposes.

The risk exposure to external money laundering threats relatively low in Mongolia. However, due to economic situation and developments of recent years and geographical location, money laundering and terrorism financing risk emanating from main trade partners such as China, Russia, South Korea is the highest.

As direct neighbours and biggest trade, business partners of Mongolia countries like Russia, China and South Korea are the countries that Mongolia vulnerable to threats emanating from these countries. With incidences of terrorist attacks and active organized criminal groups, these countries pose highest external money laundering and financing of terrorism risk to Mongolia.

Mongolian economy is based heavily on natural resources and mining. This boosts the interest of political and business groups, and private sector entities to gain profit from these sectors. And poor supervision of mining sector and inefficient accountability mechanism of supervisory institutions results in crime cases of illegal mining activities causing harm to environment, and smuggling items abroad is constantly increasing every year.

Dedicated institutions to fight corruption are succeeding in clearing, embedding right culture, preventing corruption and official status related crimes. On the other hand the methods used by criminals to hide funds and properties gained from the crime becoming even more sophisticated, and using the offshore financial centers, tax heavens is one of the evidence of this fact.

The risk exposure of Mongolia to external money laundering threats is increasing. According to the statistic data of General Prosecutors' Office and Judicial General Council a number of crimes of preparation, acquisition, transportation, delivery and distribution of narcotics and psychotropic drugs, products or substances is constantly increasing. The cases of foreign criminal groups committing banking card fraud by misusing the banking and financial systems are not limited by a few numbers. Mongolian citizens are still becoming victims of internet fraud.

## **GLOSSARY**

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ML/FT AML/CFT	Money Laundering and Financing of Terrorism Anti-Money Laundering and Combating Financing of Terrorism
AML/CFT Law	Law on Anti-Money Laundering and Combating Financing of Terrorism
Reporting Entities	Entities specified in Article 4.1 of AML/CFT Law
NRA	National Risk Assessment
APG	Asia-Pacific Group on Money Laundering
FATF	Financial Action Task Force
CC CPC	Criminal Code of Mongolia Criminal Procedure Code of Mongolia
SCCU NBFI	Savings and Credit Cooperative Unions Non-Banking Financial Institution
ICAM	Institute of Certified Accountants of Mongolia
CA	Certified Accountant
STR	Suspicious Transaction Report
DNFBP	Designated Non-Financial Institutions and Professions
GP	General Police
GIA	General Intelligence Agency
GPO	General Prosecutor's Office
JGC	Judicial General Council
FIU	Financial Information Unit
GTA GCA	General Taxation Authority General Customs Agency
NCC	National Cooperation Council in Combating ML/TF (Secretariat is FIU)
MLA	Mutual Legal Assistance

## ***I. ECONOMIC SITUATION***

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## 1.1. Economic Environment

Social, economic, political, and geographical conditions play major role in money laundering, terrorism financing crime risk. Mongolia's total economy was 23 trillion togrog or 11.8 billion USD in 2015 and ranked at 129 among the other countries<sup>1</sup>.

The mining sector of Mongolia boomed in 2010-2012 and as a result a foreign investment soared, which in turn increased the risk exposure of Mongolia to external money laundering threats.

Based on Mongolian Government decisions issued in 2014, 2015 in accordance with the law on Minerals, 19.9 percent of the total of Mongolian territory were determined to be able to be granted for mining licenses. By the end of 2015, 9.5 percent of Mongolian territory was given to companies with such license and further there is potential of increase of the number of companies with mining and exploration activities.

During the last 3 years the average share of mining sector consisted 20 percent of total revenue of Mongolian budget, 24 per cent of tax revenue and 78.4 per cent of export revenue and produced 70 percent of industrial output and 23 percent of gross domestic product and it is a major driving force in the economy. 71 percent of the total foreign direct investment accounts to mining<sup>2</sup>.

Mongolia is low income country with per capita about 8 million togrog or about 4000 USD in 2015, and ranking at 110<sup>th</sup> place among other countries. This reflects on crime types committed in our country, for instance in developed countries predominant types of crime are financial market's crime, misuse of insider information, speculation of securities, and crimes related to narcotics and organized crimes, in contrast in Mongolia due to low living standards theft, robbery, crimes against environment, tax avoidance are the predominant types of crimes and with significant size of shadow economy.

International experiences prove that criminals hide their illegal funds to avoid control of law enforcement institutions by staying away from official financial systems, which register all money movements and prefers cash settlement or use unofficial sector. Recent developments in payment system of Mongolia play important role in reducing the risk. Researchers highlight that enhancement of a payment system reduces an amount of money outside the banking system. The Bank of Mongolia aims to support non cash settlements and lower cash settlements. In 2010 number of actively used debit cards was 700 thousand, and the number almost tripled and reached 2.3 million in 2015. The number of POS, POB, and ATM is escalating, and it will demonstrate a positive impact on lowering cash settlements.

Cash in circulation was 706.7 billion togrog or 330 million USD at the end of 2015.

The population of Mongolia reached 3 million in 2015, and ranks at 138 among other countries. The risk exposure of Mongolia to external money laundering and terrorism financing

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<sup>1</sup> The World Bank database <http://www.worldbank.org/en/country/mongolia>

<sup>2</sup> Статистикийн үндэсний хороо, 2015 он

threats as a country with small population and small financial sector are relatively low in comparison with other countries.

The risk exposure of Mongolia to external money laundering threats comes from tourism, contracted labor, investment, trade, remittance and loan movements directed to Mongolia.

The number of people crossed our border increased by 504.2 thousand people or 11.6 percent in comparison with the previous year and reached 4859.3 thousand in 2015, of which 37.4 percent crossed through Zamiin-Uud border crossing point in Dorongovi aimag, 16.6 percent through Altanbulag border crossing point in Selenge aimag, 16.5 percent through crossing points in Ulaanbaatar, 6.7 percent through Gashuun sukhait border crossing point in Umungovi aimag, and 17.4 percent through other border crossing points. Geographically these border crossing points are considered as a territory highly exposed to the external money laundering and terrorism financing crime risks.

According to the statistic data of 2015, 46.1 percent of total passengers, who crossed our border, were citizens of China, 15.7 percent citizens of Russia, 10.5 percent citizens of South Korea, 4.2 percent citizens of Japan, 3.3 percent citizens of USA, 3.2 percent citizens of Kazakhstan, 17.0 percent citizens of other countries.

6.8 thousand foreign citizens from 78 countries worked in Mongolia in 2015, of which 35.4 percent are citizens of China, 23.0 percent are citizens of North Korea, 8.3 percent are citizens of Russia, 6.7 percent are citizens of South Korea, 4.2 percent are citizens of USA, 3.4 percent are citizens of Vietnam, 19.0 percent are citizens of other countries.

It can be concluded from the above data, that risk exposure to money laundering threats from China and Russia is very high, and next comes South Korea, Japan, and USA.

There is a study<sup>3</sup> which shows that foreign trade is widely used in money laundering at international level. In order to transfer illegal funds abroad, some amount of illegal money is added to the normal price of a product stated in a letter of credits or trade contracts (over invoicing) thus increasing an amount of payments to be transferred.

In 2015 the main export product of Mongolia was mining product (copper, coal), which composes 87 percent, livestock-rising sector products composes 7 percent (live stock, meat), industry products (food, cashmere products) composes 5 percent, agricultural products composes 1 percent. Mining products are highly exposed to foreign trade based money laundering crime.

## 1.2 Financial Sector

The share of banking sector in the financial system of Mongolia is still high. In order to analyze a structure of the financial sector of a country statistics on total assets, profit, and equity of banks, NBFIs, credit cooperatives, security traders and insurance institutions were used. As of end of 2015, banking sector composed 95.7 percent of total assets, 79.9 percent

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<sup>3</sup> APG's typologies work <http://www.apgml.org/methods-and-trends/page.aspx?p=a4a11dca-75f2-4dae-9c25-6215103e56da>

of total profit, 80.1 percent of total equity of the financial sector, and NBFIs, credit cooperatives, security traders and insurance institutions composed the rest.

As of end of 2015, 14 banks with total 1482 branches and units were operating in the banking sector. Total amount of savings account holders increased by 120.2 thousands from the end of 2014 and reached 2.8 million in 2015, while number of borrowers increased by 43.0 thousands and reached 846.0. Total assets of banking sector reached 20.8 trillion (around USD10 billion) to the end of 2015. This makes banks the biggest sector exposed to money laundering and terrorism financing crime compared to other institutions in the financial sector.

The number of financial institutions other than banks is estimated as follows, as of 2015:

1. NBFIs	442
2. Savings and Credit Loan Unions	254
3. Securities dealers	26
4. Insurance companies	<u>17</u>
<b>Total:</b>	<b>722</b>

Non-banking financial institutions make up small portion of the financial sector compared to its asset share with the banking sector, but if compared with the number of companies the sector is relatively large. This is the main issue which makes prudential supervision on non-banking financial sector less focused and increases ML/TF risks in the sector. As a result, although non-bank financial institutions make up a small asset share of the financial sector, when considered for the number of entities and its geographical coverage, it could be concluded a high-risk sector.

#### **Government Finance**

The State budget Income and aid to the state budget was MNT 5,973.8 billion, and total expenditure and real debt was 7,136.9 billion which equalled to 30 percent of the GDP in 2015. This shows the vulnerability of the state budget to embezzlement and malfeasance crimes which is still very high in Mongolia, thus it is crucial to diligently monitor the expenditure of the state budget.

#### **Money Value Transfer Services**

Informal remittance and money value transfer services (MVTs) are considered another risk of money laundering and terrorism financing. Informal remittance means money transfer services - not registered by an authority - provided based on the mutual trust by those not holding a special permission to run banking or other financial services. There are numerous Mongolian citizens or expats working without relevant permissions in foreign countries. There were cases of investigations by law enforcement and supervisors involving informal remittances.

#### **Shadow Economy**

Shadow or implicit economy includes goods and services outside of the tax duties, and turnover of unofficial, illicit, and criminal assets. Those sectors or activities left outside the national census data including the implicit, illicit, and unofficial activities, household manufacturing for one's own use, and lack of the ability to fully collect information is termed in general as Grey Economy in Mongolia.<sup>4</sup>

According to researchers, the turnover of criminal assets occurs in the shadow economy in Mongolia. If portion of the shadow economy is high, then the criminal assets in it tend to be high as well. Therefore, it could be concluded that this sector is one of the main area comprising ML/TF risks in Mongolia.

The scale of the shadow economy is generally measured through surveys and other observations - representative to such economy. Below mentioned researches were conducted to measure this part of the economy, such as:

1. Anderson, World Bank, 1997, Sample Survey, Shadow economy makes up 23-28 percent of the total municipality economy (Ulaanbaatar city);
2. USAID and National Statistical Bureau of Mongolia, 1999, Sample Survey, 13 percent of the GDP;
3. Bayambatseren.S, 2000, Inter-Sectoral Balance, 17 percent of the GDP;
4. National Statistical Bureau of Mongolia, 2005-2011, National Estimation System, Surplus value of the implicit economy measures 8-13 percent of the GDP;
5. Researcher Battur, 2012, Observation, 50 percent of the GDP;
6. Central Bank of Mongolia/Bank of Mongolia (Researcher Enkhzaya.D), Methodology of cash turnover, 2013, 35 percent of the GDP.

The scale of shadow economy of Mongolia between 2000 and 2012 was approximated and general tendencies were defined by the Bank of Mongolia (BoM) using a cash turnover methodology. The main hypothesis of this methodology is that the key reason of emergence of shadow economy is an undue tax burden and implicit economic activities in this sector of the economy are predominantly run in cash.<sup>5</sup> The research results revealed that in 2012 the shadow economy equaled to 35 percent of GDP and since 2000 it tended to increase.

Windfall Profits Tax (68 percent) was passed in 2006 which resulted in tax evasion by many gold mining operatives and decrease in the amount of gold submitted to the BoM and other commercial banks. For instance, before passing of the law in 2005 the amount of gold submitted measured at 15.2 tons, yet in 2011 it equaled to 3.4 tons. Thus, many gold mining operatives and artisanal mining operatives smuggle gold abroad. Resulting from this situation, the size of the shadow economy widened. Also, the data on smuggling corresponds with the decrease of gold submitted.

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<sup>4</sup> Research of National Statistical Bureau.

<sup>5</sup> Research Bulletin No.8, Mongolbank, 2013.

The passing of the Law on Economic Transparency in 2015 may have had a positive impact on mitigating the tax burden. Since enactment of the law MNT 34 trillion was uncovered. This reveals that there is a large amount of monetary turnover outside of the tax system and the risk of crime of tax evasion is extremely high in Mongolia.

The Law on Value-Added Tax, enacted in July 9<sup>th</sup> of 2015 (Revised Edition), was designed to decrease the shadow economy.

### **Transparency of legal persons**

In 2006, the Mongolian Government decided to join the Extractive Industries Transparency Initiative (EITI) and joined the Initiative during the its Governing Council meeting in 2007 in Oslo, Sweden as a candidate and was accepted as a member in 2010.

Under this initiative the Transparency Reports were submitted by 64 mining companies in 2006, 102 reports in 2007, 115 in 2008, 129 in 2009, 273 in 2010, 300 in 2011, 1527 in 2012, 1198 in 2013, 998 in 2014 with yearly increase of reports.

In 2016, through this initiative, a working group comprised of various agencies of Mongolian government started a research on transparency of beneficial owners in the extractive industries transparency firms (pre-feasibility study) with assistance of Open Forum Society. The preliminary result of the research is expected to be finalized in August of 2016. According to the preliminary report of this research will not be limited only on the beneficial ownership of the mining industry and it deems to cover aspects of the beneficial ownership of companies operating in Mongolia.

## ***II. LEGAL AND INSTITUTIONAL FRAMEWORK***

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### **2.1. Legal Framework in Combating Money Laundering**

Mongolia has acceded as participating country in Palermo convention against Transnational Organized Crime of 2000, Terrorist Financing Convention of 1999 and the Merida convention against corruption of 2003. In last 10 years, national legislative reform took place to comply with international standards stipulated in above treaties and conventions with extent to investigating, preventing ML/TF and imposing criminal penalty against such crimes.

Money Laundering was initially criminalised as utilization of illegal property in financial and business transaction with knowing such money or property gained illegally, under article 163 of Criminal code of 2002; and amendments to CC of 2002 had broadened “money laundering” as in article 268.1 as “an activity with purpose of concealing, disguising origin of property or making it legal, knowing such property is illegal with related to proceeds of crimes including only arms and narcotics dealing, counterfeiting and terrorism financing. However, it became clear that those legal amendments were not in compliance with international standard resulting immediate changes were necessary.

Further amendments related to Money laundering was made in 24<sup>th</sup> December, 2009 to CC that defined money laundering was intentional act receiving, keeping, utilizing, transferring and converting proceeds of crimes excluding those of minor and tax evasion crimes, with purpose to disguise, conceal illicit origin of such proceeds and to aid any person to evade legal liability.

Money laundering crime has unique attributes that it is committed in transnational scope with long and continues duration and that proceed of those crimes originates through complex means and schemes and that it requires broad knowledge and professional capacity to investigate. It is common that law enforcement agencies tasked with investigating this type of crimes need to dedicate a lot of resource and power to carry out their function and require participation of other experts and analysts.

Mongolia had been mutually evaluated in 2007 in line with 40+9 recommendations of FATF. Based on the ME of 2007, FATF placed Mongolia on its “grey list” between 2011 thru 2014.

In response to that and in order to strengthen AMLCF framework in legal policy level, preventive and organizational measures had been taken, AMLCFT was revised in 31<sup>th</sup> May, 2013; in accordance with UNSC resolution, the regulation on Designation of terrorists, freezing of assets of designated persons and review of frozen assets was enacted by Government resolution 348 in 12<sup>th</sup> October, 2013; and amendments to CC and Criminal procedure code was enacted by Parliament in 6<sup>th</sup> January, 2014.

Legal reforms to improve national Anti money laundering combating the financing of terrorism system (AMLCFT) in 2011-2014 had made Mongolia to have understanding and concept which is in compliance with international standard and applied internationally in AMLCF. For instance, such new terms as politically exposed person, beneficial owner and shell bank have been defined in the law on AMLCFT. However, even though such new terms had been successfully transplanted in domestic legislation, there iare still difference in knowledge, practice and skills and understanding exist among investigators, law enforcers, prosecutors and judges in properly applying AMLCFT law.

Since 2012, The Financial Information Unit in collaboration with ADB has achieved outcome to eradicate knowledge difference among participants in AMLCFT through implementation of capacity building project for police, intelligence, anti corruption, prosecution and judicial authorities. However, there is still strong need to have sustainable career, focused traning, remuneration system for investigators, prosecutors and judges who deal with case which involve complex financial and economic matters.

Although current criminalisation of ML in article 1661.1 of CC code, which is “Acquiring, possessing or using property with knowing that such property is the proceeds of

crime; or converting or transferring property with purpose to conceal or disguise the illicit origin of such property or to aid any person /individual or entity/ who participated in committing crime in evading the legal liability of his/her action; or the concealing or disguising of the true nature, source, location, disposition method, ownership of or rights with respect to such property”, is in full compliance with international treaties, conventions and standard requirements, it requires some time to establish uniform practice to put proper application of the law by investigators, prosecutors and judges, systematic training and awareness at all levels is essential. In this regard, for example, lack of proper judgement and error has incurred in judicial practice to apply the law.

At first time, the amendment to CC of 16<sup>th</sup> January, 2014 has made legal person criminally liable under Mongolian legislation. Under the law, committing crimes such as MLTF would be criminally liable, however, related criminal procedure has not been enacted<sup>6</sup>.

## **2.2. Legal Framework in Combating Terrorism Financing**

Mongolia has made exceptional progress in improving the legal framework for the prevention of terrorist financing. In accordance with recommendations by FATF, enacting revision of the AMLCFT law in 31<sup>th</sup> May, 2013, amending CC, CPC, Anti terrorism law have created the legal basis for freezing terrorist assets.

UN Counterterrorism Committee has concluded that it was an expression of strong political will of Mongolia in complying domestic law with international standards, through stipulation in the law that says international treaties ratified by Mongolian prevail over domestic legislation.

Criminalizing financing of terrorism and the regulation on listing and de-listing terrorist entity, monitoring of the list, freezing movement of asset of such entity listed, redressing damage caused by listing error and separating asset between guilty and non-guilty entity, has created a mechanism to list terrorist entity and to freeze its funds in accordance with the 1373 resolution.

Counter terrorism coordinative council (CTCC), members of which comprises of highest level of Mongolian Government has been functioning to prevent from terrorism, including the financing of terrorism. The CTCC's secretariat is located within the General intelligence agency.

## **2.3 Financial Information Unit**

Mongolia has adopted the law on law on Combating money laundering and terrorism financing in 2006 and established the Financial Intelligence unit by the Bank of Mongolia.

The core functions of FIU is to receive reports stated in the article 7 of law on AMLCFT and suspicious transactions from banks, non-bank financial institutions and other financial institutions, notaries, investment funds, stock companies, professional real estate institutions

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<sup>6</sup> Report on Mongolia by UN Counterterrorism Committee.

and other natural persons and entities, to analyze them, and to disclose the results to local law-enforcement organizations and foreign FIUs to combat money laundering.

The Bank of Mongolia regulates banks while the Financial Regulation Commission regulates other financial institutions in Mongolia. However, among the reporting entities, non financial stakeholder, real estate area is not regulated by the law by any authorities which makes it a riskful area for money laundering and financing terrorism in real estate area.

The FIU has other functions under the article 4.1 of law on AMLCFT to if there is consideration of any account is used for the purpose of money laundering and financing terrorism, the Head of the FIU has special enforcement to freeze the transaction up to 3 days.

From the beginning of its establishment, the FIU had had limited capability to analyze transactions from reporting entities until the revised edition then the FIU has a right to receive property registration information of person and legal entity, social insurance, cross the border information, transaction between banks and investment inquiries from the authorities under the article 18.1 of law on AMLCFT.

The FIU shall have a unified data under the article 20.1 of law on AMLCFT. According to the amendment to the AMLCFT of 2013, experts from the law enforcement authorities could work in the FIU for a fixed time to strengthen the cooperation between information exchange and investigation. As a result, the FIU and the law enforcement authorities have a mechanism to exchange information and the outcome of investigation could be achieved.

The FIU cooperates with the other countries' Financial Intelligence Units and international organizations through the international formulation. During the country risk assessment process, the FIU is working with the 18 Financial Intelligence Units through the Understanding of Memorandums. Also, the FIU has a capability to exchange information with 160 countries through the Egmont network.

The prevention and enlightenment of public relation, promotion are very effective to anti money laundering combating the financing of terrorism system. There are various occurrences among the people, legal entities to be used purposely or incidentally/without knowing/ in the money laundering and financing terrorism crimes. Therefore, the prevention, public awareness and promotion should be exercised in the anti money laundering combating the financing of terrorism system.

## **2.4 The system of law enforcement authorities, their activity**

Money laundering and financing terrorism crime is investigated by the General Intelligence Agency /GIA/ and General Police Department /GPD/ under the Criminal law. GIA and GPD shall send the restraint request to the court and have to inform to the prosecutor within 24 hours, the judge within 72 hours. Term of confinement under guard of a suspect shall be up to 14 days and if necessary shall be up to two months. If there is inevitable necessity to investigate the case while confining the accused by reason of the special complexity of the case of less grave, grave, specially grave crimes committed by accused, the period may be prolonged by court, but total period of investigation with confinement shall not exceed 24 months.

**Special investigation.** According to the law on intelligence authority, GIA and GPD shall obtain the authorization from prosecutor to investigate communication, telecommunication and to enter other network. Mongolia does not support the secret activity /service/ by the law. The commission recommends amendment to the law that to ensure the balance between the people`s secret and investigation procedure on communication and network safety should be permitted by only judge. /Recommendation 13/

**The right of suspect or restrained person.** According to the article 10.5, 59.3 of the Criminal procedure code, during arrest of a suspect he/she shall be informed on the reason and grounds for the arrest, and reminded his/her right to have a defense counsel, to defend him/herself, to lodge a complaint to court and not to give testimony against him/herself and shall be informed to the family within 24 hours. A suspect has right to not give testimony without counsel and there is video recording in pen.

### **Structure and Operation of the Prosecuting Organization of Mongolia**

Prosecutor`s of Mongolia shall consists of the prosecutor-general`s office, the aimag and capital city prosecutor`s offices and soum, inter soum and district prosecutor`s office. /Article 8 of the Law on the Prosecutor`s office of Mongolia/

The prosecutor`s office is an independent authority that acts on behalf of the State with the purpose of ensuring the implementation of the criminal legislation and participates in the administration of justice in the territory of Mongolia. /Article 2 of the Law on the Prosecutor`s office of Mongolia/

The Prosecutor shall exercise supervision over an inquiry and into the investigation of cases and the execution of punishment and participate in the court trial on behalf of the State. /Article 56 of the Constitution of Mongolia/

According to the Criminal procedure law of Mongolia, in executing supervision over implementation of the law in the inquiry and investigation actions the procurator shall exercise the following powers except giving confinement under guard:

- exercise to resolve a proposal submitted by an inquiry officer or investigator on suspension, reopening, or termination of a case,
- to give sanction on carrying out particular procedural actions by an inquiry officer or investigator, etc /Article 195, 205, 209, 215, 219 of the Criminal Procedure Law of Mongolia/

“Methodical guidance to comply with the Criminal Procedure Law in a supervision work of prosecutor and the inquiry and investigation actions” approved by the Appendix 1 of resolution dated 11<sup>th</sup> of August, 2016, of Prosecutor General and this guidance administers the exercising execution of certain actions of criminal proceedings of an inquiry, investigator, supervision prosecutor who is executor of procedural actions.

Seizure of items created by way of crime, arms and means used for committing it, or income gained by way of crime and other things incidental thereto shall be mandatory in addition to the confiscation of property /Article 49.2 of the Criminal Code of Mongolia/.

According to General Prosecutor's resolution from 5 June 2015, Criminal Police is responsible for complaints and information related to Article 166<sup>1</sup> of Criminal Code and Capital Prosecutors Office is responsible for monitoring it.

Central Intelligence Agency has authority of taking preventive measures, leading investigation and cooperates with Police Department, Border Protection Agency and with other state agencies for terrorism related crimes. Anti-Terrorism Committee provides prompt information to the GIA, Police and relevant government agencies, promotes the exchange of information between agencies and reports directly to the Prime Minister's Office using internal network and the local branches on terrorism related issues. Local branches of Committee operate at all provinces (aimaks) of Mongolia.

## **2.1 Criminal Court System and Proceedings**

Judicial System of Mongolia consists of three levels of courts, the Supreme Court (The court of cassation or review), the court of appeals and courts of first instance. The Judicial General Counsel is established to ensure independence of judges, consists five judges nominated by decree of President of Mongolia. Court budget approved by The Parliament and judicial authorities manages the budget allocation.

Parliament adopted in 2012 "Law on Courts" and in 2013 "Law about establishing of Courts". Other courts excluding Supreme Court is established by specialized task areas of judicial proceedings, such as criminal, civil or administrative matters, judges number is increased to cover increasing assignments.

In laws mentioned above courts of first instance may have specialized chambers on specific types of cases or disputes, such as family, labor disputes or juvenile cases, such norms indicates possibility of creating specialized task courts, specializing judges in few cases and creating foundation for specialized courts. The Judicial General Counsel supports and advances specialized task courts for reducing assignments, offer possibility to concentrate on specific cases, accumulate familiarity and improve knowledge which leads to expanding independence, quality of decisions and its meaningful to ensure the right to a fair trial. Criminal specialized court system will increase the experience and skills of judges to examine and resolve emerging organized crimes and money-laundering offenses.

In general for money laundering offences the courts of first instance and court of appeals takes approximately one-month period from receiving to delivering decisions and on the court of cassation or review it takes two-month period. The Judicial General Counsel conducts regular trainings on descriptions, understanding and legal definitions of emerging new crimes, including money laundering offences. For example, The Judicial General Counsel conducted a series of workshops to increase awareness and knowledge about resolving money laundering and terrorism financing crimes in cooperation with the Asian Development Bank. In 2014 at the workshop "Principal understanding of money laundering offences and legal bases" more than 250 criminal judges has attended.

To increase purpose, importance and create sustainable conditions and opportunities for trainings, 15 judges trained as teacher-trainers in 2015. Training for judges and teacher-trainers training for judges will be organized in stages until the end of 2017. In addition, the training is organized with foreign judges.

## **2.2 Internal Cooperation**

Local or national cooperation to combat money laundering and terrorism financing can be conducted as a meeting of The Cooperation Council established at the Financial Intelligence Unit; information exchange between the reporting entity, FIU, law enforcement, prosecutor and the courts; joint training, seminars and workshops; intelligence and investigative organizations joint working groups.

The Cooperation Council function is to ensure the implementation of AML/CFT laws and regulations, information exchange, mitigate risk and prepare recommendations on preventative measures. It has been working since 2006 beside of the Financial Intelligence Unit, consist of representatives of Ministry of Foreign Relation, Ministry of Finance, Ministry of Justice and Internal Affairs, Prosecutors Office, Bank of Mongolia, Financial Regulatory Commission, General Police Department, General Intelligence Agency, General Tax Department, General Custom Department and the Financial Intelligence Unit. According to The Cooperation Council regulation council should meet every quarter, if necessary special meetings can be held between them. Revised AML/CFT law was adopted by parliament on 31 May 2015 and Cooperation Council regulation was revised by A-116 decree on 21 July 2014. To increase rights, responsibility and involvements of members of the Cooperation Council the chairman is rotated for one year.

The rotation of the chairman of the Cooperation Council introduced to increase rights, responsibility and involvements of members of council, leads to stabilization of participants.

Trainings and increasing awareness on risks of money laundering and terrorism financing, reducing institutional deficiency, improvement of legal environment, ensuring implementation of laws are necessary for members of The Cooperation Council. Therefore, attendance in the future in semi-annual and annual meetings of AML/CTF regional institutions and training activities, including seminars regularly held at national level. It's not just incident that participant at ADB's technical assistance program training for law enforcement, prosecutors and judges in AML/CFT suggested several times that is important strengthening the Cooperation Council members role, participation and increasing training, awareness activities for the members.

At the policy level Mongolia's internal cooperation mechanism is set-up; however there is deficiency in introduction of mechanisms for cooperation to detect offences of money laundering and financing of terrorism and effective investigation at the practical level. One of the FATF's main efficiency indicators for effective AML/CFT system is the rightful use by

competent authorities' financial and other information for investigation. According to article of 17.1 and 17.2 of AML/CFT law representatives of competent law enforcement authority should be seconded in the FIU and they have the rights to conduct supervision and obtain information pursuant to article 16.9 of the law, however these provisions effective implementation is still inadequate.

## 2.3 International Cooperation

According to article of The Constitution of Mongolia "The international treaties to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession". Therefore, the international treaties and internationally recognized and accepted norms, principles became part of country's legal system and follow "fair principles to abide by its obligations" of basic principle of international law declared in paragraph 2 of The Constitution of Mongolia.

Mongolia adopted and ratified "The United Nations Convention against Corruption", "The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", "The United Nations Convention against Transnational Organized Crime" and "The International Convention for the Suppression of the Financing of Terrorism" and has fulfilled its obligations under these obligations. In particular, countries ratified above mentioned required criminalizing offences according to conventions definition and Mongolia revised corruption, money laundering, terrorism financing and related predicate offense definitions in the criminal law.<sup>7</sup>

### Mutual legal assistance

The mutual legal assistance on criminal offenses, extradition of suspects and transfer of prisoners is legally regulated by the specific chapter 45, 46 and 47 of the Criminal Procedure Code and The General Prosecutor office issued detailed regulation on this matter and determined the relevant procedures.

The mutual legal assistance is carried out in accordance with the mutual legal assistance agreement (MLAA) and according to other international treaties and agreements. Mongolia has signed bilateral mutual legal assistance agreements with 17 countries, extradition of suspect's agreements with 5 countries and prisoner's transfer's agreements with 5 countries. Statistics for received requests under the mutual legal assistance, the extradition of suspect's agreements and prisoners transfers agreements shown in The Table 2.1 (GPO, 09/2016)

**Table 2.1. Received Mutual Legal Assistance Requests (GPO)**

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<sup>7</sup> General Prosecutor Offices Information Bulletin, 09/2016, Ulaanbaatar City.

No	Name	2014	2015	2016
1	<b>Number of Received MLA</b>	<b>9</b>	<b>19</b>	<b>6</b>
2	Number of fulfilled MLA requests	8	18	4
3	Number of refused MLA requests	1	1	-
4	<b>Number of Received extradition of suspect's request</b>	<b>3</b>	<b>2</b>	<b>1</b>
5	Number of fulfilled requests	2	1	1
6	Number of refused requests	-	1	-
7	<b>Number of Received prisoner's transfer request</b>	<b>2</b>	<b>6</b>	<b>3</b>
8	Number of fulfilled requests	1	6	-
9	Number of refused requests	-	-	-
10	<b>Responded time</b>	From 2 months up to 2 years	14-90 days	30-60 days

There is a firm commitment to fulfilling international obligations under mutual legal assistance in relation to money laundering, terrorism financing and associated predicate offences but Mongolia didn't receive any request so far.

The extradition of suspects regulated by chapter 46, article 404-409 of the Criminal Procedure Code, procedures of receiving and fulfilling requests accomplished according to General Prosecutions Guidelines for Procurators monitoring of the applications of The Criminal Procedure Code during inquiry and investigative actions adopted by A/88 resolution from 2015. This guideline is a significant progress in this field. The guideline for prosecutors and investigators is an essential instrument for responding to a request and officially point to operational steps for and mechanism for responding to each request on time, designation of the central agency responsible for requests.

However, issues such as shortage of human resources, responsibility covering translation and other similar costs associated with requests, designating new personnel solely responsible for revising of MLA<sup>8</sup>, signing new agreements are some problems associated with MLA.

There were cases that above mentioned issues affects in such way that response was delayed for MLA request sent to foreign country, refusal of requests on the ground of

<sup>8</sup> Most of MLAA are outdated and signed with former socialist countries, covers civil or administrative cases.

incompleteness documents and refusal of task depending on the quality of the translations. These issues affect to proving criminal background of assets located in a foreign country, establishing beneficial owners, successfully solving a case and confiscating assets. Therefore, these issues increase the risk of criminals for placement illegal funds abroad.

Mongolia has signed 4 treaties for extradition of suspects and prisoner's transfer agreements. Current situation of extradition of suspects and prisoner's transfers are following<sup>9</sup>:

- Foreign prisoners sentenced by the Mongolian court, upon request and by the consent of the General Prosecutor of Mongolian could be transferred to home country to serve an imprisonment sentence.
- Mongolian citizens sentenced abroad could be transferred according to extradition of suspects and prisoner's agreement, and Foreign prisoners sentenced by the Mongolian court could be transferred to home country to serve an imprisonment sentence
- In 2014 2 Mongolian citizen sentenced to the drug trafficking crimes were transferred from Kazakhstan to serve prison sentences in the country. One South Korean citizen sentenced for fraud crimes was transferred to home country to serve prison sentence. One Kazakhstan citizen was transferred to home country for investigation in connection with a crime.

According to The Constitution of Mongolia it is prohibited "to deport from country and to transfer of Mongolian nationals" so it's prohibited to transfer Mongolian nationals to another country. Although, this article is for protecting own citizens, when interests of several countries affected by a persons who have significant degree of influence over the government and business sectors, crimes cannot be solved internally and it might be difficult to transfer him/her to foreign country to impose criminal liability. This arrangement raises significant issue for transferring to a foreign country when potential terrorist persons shelters in Mongolia. This issue could be risk increasing factor on criminal liability for money laundering and terrorism financing. Also, there are lack of legal regulation and basis to refuse of MLA in Mongolia.

#### **Other Types of Cooperation** <sup>10</sup>

In addition to MLA other types of cooperation shall include activities aimed at collecting important information, supporting documents and evidences in a criminal case. These include informal contacts, assistance, inter agency agreements, informal events between police agencies and use of International Criminal Police Organization (Interpol)'s networks. Informal information channels are effective and are important source information for criminal

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<sup>9</sup> GPO bulletin, 2016/09, Ulaanbaatar city.

<sup>10</sup> Based on World Bank and UN Office on Drug and Crime Stolen Asset Recovery Initiatives "Guide for mutual legal assistance in criminal actions."

investigation to track down of person, discovery of criminal history and property registration information.

Although Information gathered from informal sources cannot be presented as a major importance evidence to resolve the criminal case it is important source of understanding of legal assistance framework, regulations, and specific procedural characteristics of a criminal investigation and useful for collecting data, collecting information necessary for assistance. Furthermore, it's very important for the success of assistance, in such way that experts sending MLA request would prepare better tasks.

Informal cooperation includes receiving information by agreements, performance contracts and memorandum of understanding between Mongolian authorities and foreign counterparts, cooperation between Financial Intelligence Units, including use of Egmont network through FIU, use of International Criminal Police Organization (Interpol) 's Network through General Police Department, use of World Bank and UN Office on Drug and Crime Stolen Asset Recovery Initiatives (STAR's) network and use of Asia Pacific Stolen Asset Recovery networks.

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