



Asia/Pacific Group
on Money Laundering

**ASIA/PACIFIC GROUP
ON MONEY LAUNDERING**

**APG MUTUAL EVALUATION REPORT ON
MONGOLIA**

**Against the FATF 40 Recommendations (2003) and 9
Special Recommendations**

**As adopted by APG members
24 July 2007**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
1 GENERAL.....	12
1.1. GENERAL INFORMATION ON MONGOLIA	12
1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM.....	16
1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP	17
1.4. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS	20
1.5. OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING	22
2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES	27
2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)	27
2.1.1 DESCRIPTION AND ANALYSIS.....	27
2.1.2 RECOMMENDATIONS AND COMMENTS	29
2.1.3 COMPLIANCE WITH RECOMMENDATIONS 1 & 2	29
2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II)	30
2.2.1 DESCRIPTION AND ANALYSIS.....	30
2.2.2 RECOMMENDATIONS AND COMMENTS	30
2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II.....	31
2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)	31
2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)	33
2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)	36
2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28)	41
2.7 CROSS-BORDER DECLARATION OR DISCLOSURE (SR.IX)	46
3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS	51
3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING	51
3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8).....	51
3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9).....	58
3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)	60
3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII).....	60
3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)	65
3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13- 14, 19, 25 & SR.IV)	66
3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)	70

3.9	SHELL BANKS (R.18)	73
3.10	THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SRO's ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25).....	74
3.11	MONEY OR VALUE TRANSFER SERVICES (SR.VI)	87
4 ...	PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS	90
4.1	CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12).....	90
4.2	SUSPICIOUS TRANSACTION REPORTING (R.16).....	91
4.3	REGULATION, SUPERVISION AND MONITORING (R.24-25)	91
4.4	OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20).....	92
5	LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS ..	94
5.1	LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33).....	94
5.2	LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34).....	96
5.3	NON-PROFIT ORGANISATIONS (SR.VIII)	97
6	NATIONAL AND INTERNATIONAL CO-OPERATION	101
6.1	NATIONAL CO-OPERATION AND COORDINATION (R.31)	101
6.2	THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I).....	103
6.3	MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)	104
6.4	EXTRADITION (R.37, 39, SR.V)	106
6.5	OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V) ...	108
7	OTHER ISSUES	111
7.1	RESOURCES AND STATISTICS	111
8	TABLES.....	112
9	ANNEXES.....	136

PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF MONGOLIA

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Mongolia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Mongolia, and information obtained by the evaluation team during its on-site visit to Mongolia from 4 – 15 December 2006, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Mongolia government agencies and the private sector.

2. The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

Legal Expert – Catherine Shuk-yin Fung, Senior Government Counsel, Domestic Proceeds of Crime Section, Prosecutions Division, Department of Justice, Hong Kong, China

Financial/Regulatory Experts – Kazuhiro Sakamaki, Deputy Director, Japan Financial Intelligence Office

and

Kyeongmo (Antonio) Koh, Director, Head of Planning & International Cooperation Team, Korea Financial Intelligence Unit (KoFIU)

Law Enforcement Expert – Wayne Eacott – Federal Agent, Economic & Special Operations, Australian Federal Police

APG Secretariat – David Shannon, Principal Executive Officer

3. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

4. This report provides a summary of the AML/CFT measures in place in Mongolia as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Mongolia's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place within Mongolia as at the date of the on-site visit or immediately thereafter. It describes and analyses the measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Mongolia's level of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

1. Background Information

2. Mongolia is a land-locked country bordered by Russia (3485km) and China (4673km) with an estimated population of 2.56 million people.
3. Mongolia continues to rely on the traditional agricultural and mining sectors for growth with over half of the population relying on agriculture for some part of their income. The mining sector accounts for over 12% of GDP, 50% of the industrial output, and 43% of export earnings.
4. Mongolia is a constitutional democracy with a legal system following the Romano-Germanic legal tradition. Statutes are the main source of law. The Supreme Court may expand/explain or correct application of all laws, except the Constitution. Formal interpretations of the Supreme Court takes the form of a resolution and once issued is to be considered a part of the laws.
5. In common with a number of economies transitioning from communism to a free market, over the past 14 years Mongolia and independent observers have identified considerable problems with corruption, in particular associated with activities involving the privatisation of large sections of state-owned enterprises and property.
6. Mongolia has taken significant steps to enhance conditions of transparency, strengthen governance and combat corruption in parallel with steps to combat money laundering (ML) and terrorist financing (FT). In 2006 Mongolia passed a comprehensive Anti-Corruption law which, amongst other things, laid the foundations for the creation of an independent corruption fighting body.
7. AML/CFT compliance issues have not yet been comprehensively addressed, however the Bank of Mongolia has taken steps to strengthen the culture of compliance with prudential norms amongst Mongolian Banks. Governance and compliance culture is generally weaker in the Non-banking Financial Institutions (NBFIs), but with the creation of the Financial Regulatory Committee (FRC), Mongolia is taking steps to strengthen the culture of compliance of NBFIs and some DNFBPs, however this is at a very early stage in these sectors.
8. Mongolia faces a number of serious ML and FT risks.
9. No terrorist activity has occurred in Mongolia or has involved Mongolian citizens/residents, nor have Mongolian nationals been identified as members of terrorist organisations. However, Mongolian authorities have investigated a number of cases involving possible FT and have worked closely with international partners to identify possible cases of FT within Mongolia.

10. Mongolia has a predominantly cash economy resulting in a large informal sector, which makes it highly vulnerable to ML and FT.
11. Corruption, bribery, tax evasion and smuggling have been identified as crimes generating significant proceeds. There is a possibility that Mongolia may be used as a staging point for drug trafficking. Mongolia has a very large informal mining sector, with estimates that there are up to 100,000 'ninja miners' operating who illegally extract deposits of gold and other minerals without a mining license. Human trafficking, wildlife smuggling and poaching of endangered species have been identified as sources of criminal proceeds. Smuggling of antiquities, including fossils, have been identified as a major risk and a source of proceeds of crime within Mongolia.
12. Currency smuggling is a significant vulnerability for ML and FT in Mongolia. Authorities have identified Savings and Credit Cooperatives (SCC), banks, hotels, restaurants and bars as being vulnerable to exploitation in order to facilitate ML in Mongolia. Trade-based ML appears to also be a vulnerability for ML in Mongolia. Mongolia has an expanding real estate sector with rapidly increasing prices and a trend of 'off the book' transactions which poses a significant vulnerability for ML through this sector.
13. Mongolia's large underground banking sector reflects demand for low cost remittance, but also poses a risk for ML. Reasons for the high uptake of informal remittance systems include the relatively high costs and slow speed of remittance using the formal financial sector; and the large number of foreign workers remitting money to Mongolia.
14. Mongolia has a clear policy to implement effective AML/CFT measures, but faces challenges of capacity and resources. Mongolia passed the law on Combating Money Laundering and Terrorist Financing (CMLTF) which came into effect on 8 July 2006. This law does not establish any criminal offences, rather it sets out provisions in order to establish a FIU, which will develop certain preventative measures for financial institutions, including CDD, STR reporting, internal controls and powers of supervision for AML/CFT. The CMLTF also provides for national and international cooperation on AML/CFT.
15. A range of financial institutions and financial markets exist in Mongolia, but there is a limited range of DNFBPs. Mongolian Law prohibits any casino businesses in Mongolia.

2. Legal Systems and Related Institutional Measures

16. ML is implicitly criminalised under Article 163 of the Criminal Code of Mongolia. The scope of the ML offence does not meet the requirement of the Palermo Convention and the effectiveness of the offence is not able to be established
17. While the ML offence covers a very wide range of predicate offences, as it is currently set out, it does not allow intention to be inferred from objective factual circumstances. Criminal liability for ML is not extended to legal persons and legal persons are not subject to effective or proportionate sanctions for ML.
18. Although Mongolia ratified the UN Convention for the Suppression of the Financing of Terrorism in 2003, it does not yet have a criminal offence for FT.

19. Powers of confiscation, seizure, freezing, identification and tracing are not set out clearly in the relevant statutory provisions (the Criminal Code and the Criminal Procedure Code).
20. Mongolia lacks effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN 1267 Committee or to freeze terrorist assets of persons designated in the context of UN SCR 1373.
21. Mongolia established the financial intelligence unit (FIU) in November 2006 with the powers of an FIU to receive, analyse and disseminate suspicious transaction reports (STRs), although there are deficiencies in its dissemination powers. The FIU has been created within the Bank of Mongolia under the terms of the CMLTF. The CMLTF creates the FIU as the AML regulator and bestows limited powers on the FIU to monitor and suspend accounts when it suspects cases of ML or FT. While the Mongolian FIU is very new and has not yet begun to receive STRs, the Bank of Mongolia is working closely with the FRC and the Police Prosecutors' Office to support the establishment and growth of the FIU. There are, however, very significant legislative deficiencies in the STR obligations that will be a major impediment to establishing an effective FIU.
22. While there are a range of powers available to law enforcement authorities, there are significant capacity constraints amongst law enforcement agencies and some problems with ensuring that ML offences are properly investigated. Additionally, no law enforcement agency is yet designated to investigate FT, as the offence has not yet been established. There will be a need to include the new Anti Corruption Agency in AML investigations.
23. Mongolia has a cross-border currency declaration system in place, however bearer negotiable instruments are inadequately covered in the declaration system and there is no mechanism to ascertain origin of reported currency and its intended use. There is no procedure in place to ensure that the FIU is notified on suspicious cross-border transport of currency and sanctions available for false declaration are inadequate.

3. Preventive Measures – Financial Institutions

24. Mongolia's AML/CFT system is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations and Mongolia has not sought to exclude any of the activities on a risk basis.
25. The Law on CMLTF establishes certain customer due diligence (CDD) and STR obligations on the full range of financial institutions as envisaged in the FATF standards.
26. There are inadequacies in legislative requirements for a number of key preventive measures including obligations to verify person(s) acting on behalf of corporate customers such as; to identify beneficial owners, including determining the natural persons who ultimately own or control a corporate customer; and to undertake reviews of existing records on CDD documents to keep them up-to-date and relevant.
27. Mongolia has not adequately addressed the issue of enhanced CDD measures in relation to politically exposed persons (PEPs).
28. There is no requirement for the reporting entities to take enhanced CDD measures in relation to cross-border correspondent banking and other similar relationships.

29. Financial institution secrecy laws do not appear to inhibit the disclosure to and sharing of requisite information with the competent authorities, although obligations on financial institutions to keep records of customers' transactions for five years are set down in legislation. There is, however, no requirement to retain records sufficient to permit reconstruction of individual transactions, nor any requirement to maintain information on customers' identification data for five years following the termination of an account or business relationship, and to keep all customer and transaction records available on a timely basis to competent authorities.
30. In relation to wire transfers, there are problems with ordering financial institutions obtaining information of the originator of wire transfers, to verify the identity of the originator, and to include full originator information in the message or payment form accompanying cross-border wire transfers.
31. There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.
32. The CMLTF includes an obligation to monitor complex and unusual transactions.
33. There are very serious deficiencies in the obligations contained in the law on CMLTF to report suspicious transactions in relation to ML and FT. While obligations to report STRs do exist, they fall well short of the international standards and provide for only very narrow circumstances in which an STR may be filed. STRs are not required in cases of non-cash transactions of any kind, nor domestic transactions under 20 million togrog (approx \$20,000).
34. The CMLTF provides 'safe harbour' for financial institutions who report STRs and other threshold reports to the FIU in good faith. It is not clear that the directors, officers and employees of the financial institutions are adequately protected from criminal and civil liability if they report in good faith.
35. There is a legislative requirement for the reporting entities to develop and implement an internal monitoring program to combat ML and terrorism financing, which contains rules and procedures for compliance officers with their powers and obligations being specified, however there is a need for further implementation to ensure effectiveness.
36. At the time of the on-site visit there is no requirement for the reporting entities to maintain an independent audit function to test compliance with the internal monitoring programs, to establish ongoing employee training on AML/CFT issues and measures, and to put in place screening procedures to ensure high standards when hiring employees.
37. No financial institutions have foreign branches or subsidiaries at this stage.
38. The Bank of Mongolia has adequate monitoring powers, inspection authority and sanctions available under the Banking Law. No statistics are available since the Bank of Mongolia, FRC or FIU have neither conducted any AML/CFT focused on-site examination nor taken any sanction against non-compliance with AML/CFT requirements. The Bank of Mongolia is adequately structured, funded, staffed and provided with certain technical and other resources but sufficient training opportunities have not been supplied to its employees on AML/CFT issues.
39. The FIU has adequate monitoring powers and inspection authority under the law on CMLTF, but effectiveness is an issue. The FIU has limited power to apply

administrative sanctions to those reporting entities which have permitted anonymous accounts, conducted transactions with insufficient customer information, etc. The FIU lacks capacity and resources to meet its roles and functions given under CMLTF.

40. The FRC has adequate monitoring and inspection authority and strong sanctions available, but has not effectively implemented those powers and they are unable to sanction unlicensed entities. The FRC has not yet conducted AML/CFT supervision for NBFIs and the FRC lacks resources to implement its supervisory role. The FRC has not prepared detailed regulations in line with the new AML/CFT obligations
41. At the time of the on-site visit the Bank of Mongolia and the FIU were planning to issue detailed regulations in line with the new AML/CFT obligations. Prior to the enforcement of the law on CMLTF, the Bank of Mongolia issued recommendations on AML for the banking and financial organization; however, this recommendation has had no regulatory power with sanctions for non-compliance.
42. NBFIs remittance providers have shown little evidence of AML/CFT implementation and no guidance has been provided to money value transfer providers to support their compliance with obligations under the CMLTF. Money value transfer service operators are not required to maintain a current list of agents. Overall, there appears to be a very significant sector of informal remittance which is not yet included under AML/CFT regulated channels.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

43. DNFBPs, as set out in the FATF standards, have not yet been brought into the AML/CFT regime in Mongolia, with the exception of trust service providers, which are considered to be NBFIs under Mongolian law.
44. With the exception of trust service providers, there are no CDD requirements on DNFBPs operating in Mongolia, nor are there any obligations to maintain records of customer identification or transaction data. For the most part, these DNFBPs have obligations to report incomes to the tax authorities. Lawyers are obliged to be licensed by the Ministry of Justice. Notaries are registered by the Mongolian Chamber of Notary. Accountants are registered with their self-regulatory organization.
45. Real-estate market intermediaries are a very new business in Mongolia and are largely free from government control and there are poor statistics on the number of real estate intermediaries operating.
46. Trust service providers are regulated as NBFIs in Mongolia. There are provisions in both the CMLTF and the FRC laws which provide for authorities to obtain information from NBFIs providing trust services, however, the absence of clear obligations on NBFIs to obtain or ensure access to the beneficial ownership information means that such powers cannot be effective.
47. Given the newness of the CMLTF law and the relative newness and limited capacity of the FRC, the measures in the CMLTF have not yet been implemented in relation to NBFIs, and there is no indication that particular attention has yet be paid to trust service providers. As such it is not possible to determine the effectiveness of the measures at this time.

48. As AML/CFT controls have not been extended to the DNFBPs, the suspicious transaction reporting obligations under Article 7 of the AML law have not been extended to the DNFBPs, with the exception of trust service providers.
49. Self-regulatory organizations have only a limited role at present and no role in relation to AML/CFT measures for DNFBPs.

5. Legal Persons and Arrangements & Non-Profit Organisations

50. Mongolia lacks sufficient measures to ensure adequate transparency for the registration of legal persons, including requiring public disclosure of those directing, managing and controlling companies, including beneficial owners of legal persons.
51. Bearer shares are not specifically prohibited, but in practice, bearer shares are not a feature of the Mongolian market.
52. There are no requirements for companies to record the beneficial ownership of shareholders or to make beneficial ownership information available in a timely fashion. There is a lack of effective penalty provision to ensure prompt report of any change of information on charter or activities by companies.
53. Trusts operating in Mongolia are defined in Article 406 of the Civil Code in relation to “trust contracts”. Such trust contracts are concluded between the settlor and the trustee. Article 406 does not address requirements for identification of trustees or settlors.
54. There are provisions in both the CMLTF and the FRC laws which provide for authorities to obtain information from NBFIs providing trust services, however, the absence of clear obligations on NBFIs to obtain or ensure access to the beneficial ownership information means that such powers cannot be effective. The FRC has not yet taken steps to oversee the implementation of AML/CFT measures by trust service providers.
55. Non-Profit Organisations (NPOs) in Mongolia can take the form of associations, foundations or cooperatives under the Civil Code. Laws that regulate NPOs include the Civil Code, the Cooperative Law of Mongolia and the Law of Mongolia on NPOs. Authorities indicate that there are currently approximately 6000 NPOs registered in Mongolia.
56. NPOs are not specifically included in the new CMLTF. Article 4.2 of the CMLTF allows any legal person, which would include NPOs, to file STR reports to the FIU, however there is no safe harbour provided in the CMLTF to support such reporting.
57. Mongolia has not yet undertaken a review of its domestic NPO sector, however the Ministry of Justice and Home Affairs indicates that a new law addressing NPOs is being considered. Outreach has not yet occurred to the NPO sector in relation to AML/CFT risks and prevention.
58. Registration requirements do not include obligations to record the details of person who own, control or direct NPOs and sanctions available to competent authorities in cases of breaches of controls over NPOs are ineffective.

6. National and International Co-operation

59. Mongolia has established a number of formal mechanisms to support cooperation and coordination between domestic authorities in combating ML and the financing of terrorism. All Mongolian agencies met during the on-site visit highlighted the need for close cooperation to effectively implement the laws relevant to AML/CFT. However, a number of agencies indicated some problems with inter-agency cooperation and coordination up to this point.
60. There has been cooperation and coordination at the highest policy level in the preparation of the AML/CFT law and amendments to the Criminal Code to criminalise ML and FT.
61. Article 20 of the CMLTF law includes statutory provisions for the creation and operation of a Cooperation Council at the FIU, whose functions include ensuring the implementation of AML/CFT laws, exchanging information and preparing recommendations on preventive measures.
62. As of the date of the on-site visit the Cooperation Council had not been established, but subsequently had its first meeting on 10 June 2007 and will meet every 3 months.
63. The National Coordinative Council is established under the Anti-terrorism law (2004) to exchange information and support cooperation between organisations in the efforts against terrorism. The NCC is headed by the Head of Central Intelligence Organisation.
64. Mongolia has ratified the Vienna Convention and the Terrorist Financing Convention, but is not yet a party to the Palermo Convention. Not all the terms of the Terrorist Financing Convention have been fully implemented, including an absence of a comprehensive FT offence.
65. Mongolia actively provides mutual legal assistance and other forms of international cooperation to other jurisdictions relating to AML/CFT or other predicate offences on investigations, prosecutions and related proceedings. These include taking statements, collecting evidence, search, freezing and seizure of assets and equipment, confiscation of property and confiscation of proceeds of crime. Mongolia is also able to provide assistance on fiscal matters.
66. Statutes in Mongolia are not clear on whether Mongolia would provide mutual legal assistance in the absence of dual criminality. Mongolia, however, requires dual criminality for the offence to be extraditable and the absence of an FT offence could present grounds to refuse an extradition request.
67. Mongolia has demonstrated a strong commitment to share information with foreign counterparts, in particular through the Bank of Mongolia (BoM), FRC, Customs Office and law enforcement agencies. There are various mechanisms and pathways in place, which are being utilised. The new FIU is actively pursuing opportunities to establish mechanisms to share information with foreign counterparts.

MUTUAL EVALUATION REPORT

1 GENERAL

1.1. GENERAL INFORMATION ON MONGOLIA

1. Mongolia is a land-locked country located in eastern Asia, bordered by Russia (3485km border) to the north and China (PRC) to the east, west and south (4673km border). Mongolia has in total 40 border points of which 29 are with Russia and 11 with PRC, and 2 international airports. It has a total area of 1,565,000 square kilometres. The estimated population in 2005 was 2.56 million people.

Economic Overview

2. Economic activity in Mongolia has traditionally been based on nomadic livestock and agriculture. Mongolia has extensive mineral deposits. Copper, coal, molybdenum, tin, tungsten and gold account for a large part of industrial production.
3. During the 1990s, Mongolia's transitional economy suffered deep recession due to political inaction, the impact of natural disasters and the conduct of reform from a state-run to a free-market economy. This period saw extensive privatization of the formerly state-run elements of the economy. Summer droughts followed by severe winters (Dzud) in 2000-2002 resulted in massive livestock losses and zero or negative GDP growth. This was compounded by falling prices for Mongolia's primary sector exports and widespread opposition to privatization.
4. In recent years economic growth has increased rapidly and was 10.6% in 2004 and 6.2% in 2005, largely because of high copper prices and increased of gold production. Inflation was 11% in 2004, but moderated to 9.5% in 2005.
5. Mongolia continues to rely on the traditional agricultural and mining sectors for growth. Over half of the population relies on agriculture for some part of their income. The mining sector is a major contributor to the economy, accounting for about 12 percent of GDP, half of the industrial output, and 43 percent of export earnings. The formal mining industry sector employs over 12,000 people and Mongolian authorities estimate that the informal mining sector may involve up to 100,000 people.
6. In 2005, Mongolia recorded a budget surplus of MNT 83.0 billion (approx US\$83 million), and the excess of current revenue over current expenditure comprised MNT 240.2 billion (approx US\$240 million).
7. In the six months to August 2006 Mongolia's high economic growth continued. Real gross industrial output increased by 32 percent over the corresponding period in the previous year. The main drivers of industrial growth were manufacturing products, in particular beverages (32 percent), textiles (31 percent) and basic metals (36 percent).
8. Despite remarkably high international prices, production in the mining sector contracted by 7.5 percent in real terms, as a result of the stagnation of copper extraction and a decrease in recorded gold production. The sector is however attracting foreign direct investment which is expected to reach US\$319 million in 2006.

9. The World Bank indicated in November 2006 that projected overall GDP growth for 2006 is anticipated to be around 7 percent, with the main contributions coming from the manufacturing, livestock and services sectors.
10. High prices for copper and gold have sustained export revenue growth in 2006. In the January-August 2006 period, exports in U.S. dollar terms increased by 60 percent and imports by 32 percent from the previous year's. Copper concentrate and gold contributed 43 percent and 13 percent of total export value respectively. Inflation was brought down from 9.2 percent in 2005 to 5.3 percent in 2006 as of August, although monetary growth remains strong, suggesting that monetization of the economy is still at work. As of June 2006, broad money increased by 46 percent and credit to the private sector by 40 percent.
11. Mongolia's economy continues to be heavily influenced by its neighbours, Russia and China. For example, Mongolia purchases 80% of its petroleum products and a substantial amount of electric power from Russia, leaving it vulnerable to price increases. Remittances from Mongolian migrant workers employed abroad both legally and illegally are sizeable. Mongolia, which joined the World Trade Organization in 1997, seeks to expand its participation and integration into Asian regional economic and trade regimes.
12. Preliminary data for 2005 showed a foreign trade deficit of USD 95 million, equivalent to 5.1 percent of GDP.
13. The private sector in Mongolia is intensive and over 90 percent of enterprises are privately owned. Mongolia has benefited from a considerable influx of foreign direct investment principally for the mining and farming sectors.
14. The exchange rate of the MNT against major currencies appreciated during the second half of 2006. As of 15 December 2006 the MNT currency rate was 1012 MNT equal to 1USD.

Government and Legal System

15. Mongolia is a constitutional democracy, with the constitution as the supreme source of law.
16. Mongolia is a unitary state; the territory of Mongolia is divided into administrative units. Administrative units consist of the capital city and aimags (provinces). Aimags are subdivided into soums (sub-provinces) and capital city is subdivided into districts. The state power is allocated into 3 separate branches: legislative, executive and judiciary.
17. Legislative power is vested in the Parliament, known as the State Great Hural, and has the exclusive power to enact and amend laws, determine the basis of the domestic and foreign policies of the State, to pass a law recognizing full powers of the President after his/her election and to relieve or recall the President, to appoint, replace or remove the Prime Minister and members of the Government, and to define the State's financial, credit, tax and monetary policies, etc. The Great Hural consists of 76 Members elected for a term of four years.
18. The President is the head of the State and the embodiment of the unity of the people. The President enjoys such prerogative rights as to veto, partially or wholly, laws and other decisions adopted by the parliament. The veto may be overridden by a 2/3 vote of members present and voting.

19. The Government is the highest executive body of the State. It has powers to organize and ensure nation-wide implementation of the Constitution and other laws, to promote efficient leadership of central State administrative bodies and direct activities of local administration, to elaborate guidelines for economic and social development of the State and organize their implementation, to strengthen the country's defence capabilities and to ensure national security.
20. The judicial power is vested exclusively in the courts. As stated in the Constitution, the judicial system shall consist of the Supreme Court, aimag and capital city courts, soum, intersoum and district courts. In addition, specialized courts such as criminal, civil and administrative courts can be created.
21. Mongolia follows the Romano-Germanic or continental legal system. The Constitution is the supreme source of law: all other laws and decisions of the state must conform to the Constitution. Statutes are the main source of law.
22. The courts are independent and subject to law only. A special Constitutional Court exercises supreme supervision over the implementation of the Constitution, making judgement on the violation of its provisions and resolving constitutional disputes. Human rights and freedoms are accepted as the highest value.
23. The Supreme Court may expand/explain or correct application of all laws except the Constitution. Pursuant to Article 50.1.4 of the Constitution of Mongolia, the Supreme Court provides official interpretations related to the correct application of all laws other than the Constitution. The formal interpretations of the Supreme Court takes the form of a resolution and once issued the resolution is to be considered a part of the laws. At present, there is no specific law which requires the promulgation of explanations according to a standardized system.
24. Under the Constitution, international treaties to which Mongolia is a party shall become effective upon the entry into force of the laws on their ratification or accession.
25. The court consists of trial courts or first instance courts, courts of appeals or courts of appeal and the Supreme Court. The functions of separate levels overlap: courts of appeals can take first instance and appeals cases, while the Supreme Court can resolve first instance, appeals and other cases within Supreme Court jurisdiction only.
26. Courts of all instances exercise criminal law. Criminal legislation comprises of the Criminal Code of Mongolia. It is a unified code and there is no other criminal law. Any new laws and amendments providing for criminal responsibility are to be incorporated into the Code.

Principles such as transparency and good governance

27. In common with a number of economies transitioning from communism to a free market, independent observers have identified that over the past 14 years Mongolia has had considerable problems with corruption, in particular with activities associated with the privatisation of large sections of state-owned enterprises and property.
28. Since the late 1990s Mongolia has taken a number of steps to enhance conditions of transparency and strengthen governance.

Culture of AML/CFT compliance

29. While AML/CFT compliance issues have not yet been addressed, the Bank of Mongolia has taken steps to significantly strengthen the culture of compliance with prudential norms amongst Mongolian banks.
30. There has hitherto not been an awareness of or strong culture of AML/CFT compliance in Mongolia outside of the banking sector. With the creation of the FRC, Mongolia is taking steps to strengthen the culture of compliance of NBFIs and some DNFBPs, however this is at a very early stage in these sectors and there has been a weak culture of compliance and poor governance in a number of NBFI sectors.
31. Self-regulatory bodies and industry or trade groups have not been closely involved in national AML/CFT efforts up until this point.
32. There are a number of former Bank of Mongolia employees who hold compliance roles in large banks within Mongolia, which may assist with the development of a culture of compliance in the future.

Appropriate measures to combat corruption

33. In 1996 Mongolia adopted the Law Against Corruption, however implementation of the law was weak, with little application of corruption prevention measures contained in the law, nor actions to investigate or prosecute corruption cases.
34. Mongolia signed the UN Convention Against Corruption in 2005 and has taken a number of steps necessary to ratify the convention since that time.
35. Mongolia has taken significant steps to combat corruption in parallel with steps to combat ML and FT. In July 2006 Mongolia passed a comprehensive Anti-Corruption law which, amongst other things, laid the foundations for the creation of the Anti-Corruption Agency, which is an independent corruption fighting body. As of March 2007 the Anti-Corruption Agency had been established, headed by a former Supreme Court Judge of Mongolia. It is anticipated that the body will have a strength of 90 staff when fully established.
36. Prior to the establishment of the Anti-Corruption Agency, there had been a number of cases of the police investigating corruption cases, including one prosecution and conviction of a high level official.

A reasonably efficient court system and properly enforced judicial decisions

37. There appear to be some delays in processes to ensure that court decisions are properly enforced. This role is led by the Bailiff's office, which sits under the Prosecutor General's Office.

Ethical and professional behaviour on the part of professionals

38. Lawyers, accountants and notaries have formed associations that issue codes of conduct and good practices, as well as methods to ensure compliance such as registration and licensing. Supervision or oversight by these self-regulatory organisations is at an early stage.

1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

39. Mongolia faces a number of serious ML and FT risks. Mongolia's long porous land borders with China and Russia, its growing economy and strategic geographic position influence the ML and FT situation.
40. Mongolian authorities have not yet undertaken a comprehensive assessment of ML and FT risks in the country, but authorities are able to indicate a range of risks of ML from identified predicate criminal activities.
41. Until recently, Mongolia lacked AML/CFT legislation and regulation and still has relatively few AML/CFT preventative measures and no legislation to comprehensively criminalise and prosecute ML and FT.
42. No terrorist activity has occurred in Mongolia or has involved Mongolian citizens or residents, nor have there been Mongolian nationals identified as members of terrorist organisations. However, Mongolian authorities have investigated a number of cases involving possible FT and have worked closely with international partners to identify possible cases of FT in Mongolia.
43. Mongolia has a predominantly cash economy and a large informal sector, which is highly vulnerable to ML and FT.
44. Corruption and bribery, tax evasion and smuggling have been identified as crimes generating significant proceeds in Mongolia.
45. Press reports indicate that Mongolia may be used as a staging point for drug trafficking, including heroin being transported overland to enter Russia.
46. Mongolia is a significant gold producer and there is very large informal mining sector, with 'ninja miners' operating to extract deposits of gold and other minerals without a mining license.
47. Tax evasion is identified as a very significant issue in Mongolia and a significant predicate crime. The tax threshold is MNT 48,000 per month (about US\$40). There are only 100,000 Mongolians registered as tax payers and 37,000 companies registered for taxation purposes.
48. A number of cases of counterfeiting currency have been detected by Mongolian officials (Togrog, Yuan and US dollars).
49. Human trafficking is noted as a concern in Mongolia and generates significant amounts of criminal proceeds.
50. Wildlife smuggling and poaching endangered species has been identified as a source of criminal proceeds. A number of cases of wildlife smuggling, including possessing pelts of endangered species (in particular snow leopards) have been detected.
51. Smuggling of antiquities, including fossils, has been identified as a major risk and a source of proceeds of crime in Mongolia.
52. Currency smuggling is a significant vulnerability for ML and FT in Mongolia. The predominance of cash in Mongolia's economy and Mongolia's long porous borders all significantly contribute to the vulnerability from the use of cash couriers for ML.

53. Mongolian authorities have identified Savings and Credit Cooperatives (SCC), banks, hotels and restaurants, bars as being vulnerable for exploitation to facilitate ML in Mongolia.
54. Trade-based money laundering is a common method of ML in Mongolia. Customs authorities report detections of false letter of credit schemes, over-invoicing of imports and under-invoicing of exports, which are typically related to trade-based money laundering schemes.
55. Mongolia has an expanding real estate sector with rapidly increasing prices and a large number of 'off the book' transactions being common. This poses a significant vulnerability for ML through the real estate sector.
56. In addition to currency smuggling, gold smuggling is identified as a risk. A number of cases have been detected involving smuggling gold from Mongolia into China.
57. Mongolia's large underground banking sector, which largely reflects legitimate demand for low cost remittance, has been identified by enforcement agencies in Mongolia as a high risk for ML, with little risk of detection. The high uptake of informal remittance systems reflects Mongolia's poor population, the relatively high costs and slow speed of remittance using the formal financial sector and large number of foreign workers remitting money to Mongolia, in particular from South Korea, Japan and China. In addition, there is a population of North Koreans resident in Mongolia who do not have access to formal financial services to remit funds from Mongolia directly to North Korea.
58. Savings and Credit Cooperatives (SCCs) were significantly involved in fraudulent activities in recent years, which resulted in millions of dollars in proceeds of crime being generated over a number of years leading up to 2006. Authorities indicate that frauds perpetrated through SCCs were partly due to weak state regulations of the sector and infiltration by criminal elements. The collapse of a number of fraudulent SCCs had a strongly negative effect across the sector. In 2006 Mongolia established the Financial Regulatory Committee (FRC) to address the vulnerabilities with these entities by properly regulating and supervising the sector and to work with Mongolian police to investigate various fraud cases.
59. Mongolian authorities identified problems with illegal gambling and with the previously legal gaming sector, which was shut down in mid 2006 due to criminal influence in the sector. Ministry of Justice and Home Affairs, in coordination with the police, withdrew the licenses of all gambling establishments.

1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

60. The total GDP of Mongolia is approximately 2 billion USD per annum with total assets of all commercial banks 1.6 billion USD¹ and total exports about 1.1 billion USD per year.
61. Mongolia passed the Banking Law in 1991 which provided for the creation of the new central bank, the Mongolbank (Bank of Mongolia) which took over responsibility for monetary policy and exchange rate stability and supervision of commercial banks. At

¹ as of the first half of 2006

that time new commercial banks were established from the former branch networks of the State Bank.

62. During the early years of transition to market economy, 33 commercial banks were established in Mongolia (6 were state-owned), however 16 of them were bankrupted and restructured during 1993-2000. The Government of Mongolia with assistance from International Financial Institutions implemented restructuring policies to restore the stability of the financial system. These policies included measures such as improvement in legal frameworks, restructuring of insolvent banks, introduction of corporate governance principles and capacity building of supervisory agencies.
63. As of the date of the on-site visit 16 banks are licensed and are carrying out activities in Mongolia. 754 subsidiaries of these banks provide banking services across Mongolia to 1,201,265 current account holders, 567,545 depositors and 375,620 borrowers. Banks total assets amounted to 1.9 trillion MNT (approx USD 190 million). This represents an increase of 8.5 times since 2000. In recent years, banks have adopted new technologies, including non-cash settlements and internet banking. Banks have focused on providing diversified banking services and products. The expansion of banking services in Mongolia has been a reflection of the recent rapid growth in the Mongolian economy.
64. Licensed commercial banks in Mongolia may, upon the authorization of the Bank of Mongolia, carry out the following activities pursuant to Article 6 of the Banking Law:
 - 1) accepting deposits;
 - 2) disbursing loans;
 - 3) providing transaction services;
 - 4) on behalf of itself, providing payment guaranties to third parties;
 - 5) purchasing, selling, depositing and placing on deposit foreign currency;
 - 6) purchasing, selling, depositing and placing in deposit precious metals and stones;
 - 7) receiving valuables into custody;
 - 8) conducting foreign exchanges and transaction services;
 - 9) issuing, buying and selling securities;
 - 10) providing investment, financial consultancy and/or information services;and
 - 11) engaging in other financial activities or services permitted by the laws and regulations and licensed by the Bank of Mongolia.
65. Since 2000 money supply increased by 5.7 times and reached to 1.5 trillion MNT and its share in GDP has grown year by year. The share of currency outside banks in GDP is falling every year, indicating that public confidence in the banking system has grown.
66. By the middle of 2006, capital in the banking sector reached MNT 242.9 billion (approx USD 243 million). The earlier tendency of Mongolian banks to concentrate loans on a few, reliable customers and hold low-risk assets such as treasury bills and government bonds has been changing in recent years and banks are now trying to increase their market share by attracting as many depositors as they can, while expanding their loan portfolio to new segments of the market. Commercial banks

have introduced new products and services including a number of innovations in information technology.

Securities

67. The Mongolian Stock Exchange (MSE) was established in 1991. Passage of the Securities and Exchange Law in 1994 and the Corporate Law in 1995 resulted in the establishment of the secondary market. There are currently 25 brokerage companies and two underwriters operating on the MSE. Depository, clearing and settlement on the MSE market are executed through the "Securities Clearing House and Central Depository" (SCHCD) Co. Ltd. All listed securities on the MSE are deposited with SCHCD. The clearing and settlement of securities are performed without the physical transfer of certificates between sellers and buyers.
68. In September 2006, 322 privately owned joint stock companies were listed on the MSE. Over 40 of those are completely inactive. In 2005 three banks have entered the capital market by issuing shares and are being actively traded. Generally, share ownership is concentrated in the hands of a few people, many of whom are related and the volume of trading has significantly reduced, which impacts on minority shareholders' rights and the risk of misusing of shareholders' assets. Authorities recognise that corporate governance is weak, with poor compliance of reporting obligations by listed companies and regular complaints against small brokerage firms. The newly formed FRC is seeking to address a number of these issues of poor governance.
69. Brokerage firms in Mongolia have formed a securities brokers association, although this has no role in training or self-regulation.

Insurance

70. As of mid-2006 there are 16 insurance companies operating in Mongolia under the Mongolian law on Insurance. There are over 1,000 part-time agents working in the insurance industry. In financial year 2005, the total insurance companies wrote MNT 9,500 million (approx US\$9.5 million) in annual gross premium income. Insurance companies are regulated by the FRC. All financial transactions made by insurance companies are reported to the FRC.

Non-Bank Financial Institutions (NBFIs)

71. As of September 2006 there were 163 licensed NBFIs in Mongolia. Under the Law on NBFIs, the following activities can be undertaken by NBFIs (Article 7.1):
- lending;
 - factoring;
 - financial lease;
 - issuing a guarantee;
 - issuing payment instruments;
 - electronic payment, remittance service;
 - foreign currency exchange;
 - trust service;
 - investment into short-term financial instruments;

- provision of investment and financial consultancy and/or information services.

72. NBFIs which collect funds to offer trust services are also regulated by the “Regulation on Trust Services” law

Savings and Credit Cooperatives (SCCs)

73. There are currently 845 SCCs in Mongolia. Following a crisis of governance in the SCCs and significant infiltration of the SCC sector by fraudulent players, the government issued a joint declaration in July 2006 (Ministry of Justice, Minister of Finance and Governor of the Bank of Mongolia) to form a working group to prepare an independent Law on Savings and Credit Cooperatives. FRC is pursuing a comprehensive re-licensing process. As of January 2007 only 230 SCCs had applied to be re-licensed under the FRC law.
74. There are existing industry associations amongst the legitimate SCCs and the authorities have been liaising with those associations toward them taking on a self-regulatory organisation role under the planned law on SCCs.

Non-financial Businesses and Professions

75. Casinos are prohibited in Mongolia. In 1998, the Mongolian Parliament decided against enacting a law on casino business. The Ministry of Justice and Interior withdrew the remaining slot machine licenses in August 2006 following problems with criminal exploitation in the sector.
76. Real estate agents have only recently commenced business in Mongolia since the beginning of the privatization of public sectors. There is no specific regulatory agency that monitors real estate businesses, however they are registered as legal persons by the tax authority and are permitted to engage in activities such as representing a buyer or a seller in a real-estate transaction, for commission. They are also allowed to buy and sell property. Authorities did not provide clear statistics on the numbers of real estate intermediaries operating in Mongolia.
77. Dealers in precious metals or stones are not required to have any special licenses. They can simply apply for registration as a legal person at the tax authority. There is no competent government organization that supervises, and monitors the transactions or operations of dealers in precious metals or stones.
78. Notaries are licensed by the Mongolian Chamber of Notaries (MCN). Some aspects of their operation, such as record keeping of customers, are monitored by the MCN.
79. Independent accountants are licensed by the Ministry of Finance.
80. Trusts service provider businesses are in the early stage of development and are licensed and supervised by the FRC.

1.4. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS

81. Companies, partnerships, foundations, cooperatives and associations may be formed in Mongolia under Article 25 of the Civil Code (2002). Foreign citizens and business entities may establish companies or own shares of a company. This

relationship is regulated by the Civil Code, Company Law and Foreign Investment Law.

82. Companies and other legal arrangements are required to register with the National Tax Authority.
83. In general, the following documents are required to be provided to State Registry to create a legal person:
- an application to create a legal person;
 - a name confirmation sheet of a legal person;
 - a resolution of founders;
 - an agreement and Charter (By-laws) of a legal person;
 - a receipt of State Registration Fee;
 - a personal information (CV) of founders of legal person;
 - copies of state identification cards or similar documents of founders of legal person;
 - other documents related to the type of activity.
84. To create a limited company with foreign investment additional documents such as copy of a certificate and order of a Head of Foreign Investment Administration (FIFTA) are required. NPOs are registered with the Ministry of Justice and Home Affairs.
85. Shareholders have the right to the ownership of an entity. The rights of shareholders are defined in the Company Law (Article 3) and in a company's charter. The principal rights of a shareholder are to receive his or her dividends, to participate in meetings of shareholders, to vote on issues proposed at such meetings and, following the company's liquidation, to receive its share of the proceeds from the sale of assets of the company remaining after satisfaction of claims of creditors. A company's principal place of business and postal address shall be determined by the place where its head office is located. The company should inform the State Registration Agency of any change in the address of its principal place of business (Company Law, Article 10).
86. According to the State Registration Law, a legal person must send the company's charter to the State Register Agency. A company's charter includes the following:
- the company's name and form of organization;
 - the company's address of business;
 - the number of the company's authorized common shares;
 - if the company's charter establishes preferred shares, the number of authorized preferred shares and rights of holders of such shares;
 - if the company has a Board of Directors, the number of its members;
 - powers of shareholders at a meeting of shareholders, or of Board of Directors or Supervisory Board, to the extent such powers are in addition to those specified in the Company Law;
 - the type of business to be conducted by the company;
 - other provisions included in the company's charter in accordance with the Company Law.
87. Article 93 of the Company Law specifies that a company shall maintain financial accounting books and records and prepare financial statements for submission to shareholders and other authorized persons. A joint stock company must also deliver

such statements to the FRC together with such additional information as may be required by such organizations to be published as public information in a timely manner. The Ministry of Finance may adopt regulations requiring additional disclosures in a company's financial statements with respect to tax matters. In the case of a joint stock company, the FRC may establish requirements and standards with respect to the form and content of a company's financial statements and explanatory notes.

88. In addition to the statutory requirement for the State Registration Office to maintain a state register and disclose certain information to public, companies are also under a statutory obligation to maintain certain registers including a register of shareholders and a register of share capital (Article 46 of the Company Law).
89. Under the Law on the State Registration of Legal Person, information related to a person's identification number and a number issued for him for tax collection purpose should be available to competent authority upon their formal requests, and the other information must be available to public (Article 12 of the Law on the State Registration of Legal Person).
90. Non-profit or non-commercial interests of legal persons can be established in the form of an association, a foundation or a cooperative (Article 33.2 of the Civil Code). Laws that regulate such legal persons, in addition to the Civil Code, are the Cooperative Law of Mongolia and the Law of Mongolia on Non-Governmental Organizations.
91. The civil law capacity of legal person is established upon registration with the State Register, and terminated upon its liquidation according to law or its deletion from the State Register.
92. Under the Law on the State Registration of Legal Persons, the registration of associations and foundations is carried out by the Ministry of Justice. As to cooperatives, they are subject to be registered with the General Department of National Taxation (Article 7.1.1 and 7.1.2 refer).

1.5. OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING

a. AML/CFT Strategies and Priorities

93. Mongolia has had an overall priority to implement an effective AML/CFT regime since 2000. Mongolia is pursuing AML/CFT implementation as part of wider reforms to its private and public sectors.
94. Priority areas for Mongolia include establishing effective legal and regulatory AML/CFT regimes; building the capacity of regulatory and enforcement institutions to implement the regime; and ensuring effective national and international cooperation.
95. Mongolia passed AML/CFT legislation in July 2006 which sets the institutional framework and creates obligations for AML/CFT preventative measures, but does not criminalise ML or FT. Mongolia has drafted amendments to the Criminal Code to establish a comprehensive ML offence and to criminalise FT, but those amendments had not been passed as of the time of the on-site visit.

96. Mongolia has engaged closely with international donors in the design of new AML/CFT measures, including awareness raising, staff training, legislative drafting, and other institutional measures.
97. Mongolia passed the law on Combating Money Laundering and Terrorist Financing (CMLTF) which came into effect on 8 July 2006. The law sets out provisions to establish the FIU, to require certain preventative measures, including CDD, STR reporting, internal controls and powers of supervision for AML/CFT. The CMLTF also provides for national and international cooperation on AML/CFT.
98. Mongolia established the Financial Intelligence Unit on 29 November 2006, initially with a staff of two persons. The government has sought the assistance of international agencies and bilateral donors, and foreign technical assistance has been offered to set up the FIU and to provide training assistance to key agencies involved in Mongolia's AML/CFT efforts.
99. Mongolia acceded to the UN Convention on the Suppression of the Financing of Terrorism in 2001.
100. In 2004 Mongolia joined the APG and committed to implement the FATF 40+9 Recommendations.

b. The institutional framework for combating money laundering and terrorist financing

The Bank of Mongolia

101. The Bank of Mongolia is Mongolia's central bank and has responsibility for monetary policy in Mongolia. The Bank of Mongolia coordinates Mongolia's AML/CFT efforts and has taken a lead role in coordinating policy and operation efforts with other ministries and agencies in Mongolia. The Bank of Mongolia has a role as AML/CFT supervisor for the banking sector and had issued preliminary AML controls over the banking sector prior to the passage of the laws on CMLTF. The Bank of Mongolia is supporting the establishment of the FIU.

Ministry of Foreign Affairs

102. The Ministry of Foreign Affairs oversees Mongolia's contribution to issues of international concern, such as treaties and conventions. The Ministry of Foreign Affairs has a coordination role between various implementing ministries in relation the relevant UN conventions and Security Council resolutions 1267 and 1373. The Ministry of Foreign Affairs has a role in negotiating treaties and MOUs relating to extradition and mutual legal assistance, but does not have a role in the operation of those treaties or MOUs.

The Ministry of Justice and Home Affairs

103. The Ministry of Justice and Home Affairs is responsible for legal policy and its implementation. In this capacity the Ministry is responsible for legislative drafting of criminal laws. The Ministry is also responsible for internal affairs, including police, border protection and immigration agencies. The Ministry of Justice and Home Affairs also oversees registration of various organizations, including NPOs.

The Ministry of Finance

104. The Ministry of Finance is responsible for financial policy and its implementation, including regulation of the financial sector through the State Customs Office and the Taxation Agency.

The Financial Intelligence Service / Unit (FIU)

105. Mongolia's FIU was established on 30 November 2006 under the powers of the CMLTF Law of Mongolia (Article 17). The FIU is the competent authority in Mongolia to receive STRs, CTRs and cross-border cash movement reports and to analyse and disseminate information on ML and FT. In addition, the FIU can also monitor the accounts when there are grounds that the accounts are being used for ML or terrorism financing (Article 10) and have them suspended (Article 11) while an investigation takes place.
106. Pursuant to the Order of the Governor of the Bank of Mongolia made on 7 May 2007, the Financial Information Unit Chapter was implemented. The said Chapter sets out the structure and organization of FIU, functions, confidentiality, security and safety of FIU, and the cooperation of FIU with their counterparts internally and internationally.
107. On 20 June 2007, the Governor of Bank of Mongolia further laid down procedures for FIU to receive, transfer and analyse financial transaction reports. On the same day, the secrecy procedures of FIU were also implemented.

Financial Regulatory Committee

108. The Financial Regulatory Committee (FRC), which was established in January 2006, is responsible for regulation and supervision of all financial institutions except banks. NBFIs under the supervision of FRC include saving and credit cooperatives (SCCs), securities companies, insurers, and foreign exchange units and remittance businesses. The FRC will have an AML/CFT supervisory role over these financial institutions.

The National Taxation Agency

109. The National Taxation Agency is established under the Ministry of Finance as the sole agent authorised to register every business in Mongolia and to collect taxation. The taxes in Mongolia comprise state and local taxes. The Taxation Agency provides valuation information on the nature of various business enterprises and their business transactions.

State registry office

110. The State Registry Office is established within the National Taxation Agency to register all legal persons in Mongolia.

The State Police Department

111. The State police department comes under the Ministry of Justice and is responsible for investigating criminal offences as set out under the Criminal Procedure Code. The two relevant divisions of the Police involved in combating ML are the Investigation Department of the General Police Department and the Economic Crime Division of the Criminal Police Department.

The General Intelligence Agency (GIA)

112. The AML/CFT role of GIA is to collect information from various sources in order to investigate ML and FT activities.

113. The GIA is responsible for collecting information both domestically from various departments/agencies such as the Customs Office and internationally from other members states of bilateral or multi-lateral treaties on ML, FT or other predicate offences.

The Anti-Corruption Committee

114. The Anti-Corruption Committee was established in early 2007 as an independent agency designed to investigate and combat corruption. It is anticipated that the Anti-Corruption Committee will have a role in investigating ML offences that relate to corruption. The Anti-Corruption Committee will report directly to the Parliament.

State Customs Office

115. The State Customs office is under the portfolio of the Finance Ministry and has the responsibility of monitoring and controlling goods moving across Mongolia's borders. Customs plays an important role in monitoring movement of cash across the border.

The Border Protection Authority

116. Since September 2002, the powers of investigation on cases detected by the Customs Office were transferred to the police, the Border Intelligence Unit (which is under the Border Protection Agency) and the Central Intelligence Unit. Altogether, 267 criminal cases were transferred, 16% of which were prosecuted.

The Counter Terrorism National Coordinative Council

117. The Counter Terrorism National Coordinative Council has a role in coordinating Mongolia's efforts to implement laws and other measures designed to combat terrorism in Mongolia.

The Office of the Prosecutor General

118. The Office of the Prosecutor General has a role to exercise supervision over the inquiry into and investigation of cases and the execution of punishment as well as to participate in court proceedings on behalf of the state. Its duties include a) supervising pre-trial inquiries and investigations, and execution of sentences; b) initiating criminal cases; and c) protesting and appealing court verdicts to higher courts. Prosecutors supervise inquiries by the police and other investigating agencies. All inquiries and investigations must be registered with the General Prosecutors' Office at the outset and prosecutors are then involved at every stage. The investigator must obtain the permission of the General Prosecutors' Office before any search or inquiry can be made. The Prosecutors also supervise the execution of criminal penalties.

119. The Office of the Prosecutor General represents the state in both civil and criminal proceedings. It can also take part in civil cases in which the state is not a party and can appeal decisions in cases in which it has not appeared if it believes that the decision is contrary to law.

c. Approach concerning risk

120. The Mongolian authorities have adopted an inclusive approach to the scope of the ML obligations in the financial sector, and have not sought to exclude any of the activities on a risk-based approach. Mongolia has not undertaken a comprehensive risk assessment of ML or the financing of terrorism.

d. Progress since the last mutual evaluation

121. Not applicable – this is the first mutual evaluation of Mongolia

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)

2.1.1 DESCRIPTION AND ANALYSIS²

Recommendation 1

122. Mongolia ratified the Vienna Convention in 2003, but it is not a party to the Palermo Convention. However, accession to the same is under consideration.
123. In July 2006, Mongolia passed the Law on Combating Money Laundering and Terrorist Financing ("CMLTF"). The CMLTF does not have an offence provision for ML. Instead, ML is implicitly criminalised under Article 163 of the Criminal Code of Mongolia which reads:
- 163.1 *Knowingly released into the circulation of the illegally gained property and money by way of entering into transactions shall be punishable by a fine equal to 20 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.*
- 163.2 *The above crime committed repeatedly, in a group, using one's office, or if it has resulted in a large income shall be punishable by imprisonment for a term of up to 3 years without confiscation of property.*
- 163.3 *If the crime has been committed by an organized group, or criminal organization form, or if has resulted in an extremely large income shall be punishable by imprisonment for a term of 5 – 8 years with confiscation of property.*
124. The provision at Article 163.1 is narrow and requires the act of ML to include "released into circulation...by way of transactions" which does not cover the required elements of the ML offence as set out in the Palermo Convention.
125. The definition at Article 163 falls short of the requisite international standard and Mongolia has proposed an amendment to the Criminal Code to establish offences of ML and FT.
126. Mongolia does not take a list-based approach to define the predicate offences for ML, rather Mongolia includes a wide range of serious and less serious offences as predicate offences, which is in keeping with the international standards. Article 3.1.4 of CMLTF defines "assets derived from illegal activities" as "assets derived from committing less grave, grave and exceptionally grave offences other than those described in Article 166 Criminal Code." In other words, the ML offence in Mongolia covers assets of all types of predicate offences ranging from less grave to exceptionally grave.
127. The Criminal Code precludes proceeds of taxation offences as predicate to ML, which is a cause for concern in a jurisdiction in which tax evasion appears to be widespread and revenue loss is a serious concern in a developing economy.

² Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

Mongolian authorities explained that Mongolia has a stringent tax law which cover a very broad base, however they do not appear to be dissuasive in punishing the laundering of the proceeds of tax offences. The Evaluation Team was informed that tax offences might be included as predicate offences for ML in the future.

128. As for the definition of “property”, Article 84 of the Civil Code of Mongolia sets out :

- 84.1 *Asset that is subject to somebody’s ownership shall be property.*
- 84.2 *Property shall be classified into immovable and movable.*
- 84.3 *Land and assets that cannot be used for their original purpose when they are in separation with land shall be classified as immovable property.*
- 84.4 *Goods other than that referred to in Item 85.3 shall be classified as movable property.*
- 84.5 *Rights and claim that bring profit to their owner or that entitle to demand from others or claim, as well as intellectual values belong to non-material asset.*

129. It can be seen that property covers every type of property, regardless of its value, that directly or indirectly represents assets derived from illegal activities.

130. It is not necessary for a natural person to be convicted of a predicate offence in order to prove that the property is proceeds of crime.

131. Mongolia has a very wide range of predicate offences for ML, with the exception of tax offences.

132. According to Article 14 of the Criminal Code, a natural person who committed a crime under the Criminal Code in another country will be subject to criminal liability in Mongolia.

133. Article 163 of the Criminal Code applies to anyone who commits the predicate offence.

134. Articles 30 - 32, 34 - 37 & 39 of the Criminal Code cover ancillary offences provided for in Article 163 including conspiracy to commit, attempt, aiding and abetting, counselling and concealing the offence.

Recommendation 2

135. Under Article 8.1 of the Criminal Code, all offences stated in the Criminal Code including the offences in Article 163 which apply to natural persons that knowingly engaged in ML activities. The mental element of the offences includes knowledge, which is the requirement in the international standards.

136. The offence, as it is currently set out, does not allow intention to be inferred from objective factual circumstances.

137. Article 8.1 of the Criminal Code states that only natural persons are subject to criminal liability. This exclusion of legal persons from criminal liability does not appear to be derived from a fundamental principle of domestic law.

138. Legal persons are not subject to administrative liability for ML, in the absence of criminal liability. Article 21 of CMLTF law only allows for administrative sanctions to be levied on legal persons who are in breach of reporting obligations in the law, but not for offences of ML.

139. Legal persons are not subject to effective or proportionate sanctions for ML.
140. Sanctions available for natural persons committing ML, as set down in the criminal code, appear to be proportionate and dissuasive.

Recommendation 32

141. Mongolia has indicated that there have been no investigations or prosecutions under Article 163 of the Criminal Code.

2.1.2 RECOMMENDATIONS AND COMMENTS

142. It is recommended that Mongolia urgently address the following:
- amend the Criminal Code to widen the ML offence to bring it into compliance with the international standards;
 - consider including tax offences as predicate offences for ML;
 - extend criminal liability to legal persons for ML;
 - ensure civil or administrative liability applies to legal persons;
 - ensure effective and proportionate sanctions are available for legal persons; and
 - provide more training and support information sharing for law enforcement agencies, prosecutors and judges on the concept of ML, the modus operandi of ML and the legal application of the law on ML.
143. Staff of The General Prosecutors' Office, the Investigation Department of the General Police Department, and the Economic Crime Division of the Criminal Police Department have received some training on the law of anti-money laundering. However, they all expressed that the said training should be more extensive so that most of their staff would be able to have adequate training in order to tackle ML. The Government should inject more funds for the staff to have adequate training on AML.

2.1.3 COMPLIANCE WITH RECOMMENDATIONS 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> • The scope of the ML offence does not meet the requirement of the Palermo Convention. • The effectiveness of the offence is not able to be established.
R.2	PC	<ul style="list-style-type: none"> • The offence, as it is currently set out, does not allow intention to be inferred from objective factual circumstances. • Criminal liability for ML is not extended to legal persons. • Legal persons are not subject to effective or proportionate sanctions for ML.

R.32	PC	<ul style="list-style-type: none"> Statistics on the Prosecution of Article 163 indicate that the offence has not been used in practice. This Recommendation is rated in more than one section and is a consolidated rating.
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2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II)

2.2.1 DESCRIPTION AND ANALYSIS

144. Mongolia has a unified criminal code which contains all criminal offences. Terrorist financing is not yet criminalised under the Criminal Code.
145. Mongolia has been a member of the 13 conventions on anti-terrorism. In October 2001, the President issued Resolution No. 60 on *"On supporting the establishment of international counter-terrorist coalition."* Further, on 10 October 2001, the Government issued a decree *"On supporting activities of the international coalition on counter-terrorism."*
146. In 2003, Mongolia ratified the UN Convention for the Suppression of the Financing of Terrorism.
147. In April 2004, Mongolia passed the Anti-Terrorism Law which determined the legal and organizational basis to combat terrorism. The law defines terrorist activities and includes the provision that accumulation of property or money for a terrorist organisation or a legal person who supports it, is a terrorist activity. The Anti-Terrorism Law (2004) does not criminalise those acts.
148. In July 2006, the CMLTF was passed in which the definition of terrorist financing was set out in Article 3.1.2. Article 20 of CMLTF provides for the setting up of the Cooperation Council, the functions of which are to ensure the implementation of laws to combat ML and FT.
149. Draft amendments to the Criminal Code are currently before the Parliament which would create specific FT offences under Article 177. The Mutual Evaluation Team has provided feedback to Mongolian authorities on the international requirements for a FT offence.
150. The definition of FT set out in the CMLTF Law includes many of the elements that would be required for a criminal offence of FT in the amended Criminal Code. In addition to the required mental elements that FT should be able to be inferred from objective factual circumstances, the international standards also require that the offence should cover 'providing or collecting funds by any means, directly or indirectly'. The offence must also cover using any kind of assets: (i) to carry out a terrorist act(s); (ii) by a terrorist organisation; or (iii) by an individual terrorist.
151. The definitions of 'terrorist' and terrorism in the Anti-Terrorism Law 2004 (Article 3.1.5) do not cover non-citizens in Mongolia and do not adequately cover the activities of a terrorist nor adequately address knowledge elements in the offence.

2.2.2 RECOMMENDATIONS AND COMMENTS

152. Mongolia should:

- as a priority, adopt the offence of FT in keeping with the requirements of the offence as set out in the UN Convention on the Suppression of Terrorist Financing; and
- provide additional training for judges, prosecutors, law enforcement agencies, FIU on the understanding of the offence of FT and CFT measures.

2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

	Rating	Summary of factors underlying rating
SR.II	NC	FT has not yet been criminalised.
R.32	NC	This Recommendation is rated in more than one section and is a consolidated rating.

2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)

2.3.1 DESCRIPTION AND ANALYSIS

153. The general powers of confiscation, freezing and seizing of property for offences of ML, predicate offences and property of corresponding value are provided in the Criminal Code and the Criminal Procedure Code. Mongolia does not have stand-alone legislation in relation to proceeds of crime.
154. Under Articles 132 and 133 of the Criminal Procedure Code, an investigator, can apply to the Procurator³ for the search or seizure of property. Property is defined in Article 84 of the Civil Code as ‘Asset that is subject to somebody’s ownership shall be property.’ The seizure will remain valid until the conclusion of trial. Confiscation of the property, which is forfeited to the State, can be made under Article 49 of the Criminal Code once a conviction is secured.

Confiscation of property

155. Article 49 of the Criminal Code provides for the confiscation of property for offence of ML, predicate offences and property of corresponding value. The idea is to strip the defendants of the ill-gotten gains. Article 49 provides for confiscation of property which is not specifically for laundered property only, but also 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 be seized and subject to confiscation. In addition, Article 163.2 and Article 163.3 of the Criminal Code provide for confiscation of the property relating to ML.
156. The existing provisions in Criminal Code and the Criminal Procedure Code are general in nature and do not incorporate all requirements of the international standards. There is a need to expand and consolidate both the legislative and procedural provisions on seizure, freezing and confiscation of proceeds of ML, FT and other predicate offences.

³ Prosecutor and Procurator appear to be interchangeable terms under Mongolian translation.

157. Current confiscation provisions do not clearly cover proceeds of, instrumentalities used in, or intended to be used in, the commission of any ML, FT or other predicate offences.
158. Currentl confiscation provisions do not clearly set out that they apply to profits, income or other benefits generated from the proceeds of crime as well as property of corresponding value.
159. Regarding effectiveness, Mongolia has some experience of utilising the existing freezing and confiscation provisions in the Criminal Code and Criminal Procedure Code, including in complex matters. Although it has not been set out in Article 49 and Article 163 of Criminal Code, the Prosecutor General's Office indicate that they do have experience of confiscating property derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime.

Power of Seizure and Freezing of property

160. Article 49.2 of the Criminal Code sets out the items for seizure –
49.2. 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.
161. In addition, Articles 132 – 141 of the Criminal Procedure Code set out the grounds and the procedures for the seizure and search of the property.
162. The mechanism for freezing assets is not clear. There is no clear basis for ex parte applications to freeze assets, nor are there clear procedural provisions regarding the management of seized assets by receivers if the assets are of different varieties such as cash, real property, livestock, securities, foreign currencies, insurance policies, jewelleries, antiques etc.
163. The General Prosecutors' Office has experience of applying for seizure and freezing orders ex parte. As for the restraint of real estate, this has to be done in writing to the Land Registration Office. The Police, overseen by the Prosecutors' Office is, responsible for managing seized assets. Altogether, there were 11 cases where affected parties challenged the act of freezing of the funds.
164. Article 11 of the CMLTF also provides powers for the FIU to suspend transactions with financial institutions for up to three days while the FIU collects further information to determine whether suspicion of ML or FT is founded prior to the matter being referred to investigations agencies. It is not clear if the powers in Article 11 can be used by the FIU on a rolling basis to extend 'suspension' actions beyond three days.

Power of identification and tracing of property

165. The power of identification is provided in Article 150 of the Criminal Procedure Code. The procedures for finding through identification are laid down in Articles 151 and 152. If tracing of funds is required through various bank accounts, bank information is required. The request for bank information has to be made by the Head of the relevant Agency.

Protection for the rights of bona fide third parties

166. Statutory provisions in Mongolia do not clearly set out the protection for the rights of the bona fide third parties. However, such protection has been given to the bona fide third parties by cases handled by the staff of the General Prosecutors' Office. Since 2000, there have been two cases on the protection of third parties.

Recommendation 32

167. Statistics were lacking in relation to the volume and value of freezing, seizure and confiscation orders.

2.3.2 RECOMMENDATIONS AND COMMENTS

168. It is recommended that Mongolia should consider:

- passing a Law on Proceeds of Crime to consolidate the law and procedures on seizure, freezing and confiscation of proceeds of ML, FT and other predicate offences. This will be an improvement on the existing provisions in Criminal Code and the Criminal Procedure Code which are too general;
- the confiscation action include proceeds of, instrumentalities used in or intended to be used in the commission of, any ML, FT or other predicate offences;
- the confiscation action also set out clearly that it applies to profits, income or other benefits generated from the proceeds of crime as well as property of corresponding value;
- establishing a clear mechanism on the freezing of the assets, such as the application has to be ex parte and that the management of the assets can be by receivers if the assets are of different varieties such as cash, real property, stock and shares, foreign currencies, insurance policies, jewellery, antiques etc;
- setting rules and procedures on the rights of those persons affected by the freezing order and the confiscation order;
- developing a mechanism whereby fraudulent or void transactions designed to hide or dissipate assets to defeat the freezing and confiscation actions may be voided or ignored by the authorities for this purpose; and
- setting out clearly the civil forfeiture regime.

2.3.3 COMPLIANCE WITH RECOMMENDATIONS

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none">• Powers of confiscation, seizure, freezing, identification and tracing are not set out clearly in any statutory provisions.
R.32	NC	<ul style="list-style-type: none">• This Recommendation is rated in more than one section and is a consolidated rating.

2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

2.4.1 DESCRIPTION AND ANALYSIS

169. Mongolia lacks effective laws and procedures to freeze terrorist funds or other assets of entities designated by the UN 1267 Committee or to freeze terrorist assets of persons designated in the context of UN SCR 1373.
170. On 4 October 2001 the Governor of the Bank of Mongolia issued the Official Note No. 1/1627 to all the banks in Mongolia directing them *“to freeze the financial assets and cash flows of Osama Bin Laden and any of the persons and organizations affiliated to him, including Al-Kaida terrorist organization...”* The legal provision utilised to issue this direction is not clear and there is a lack of supporting direction or guidance on obligations in taking actions under freezing mechanisms.
171. The Bank of Mongolia indicated that they regularly distribute the UN SCR 1267 lists (the consolidated list) to all financial institutions, further to Official Note No 1/1267. In the course of the APG on-site visit it was evident that financial institutions periodically received lists, but were not clear on the procedures to be followed if a match was identified.
172. To date no financial institution in Mongolia has identified accounts being utilised by a designated entity.
173. Mongolia does not have effective laws and procedures to examine and give effect to actions initiated under freezing mechanisms of other countries. It appears that financial institutions in Mongolia receive US OFAC lists (US national designations) from the United States embassy, however there are no clear provisions to give effect to such lists.
174. Mongolia has no mechanism for unfreezing funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
175. Under the CMLTF, the FIU is responsible for communicating actions to be taken under the law to the financial sector and it is anticipated that it will have a role in relation to implementing UN SCR 1267 and 1373. However, given the newness of the FIU, the rules and procedures for communicating actions taken under the freezing mechanisms to the financial sector are still being prepared.
176. Mongolia has ratified the UN Convention for the Suppression of the Financing of Terrorism in 2003 and, in keeping with provisions in the Mongolian Constitution, it has technically become domestic legislation.
177. Mongolia has statutory provisions on the freezing of funds or assets such as Article 132 -141 of the Criminal Procedure Code. Those are general powers of seizure and freezing of funds and other assets. Despite the absence of a terrorism or FT offence in the Criminal Code, the constitutional provision by which UN conventions and Security Council Resolutions are binding under domestic law may allow general freezing provisions of the Criminal Procedure Code to be utilised. This would cover assets that are wholly or jointly owned or controlled, directly or indirectly, by the designated persons or funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorist or terrorist organisation.
178. The General Prosecutors' Office indicated that the person(s) affected may have access to frozen funds for basic expenses and that this procedure has been applied to affected parties for some other predicate offences. Similarly, the affected parties

can challenge the act of freezing of the funds (Section 115.1 & 115.3 of the Criminal Procedure Code).

115.1. A citizen, economic entity, and organization that have suffered material damages because of a crime shall have the right to bring a civil suit in respect of a suspect, accused, defendant or a person bearing material responsibility for the damages caused by them and the suit shall be reviewed and resolved by a court jointly with the criminal case.

115.3. It shall be prohibited to resolve a civil suit in respect of damages caused due to a crime through civil proceedings while the criminal case is not resolved.

179. According to the statistics provided, there were 11 cases where affected parties challenged the act of freezing of the funds, although these cases do not relate to ML or FT offences. Also, it has not been set out clearly the duration of the statistics obtained.
180. The General Prosecutors' Office indicated that the rights of the bona fide third parties will be protected as referred to the various cases that they have handled. It is not clear which statutory provisions protect such rights. According to statistics given, there were two cases concerning the protection of the rights of the bona fide third parties since 2000. Again, it has not been set out clearly whether these two cases were related to the freezing of funds on ML offences or FT.
181. There is no appropriate measure to monitor the compliance with relevant legislation, rules or regulations governing the obligations under SR III.
182. The General Prosecutors' Office members, using Article 9 of the Anti Terrorism Law can reveal and confiscate a property or money that has been used or is being used in terrorist activity, terrorist act or income from terrorist activity. Also as stated above, the Police Department members using the Criminal Code provisions, could apply the powers of arrest, seizure, and confiscation of proceeds of crime generated from any illegal activity.

2.4.2 RECOMMENDATIONS AND COMMENTS

183. It is recommended that Mongolia should:
- establish clear legal provisions and procedures to freeze terrorist funds or other assets of persons designated in the list pursuant to UNSCR 1267;
 - have the freezing action be ex parte and without delay;
 - have effective laws and procedures to freeze terrorist funds or other assets of person designated pursuant to UNSCR 1373;
 - make the said freezing pursuant to UNSCR 1373 be ex parte and without delay;
 - have effective laws and procedures to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions;
 - have the freezing actions extend to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisation;

- have effective systems for communicating actions taken under the freezing mechanisms to the financial sector;
- provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms;
- have effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed person or entities;
- have effective and publicly-known procedures for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person;
- have clear provisions for persons or entities affected by the freezing actions to obtain relief; and
- have procedures for persons or entities whose funds or other assets have been frozen to challenge that measure with a view to having it reviewed by a court.

2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • Mongolia does not have effective laws and procedures to freeze terrorist funds or other assets of entities designated under UNSCR 1267. • Mongolia does not have effective laws or procedures to implement UNSCR 1373.

2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)

2.5.1 DESCRIPTION AND ANALYSIS

184. Mongolia's Financial Intelligence Service (FIU) has the role as FIU and has powers of an AML regulator and limited powers of investigation. The FIU has been created within the Bank of Mongolia under the terms of the CMLTF. The FIU is not a law enforcement agency and does not have a designated role to investigate criminal offences. The CMLTF does, however, bestow limited powers to monitor and suspend accounts when it suspects cases of ML or FT.

185. Mongolia established its FIU in November 2006. Provisions to establish the FIU are set out in Article 16 of the CMLTF. Articles 16.2 and 16.3 provide for the Bank of Mongolia Governor to appoint the Head of the FIU and set its operating procedures.

186. The functions of the new FIU are set out in Article 17 of CMLTF. The FIU is empowered to receive information reports of cash transactions above MNT20 million (or linked transactions totalling the same amount) and transactions related to foreign payments and suspicious transactions from banks; NBFIs; insurance companies; securities intermediaries; pawn shops; savings and credit cooperatives; and foreign exchange dealers (Article 17.1.1). These reporting entities are obliged to make such reports pursuant to Article 7.1 of the CMLTF.

187. The Law on the Legal Status of the Financial Regulatory Commission, 2005 (FRC Law) contains a parallel provision (Article 34.1) requiring non-bank financial institutions to report STRs to the FRC. Article 34.2 provides for the FRC to disseminate STRs to law enforcement agencies for investigation. This provision predated the CMLTF and does not appear to have been complied with by any NBFIs since the FRC was established. In practice, Mongolian authorities do not intend that FRC would operate as a parallel FIU to receive STRs from NBFIs.
188. Article 10 of the CMLTF empowers the FIU to monitor accounts when there are grounds to suspect that accounts are related to ML or FT (Article 10). The procedure for such monitoring is not clear.
189. Article 11 of the CMLTF empowers the FIU to suspend transactions for up to three days in cases where ML or TF is suspected. This time is intended to be used to collect further information to prove suspicion and to refer the matter to investigation agencies and freeze actions as part of criminal investigations.
190. The FIU is empowered to analyse reports received in conjunction with information from databases of relevant domestic and foreign authorities (Article 17.1.1). At this time the FIU appears to be able to indirectly access administrative and law enforcement information required to undertake analysis of STRs and CTRs by way of ad-hoc request to relevant agencies. The FIU is pursuing MOUs with other agencies (FRC etc) to ensure regular or direct access to such information. Steps are being taken to establish information sharing protocols with foreign partners.
191. The CMLTF prescribes the manner, timing and content of STRs. Article 9 sets out the information required to be contained in an STR. Article 7 stipulates the timing of STR reports and the manner of transmission of reports. The FIU is required to provide additional guidance to reporting entities on monitoring accounts and identifying suspicious transactions (Article 17.1.4). The FIU has not yet issued an STR reporting form or detailed guidance to reporting institutions to elaborate the procedures for reporting.
192. Article 7.4 provides for the “authorities” to make a written request to reporting entities obliging them to provide required information, related to the transaction and parties, involved in the transaction, in conformity with the Information Delivery Procedure, approved jointly by the Governor of Bank of Mongolia and the State Prosecutor General. This provision goes beyond providing the FIU with authorisation to obtain additional information from reporting parties, instead, allowing all investigating agencies to request information from the reporting institutions regarding STRs. This is a very wide ranging power and at the time of the on-site visit the Information Delivery Procedure had not been established between the Bank of Mongolia and State Prosecutor General. There is a need to clarify the procedure and protocol for exercise of these strong powers.
193. There appear to be some limits in the CMLTF in relation to the authorisation of the FIU to disseminate information to investigation authorities when there are grounds to suspect ML or FT. The FIU has a general role articulated at Article 17.1.5 to “disseminate information and raise public awareness to combat and prevent money laundering and terrorism financing”. This Article does not clearly authorise that such information can be disseminated to domestic agencies for investigation.

194. Article 11 deals with the FIU's power to suspend a transaction for up to three days while the FIU collects information to consider whether reported information is linked to ML or FT. Article 11.3.2 provides clear authorisation for the FIU to disseminate information to law enforcement agencies in instances where a transaction has been suspended and suspicion of ML is confirmed. The FIU is obliged to notify the reporting institutions to suspend the transaction. In effect, in such cases the person making the suspicious transaction has been tipped off that a suspicious transaction report has been made, by virtue of the transaction having been frozen. The timeframe of three days appears too short for the suspension power to be effective in allowing enough time for the FIU to gather sufficient financial intelligence and then disseminate such information to the police to allow them to apply for a freezing action.
195. Article 18.2 provides for the Governor of the Bank of Mongolia to approve the procedure on maintaining the information in the FIU database and its usage, which is expected to include dissemination. As of the date of the on-site visit, that procedure had not been established and no disseminations had occurred. The FIU identified that settling the procedure for dissemination would be done in consultation with the Prosecutors' Office, given their role in supervising criminal investigations.
196. While the FIU is created under a separate statute, it is established within the Bank of Mongolia. In November 2006 the Governor of the Bank of Mongolia appointed the first acting Head of the FIU from the ranks of the Bank of Mongolia. In March 2007 the Governor of the Bank of Mongolia approved the operational strategy of the FIU. At this time, the FIU does not have an independent operational budget, however the FIU appears to be well supported by the Bank of Mongolia to become established and perform its core functions. The FIU requires additional staff in order for it to ensure functional independence.
197. The FIU is empowered to compile a database of reported transactions (Article 17.1.2). Article 13.1 prohibits the FIU from disclosing STRs to other parties, except for purposes of dissemination. Article 18 provides that the Governor of the Bank of Mongolia shall approve the procedures for maintaining the database. The acting Head of the FIU indicated that steps have been taken to ensure secure storage and handling of STRs within the FIU once they begin to be received. Neither STRs nor cash transaction reports were yet being received. The FIU is working with the Asian Development Bank (ADB) to develop a suitable database for storage and analysis of such reports.
198. Article 17.1.3 provides for the FIU to release regular reports to the reporting entities and competent authorities on measures taken by the FIU, including typologies. Article 17.1.5 sets a role for the FIU to raise public awareness to combat and prevent ML and FT. These activities have not yet been undertaken, due to the newness of the FIU.
199. The Mongolian FIU has considered applying for membership in the Egmont Group and has sought preliminary advice from the APG Secretariat and technical assistance donors in relation to cooperation and information exchange with other FIUs.

Effectiveness

200. In relation to effectiveness, overall the Mongolian FIU is very new, but in a short space of time it is clear that the small staff of the FIU have worked closely with the

Bank of Mongolia, FRC, and Police Prosecutors' Office to coordinate preparations to implement the FIU aspects of the CMLTF. There are, however, very significant legislative deficiencies in the STR obligations that will be a major impediment to establishing an effective FIU.

201. On 20 June 2007, the Governor of the Bank of Mongolia issued guidance to reporting institutions on the form and method of reporting STRs. Monitoring accounts is also stipulated on the above regulation.
202. On 7 May 2007, the Governor of the Bank of Mongolia approved the "Financial Information Unit Chapter" setting out the structure and organisation, the functions, the confidentiality, security and safety of the FIU. Further, the Chapter also sets out the cooperation of FIU with their counterparts internally and internationally.
203. On 2 July 2007, the Governor of the Bank of Mongolia issued Regulations on the procedures to be followed by FIU on the receiving, transferring and analysing financial transaction reports. On the same day, the Governor also laid down the procedures to set up, protect the secrecy of FIU and to provide security of its staff responsible for the secrecy.
204. On 2 July 2007, the Governor of the Bank of Mongolia pursuant to Resolution No. 313 introduced regulations on reporting suspicious cash transactions so that the FIU would be able to discharge its duties on AML and CFT.

Recommendation 30

205. The FIU has initially been staffed with two experienced central bank officers and the plan is for four staff to be stationed within the FIU during its initial phase. The two current officers have been provided with adequate and relevant training for combating ML and FT and have attended numerous national and international training courses, workshops and seminars. FIU staff have participated in study tours and have been actively involved in the APG's typologies work and have contributed to APG and FATF typologies projects.
206. The Bank of Mongolia has applied significant resources to train staff from various departments to support the FIU's functions. Significant resources have been applied by the Legal Department and Banking Supervision Departments to support the work of the FIU. Significant capacity constraints remain, however.
207. Article 16 of the CMLTF includes specific obligations of professional standards and integrity for the Head of the FIU.
208. There is a need for additional staff to be seconded to the FIU, from regulatory and law enforcement agencies, to support the work of this important new agency.

Recommendation 32

209. No STRs or CTRs have been received by the FIU to date.

2.5.2 RECOMMENDATIONS AND COMMENTS

210. It is recommended that:

- Mongolia should amend the CMLTF to clearly outline the FIU's authority disseminate information to investigation authorities in any case where the FIU suspects ML or FT;
- the FIU should issue an STR reporting form as a matter of priority and detailed guidance to reporting institutions to elaborate the procedures for reporting STRs;
- the FIU should issue additional guidance to reporting entities on monitoring accounts and identifying suspicious transactions;
- the FIU should settle the procedure for dissemination in consultation with the Prosecutors' Office;
- the Governor of the Bank of Mongolia should approve the procedures for maintaining the FIU database of STRs and CTRs;
- support mechanisms for the FIU to access information with other agencies (police, GIA, FRC etc) and with foreign partners should be established;
- Mongolia should establish a procedure for the FIU to monitor accounts suspected of being related to ML or FT (Article 10 of CMLTF);
- Mongolia should establish a procedure and protocol for the exercise of the powers outlined in Article 7.4 of the CMLTF
- Mongolia should consider extending the time available under Article 11 to suspend a transaction while the FIU collects information to consider whether reported information is linked to ML or FT; and
- additional staff should be seconded to the FIU, from regulatory and law enforcement agencies to support the work of this important new agency.

2.5.3 COMPLIANCE WITH RECOMMENDATION

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • The FIU has not begun to receive STRs or CTRs. • There is a lack of clarity of the FIU's authority to disseminate information to investigative agencies in all cases. • At the time of the on-site visit the FIU had not issued guidance to reporting institutions on the form and method of reporting STRs and had not provided guidance to reporting institutions on monitoring accounts and identifying suspicious transactions.
R 32	NC	<ul style="list-style-type: none"> • No STRs or CTRs have been received by the FIU to date.

2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28)

2.6.1 DESCRIPTION AND ANALYSIS

Recommendation 27

211. Mongolia's unified Criminal Code includes all criminal offence provisions. The Criminal Procedure Code designates, under Article 27, the offences that each agency is responsible for investigating. In addition, a number of other laws designate powers for other agencies that may have a role in investigating ML offences. The table below sets out the relevant agencies:

Legislation	Article	Responsible Agency
Criminal Code	163.1	Police / Prosecutors' office
	163.2	Police / Prosecutors' office
	163.3	No agency assigned
Law of Controlled Operations		Police
CMLTF	11	FIU
Anti Corruption law		Anti-corruption agency

212. At present FT is not criminalised, so no agency is designated to investigate FT offences. It is anticipated that once amendments to the Criminal Code are passed to create a FT offence, the GIA will be designated to investigate those offences.

213. ML is currently investigated by the police under Article 163.1 of the Criminal Code 'Utilization of the illegally gained property and money'. This offence is designated to be investigated by the police, as is Article 163.2. It should be noted that the Criminal Procedure Code does not designate any agency to be responsible for investigating Article 163.3 of the Criminal Code, which elaborates on the offence in 163.1 and sets out the same offence in the circumstance where ML 'has been committed by an organized group, or criminal organization form, or if it has resulted in an extremely large income'. This would appear to be a significant gap in designation.

214. Authorities indicated that it is anticipated that after the amendment to the Criminal Code to criminalise FT and widen the ML offence, that the GIA would also be designated to investigate ML offences.

215. Under Article 27 of the Criminal Procedure Code the Procurators' Office (Prosecutors) are empowered to investigate Criminal Code offences, including Article 163 when committed by police officers, inquiry officers, investigators, procurators and judges.

216. Under Mongolian legislation and precedence, crime is divided into four categories of seriousness; being minor offences, less serious offences, serious

offences and grave offences⁴. The Inquiry Department handles the minor and less serious offences. The Investigation Department handles the serious and grave offences. The Inquiry Department can refer matters that have increased in seriousness to the Investigation Department.

217. The Mongolian Police Investigation Department is the primary organization responsible for investigating ML offences. The Investigation Department consists of 360 investigators spread over six Districts within Mongolia. There are 17 investigators within the Ulaanbaatar Police Headquarters, all of whom are referred to as financial investigators.
218. The Prosecutors' Office has a supervisory role over investigations into serious and grave crimes, including ML investigations under section 163 of the Criminal Code. In this context the Prosecutors' Office is the competent body to supervise and provide advice and guidance. Article 193 of the Criminal Procedure Code provides for the close oversight and involvement by the Prosecutors' Office at all stages of inquiries and investigations. Under Articles 132 and 133 of the Criminal Procedure Code, an investigator, can apply to the Procurator⁵ for the search or seizure of property.
219. Designated agencies responsible for investigating various predicate offences under the criminal code are as follows:

Agency	Offences
General Intelligence Agency	Creation, obtaining and distributing weapons of mass destruction
Police	All Criminal Code offences
Procurators office	All crimes committed by police officers, inquiry officers, investigators, procurators and judges.

220. No investigations or prosecutions have been undertaken to date in relation to Article 163 of the Criminal Code.
221. Under Article 193 of the Criminal Procedure Code the Prosecutors' Office has powers, when supervising an investigation, to postpone or waive the arrest of suspected persons and/or the seizure of property (including money) for the purpose of identifying persons involved in other illegal activity including ML.
222. The Evaluation Team was advised that special investigation techniques such as undercover operations and surveillance on suspects have been used in various criminal investigations in Mongolia. These powers are covered under Law of Mongolia on Controlled Operations and can be exercised by the Police Department - Economic Crime Division, and Intelligence Agencies.
223. The Economic Crime Division has 60 officers and is responsible for controlled operations and undercover operations related to economic crime throughout Mongolia. This Division's main functions are to detect crimes of fraud, tax avoidance, distortion, extortion, bribery, smuggling, forgery, and other similar economic crimes. It does not conduct investigations but conducts 'target

⁴ Mongolian translation provided to evaluation team uses these terms, according to the Prosecutors Office these terms have been ruled upon by the Supreme Court and are clearly understood in Mongolia.

⁵ Prosecutor and Procurator appear to be interchangeable terms under Mongolian translation.

development' through covert operations for the Criminal Police Department. When offences are detected the operation is referred to the Investigation Department for investigation.

224. There is no specific provision in the Controlled Operations Law to undertake undercover or controlled delivery related to ML or FT operations. However, the Evaluation Team was advised that there was no restriction on the type of investigation for controlled operations and that there would be no problems in conducting ML/FT controlled or 'reverse sting' operations. At this stage no ML/FT operations have been completed, however there was a current operation that may involve ML and the Coordination Council indicated that some intelligence work, using the above provisions, had been done on FT.
225. The Police Department has yet to set up any investigation teams to specialize in the investigation of ML and proceeds of crime. However the Evaluation Team was told that the Investigation Department consists of 17 financial investigators, who conduct investigations in economic crime. These officers regularly use the provisions of search and seizure under the Criminal Code in their investigations. There have been no seizures of the proceeds of crime generated from terrorist activity.
226. The Evaluation Team was told by the Economic Crime Department, the Prosecutors' Office and the Coordination Council that co-operative investigations with authorities in Russia and China have been undertaken on economic crimes.
227. Some statistics on co-operative investigations in ML and FT offences with appropriate competent authorities in other countries including the use of special investigative techniques were provided in Mongolian.
228. Given the formative state of Mongolian AML/CFT system, there have been no reviews of ML and FT methods, techniques and trends. When fully operational, the FIU will be able to disseminate information to all the relevant investigative agencies.

Recommendation 28

229. The provisions in the Criminal Procedure Code empower law enforcement agencies, when conducting inquiries or investigations into any unlawful activity, to compel production of, search persons or premises for, and seize property⁶ or documents. There is no restriction in this legislation on the type of possessor⁷ or premises that can be searched and all types of property and legislated offences are included. The current powers of search and seizure reside under Articles 132 and 133 of the Criminal Procedure Code. Additional powers in relation to particular predicate offences are contained in the Criminal Code.
230. This search and seizure power appears to be able to be used by all investigators under the Mongolian system, including the police and the GIA. The amendment to the Criminal Code, Articles 177 (FT) and 268 (ML) also includes the GIA.

⁶ The English translation of the legislation provided refers to 'items' not property – a check of the Mongolian translation by the Bank of Mongolia Legal Dept indicates that the word should be property. Property is defined in Article 84 of the Civil Code as 'Asset that is subject to somebody's ownership shall be property.'

⁷ Prosecutors Office stated that, according to common usage and acceptance by court, the term 'Possessor' includes natural and legal person.

231. The Prosecutors' Office has a supervisory role over investigations into serious and grave crimes. In this context the Prosecutors' Office is the competent body to provide advice and guidance. Article 193 of the Criminal Procedure Code provides for the close oversight and involvement by the Prosecutors' Office at all stages of inquiries and investigations. Under Articles 132 and 133 of the Criminal Procedure Code, an investigator, can apply to the Procurator⁸ for the search or seizure of property. Property is defined in Article 84 of the Civil Code as 'Asset that is subject to somebody's ownership shall be property.' The seizure will remain valid until the conclusion of trial. Confiscation of the property, which is forfeited to the State, can be made under Article 49 of the Criminal Code once a conviction is secured.
232. The provisions of the Criminal Procedure Code contain the necessary provisions for taking of witnesses' statements for use in investigations and prosecutions of unlawful activity including activity relating to ML and FT and underlying predicate offences.

Recommendation 30: Structure, funding, staff and other resources of law enforcement and prosecution agencies

233. As mentioned above, the Police Investigation Department is currently the organization with primary responsibility to investigate ML. As noted above, the Police Department appears overall to be adequately structured and staffed for general policing investigations, however there are not yet resources for a specialist unit to conduct ML investigations and there is a need for specialist training in AML/CFT investigations.
234. In addition to the Police Department, other law enforcement agencies such as the GIA investigate offences within their areas of responsibility. In practice this agency has certain matters referred to it after being detected by the Border Patrol or Customs Department. In particular these agencies are responsible for smuggling and border protection roles. The GIA is empowered under legislation to investigate offences related to the protection of state, terrorism and offences such as human or gold/cash smuggling across the Mongolian border referred to it by Border Patrol and Customs. As ML can only currently be investigated under the Criminal Code by Police these agencies have little or no input into any ML investigation and conduct no FT investigations. However it should be noted that suggested amendments to legislation seen by the Evaluation Team indicate that the GIA would be included as an agency empowered to conduct ML and FT investigations.
235. During the Evaluation Team's meeting with the GIA, the Evaluation Team noted that the resources of the agency appeared somewhat limited. Total staff across all of Mongolia consists of 20 officers of whom 15 are based in UlaanBaatar. If this agency was to investigate ML offences related to all border smuggling type offences the Evaluation Team is concerned that many possible ML detections would not be able to be investigated.
236. It is suggested that sufficient staffing and funding be provided to all investigation departments responsible for combating of ML and FT activities so as to ensure they are able to fully and effectively perform their respective functions.

⁸ Prosecutor and Procurator appear to be interchangeable terms under Mongolian translation.

Integrity standards and training

237. During the on-site visit, the Evaluation Team was informed that all police officers had gone through an integrity vetting process prior to employment. Officers deployed to work in the Investigations Department are selected to ensure that professional standards and integrity are maintained and are subject to a code of conduct. The Evaluation Team was informed that all officers were checked for compliance to this code by a special unit within the Police Department. This unit monitored the everyday activity of police officers. Investigating police officers are also required to consult with the Prosecutors' Office in complex or involved matters which would assist in maintaining confidentiality and integrity in these matters. The Evaluation Team did not have the opportunity to speak with or observe any officers outside UlaanBaatar.
238. It is important for AML investigation units to ensure integrity and anti-corruption measures when dealing with sensitive financial intelligence.
239. The Evaluation Team was advised that the headquarters investigations team had received one UN Office on Drugs and Crime (UNODC) financial investigations training session and officers from the Economic Crime Division have undergone some financial investigation training. The Economic Crime Division indicated that three officers have attended a seminar given by the American Law Bar, one officer attended a 10 day seminar in Moscow and two officers are currently involved in ML research. Overall this degree of training cannot be considered adequate training in ML and FT for financial investigators. Also there appears to be no plan or schedule for continuous and further training in ML and FT that should be provided to all competent authorities.
240. Limited training for judges on AML/CFT has taken place, but in the absence of ML and FT offences, there will be a need for additional training.

Recommendation 32: Statistics – investigations, prosecutions and convictions

241. The Police Investigation Department does use sections of the Criminal Code and Criminal Procedure Code to search and seize property and as a general search and seize provision appears to be effective.
242. There are no comprehensive statistics available regarding investigations, prosecutions or convictions for ML and FT. The Investigations Department indicated that there were some statistics regarding their use of the current legislation involving search and seizure that has some relevance to ML, but these statistics were not available in translation. At present, different agencies maintain their respective statistics for record and publication. The Prosecutors' Office also indicated that they kept statistics related to criminal prosecution and that some of those statistics related to ML. As there have been no terrorism offences prosecuted there are no statistics on FT.

2.6.2 RECOMMENDATIONS AND COMMENTS

243. It is recommended that Mongolia should:
- designate appropriate law enforcement agencies to investigate the new offences of ML and FT once the Criminal Code is amended;

- establish specialist AML investigation units in law enforcement agencies to conduct investigation of ML offences;
- arrange coordinated training for enforcement and prosecution agencies on investigation and prosecution of ML/FT offences;
- maintain comprehensive statistics on matters relevant to ML and FT so as to ensure the a review of effectiveness can be done; and
- have FIU and law enforcement agencies and all competent authorities in combating ML and FT sufficiently funded, staffed and adequately structured so as to ensure operational independence and that they are able to perform their functions effectively.

2.6.3 COMPLIANCE WITH RECOMMENDATION 27, 28, 30 & 32

Rating		Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Law enforcement authorities are not yet designated to investigate FT, as the offence has not yet been established. • As FIU has only just commenced methods, techniques and trends are not reviewed and information not analysed or disseminated.
R.28	C	<ul style="list-style-type: none"> • The Recommendation is fully observed.
R.30	PC	<ul style="list-style-type: none"> • The resources to be devoted to investigate ML & FT are insufficient. • Adequate and relevant training programs on ML and FT need to be implemented.
R.32	NC	<ul style="list-style-type: none"> • Due to recent implementation there are no comprehensive statistics on effectiveness or efficiency. • Suspicious transaction reports not received or disseminated as yet.

2.7 CROSS-BORDER DECLARATION OR DISCLOSURE (SR.IX)

2.7.1 DESCRIPTION AND ANALYSIS

Declaration system

244. Statutory provisions relating to the cross-border transportation of currency and bearer negotiable instruments are contained in the CMLTF, Currency Settlement Act and the Customs Law.
245. The Customs Declaration Form must be completed by all persons entering or leaving Mongolia and requires all travellers to declare Mongolian or foreign currency and 'other monetary instruments'. The Customs Declaration Form does not set a threshold for reporting and indicates that giving false information in the Declaration Form is punishable under the Customs Law of Mongolia.
246. Inspectors responsible for collecting information and maintaining the database on cross-border currency movements have been appointed in each port of entries at

Mongolian borders since November 2006. Those inspectors collect declaration forms from each passenger and input the relevant information (mainly information of those passengers who have declared that they carry currency more than 5 million togrog or foreign equivalent) into the Customs currency database. Cross-border information is sent on a monthly basis to the General Customs Office in UlaanBaatar. The FIU is able to have an access to this database.

247. Article 3 of the Currency Settlement Act defines the terms 'currency' and 'foreign currency'. "Currency" includes the Mongolian togrog (MNT), foreign and gold currencies and other forms of international commerce payments. "Foreign currency" includes "solvent foreign currencies in circulation, bonds, and instruments of payment expressed in foreign currencies and widely used in international transactions". This definition appears to cover bearer negotiable instruments made out in a currency other than Mongolian togrog. Customs authorities indicate that in practice, they require a report of all non-monetary financial instruments.
248. Article 13 (i) sets out the authorization for the flow of currency in and out of Mongolia indicates that citizens of Mongolia, foreign citizens and stateless persons are permitted to bring currency declared at the customs office through state borders of Mongolia.
249. Article 15 of the CMLTF law also deals with the cross-border transportation and establishes an additional requirement to make a declaration to the FIU above a certain threshold. It states:
- 15.1 *Travellers carrying between MNT 5 and 20 million togrogs (or its equivalent in foreign currency in cash), across the Mongolian border shall declare truly the amount of cash in customs forms.*
 - 15.2 *If a person crosses the Mongolian border carrying more than 20 million togrogs in cash (or the equivalent in foreign currency), he or she shall make a declaration to the authorized representative of the Financial Information Service (FIU) in the prescribed form.*
 - 15.3 *A person who evades or objects to making a declaration or makes a false declaration under Articles 15.1 or 15.2 shall be liable as provided for in the Law.*
250. At the time of the on-site visit there was no system in place to give practical effect to the obligation on travellers to make a declaration to the FIU for amounts over 20 million MNT (approx USD20,000).
251. In June 2007 Mongolia indicated that the procedure has been set to inform the FIU about passengers with MNT 20 million, but this development was implemented outside of the timeframe for measures to be considered as part of the rating for this assessment. .
252. The CMLTF law sets a threshold of 20 million MNT, which is above international standards, and does not include bearer negotiable instruments.

Authority to obtain further information and restrain currency or bearer negotiable instruments

253. Under the Customs Law, Customs has the authority to request and obtain further information from the carrier. Articles 34-35 allow for the re-examination of goods and relevant documents and Article 40 provides for the provision of information.

254. Under the provisions of the law on CMLTF, the FIU is not authorised to obtain further information upon the discovery of false declaration or failure to report a cross-border movement of currency to the FIU. Article 15 sets out those persons who evade or objects or makes a false declaration will be liable as provided, but there is no provision for further questioning.
255. If Customs refers the matter to an investigative agency then there is a general right to question under law enforcement legislation, however there is no specific power, in these matters, to compel answers. Customs indicate that refusal to answer questions will be an aggravating factor during any subsequent prosecution.
256. Customs uses intelligence indicators and has the authority to make inquiries based on a targeted, suspicion, intelligence or on a random basis.
257. Article 42 of the Customs Law does permit Customs to 'detain goods or means of transport for thorough checking'. However there is no specific mention relating to suspicion of ML, FT or false declaration/disclosure.
258. It is not clear if the FIU would be able to exercise its powers under Article 11 of the law on CMLTF to detain currency or bearer negotiable instruments if there are grounds to suspect cross-border movement of currency is related to ML or terrorism financing. The provision relates to 'transactions', which may not apply at the border.
259. Under Article 46 of the Customs Law, Customs is required to 'create and use the Customs database and network to cover the processes of collection, collation, registration, analysis and dissemination of statistical information in respect of goods crossing the Customs frontier and shall compile Customs statistical data on foreign trade.' However, at this point there are no specific procedures in place for Customs to maintain any records in relation to the cross-border transfer of funds.
260. There is currently no system whereby the FIU is notified about suspicious cross-border transportation incidents or information on declarations or disclosures.

Domestic and international co-operation

261. There is a need for greater coordination to ensure that the new FIU and Customs agencies cooperate to implement the various cross-border declaration provisions.
262. The Customs Department co-operates with other countries. Customs has MOUs with 14 other countries to support cooperation and information sharing. The most frequent points of exchange are with counterpart authorities in China and Russia.

Sanctions for false or non-declaration

263. There are no effective or dissuasive sanctions available to competent authorities in cases of false or non-declaration.
264. Article 74 of the Customs Law outlines sanctions for non-compliance with declaration requirements/rules. The available sanction is a fine of MNT 5,000 to 25,000 (\$US5-25) which is inadequate and in no way effective.
265. Article 15.3 of the law on CMLTF provides for a person who evades or objects to making a declaration or makes a false declaration under Articles 15.1 or 15.2 of the law shall be liable as provided for in the law. However, Article 21 of the law, which sets out liabilities to be imposed, does not address sanctions for breaching Article 15 of the law.

Cross-border movements of gold

266. The issue of sharing information on the cross-border movement of gold, precious metals or stones was discussed with members from Customs, Border Patrol and GIA. In practice both Customs and Border Patrol have a detection role and the investigation role is conducted by the GIA as part of their role under the Criminal Procedure Code. The Border Patrol indicated to the Evaluation Team that it did not have specific legislation to share information with other outside agencies. It does however share information with Mongolian law enforcement and GIA. The GIA told the Evaluation Team that they had relationships with foreign counterparts and that they shared information using bilateral treaties and MOUs.

Effectiveness

267. There are a number of areas where effectiveness has not yet been established. In particular, the incomplete coverage of bearer negotiable instruments and the lack of effective sanctions undermine effectiveness. Additionally, there is a need to focus on information sharing and ensuring that the new system to share cross-border currency reports with the FIU and investigation authorities is properly implemented.

2.7.2 RECOMMENDATIONS AND COMMENTS

268. It is recommended that Mongolia should:

- Ensure declaration obligations include bearer negotiable instruments in any currency;
- coordinate efforts amongst Customs, border agencies and the FIU to implement an effective cross-border declaration and detection system that allows information to flow freely between border agencies and the FIU and that support investigation of suspicious cross-border movement of cash and bearer negotiable instruments;
- Ensure that the threshold for making a cross-border declarations is sufficiently low to meet the objectives of SR IX and not above EUR/USD 15,000.
- establish an effective mechanism to allow the FIU to have direct access to data arising from currency declarations;
- make available effective and dissuasive sanctions to competent authorities (Customs) in cases of false or non-declaration of cross-border movement of currency;
- set up a mechanism to allow suspicious cross-border currency transportation incidents to be investigated by competent authorities in relation to the origin of currency and its intended use;
- require declaration of cross-border transportation of precious metals or stones with information made available to the FIU;
- establish a mechanism to maintain comprehensive statistics on cross-border transportation of currency ; and
- have Customs and the Border Patrol Department establish relationships to enhance coordination and contact with other enforcement agencies both

domestically and overseas for intelligence sharing and cooperation on cross-border transportation reports.

2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATION IX

	Rating	Summary of factors underlying rating
SR.IX	PC	<ul style="list-style-type: none">• Bearer negotiable instruments are inadequately covered in the declaration system.• No mechanism to ascertain origin of the currency and its intended use.• There is no procedure in place to ensure that the FIU is notified on suspicious cross-border transport of currency.• Sanctions available for false declaration are inadequate.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING

269. Mongolia's AML/CFT system is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations and Mongolia has not sought to exclude any of the activities on a risk basis.

3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)

3.2.1 DESCRIPTION AND ANALYSIS

270. Under provisions of the Law on CMLTF the FIU is the competent authority for implementation of the Law, however there is no provision or power for the FIU to issue regulations under the Law. Given this deficiency there will be a need for authorities to rely on powers granted to the Bank of Mongolia and the FRC under various pieces of legislation, to issue binding regulations to support AML/CFT implementation.

Recommendation 5 (Customer due diligence)

271. Since 8 July 2006, the Law on CMLTF has been put into practice, in which certain customer due diligence (CDD) measures are required of banks, non-bank financial institutions, insurance companies, licensed securities market entities, natural or legal persons conducting pawnbroker activities, savings and credit cooperatives, natural or legal persons conducting foreign currency exchange activities, and natural or legal persons conducting gambling activities.

272. The above coverage of persons or entities subject to the CDD requirement is wide enough to capture all the financial institutions in Mongolia conducting for or on behalf of a customer one or more of the activities or operations spelled out in the FATF glossary of definitions used in the methodologies.

273. Those natural or legal persons referred to in the previous paragraphs are generically called "the reporting entities" under the law, and they are prohibited from opening an anonymous or numbered account or an account in fictitious names, or make a transaction from or to such accounts, or use closed accounts. (Article 4.3)

When CDD is required

274. The reporting entities are required under Article 5 of the Law on CMLTF to obtain customer information in the following circumstances:

- prior to providing a financial service;
- prior to conducting a transaction equal to or more than 20 million togrogs (or equivalent foreign currency);
- if the total sum of several inter-related transactions is 20 million togrogs (or equivalent foreign currency) or above, the individual value of any of these

transactions is less than 20 million togrogs, and there is a ground to suspect that the transactions are conducted with the intent to avoid the reporting requirement of suspicious transactions;

- if there is a need to verify the accuracy of previously obtained information on customers;
- prior to conducting an international settlement transaction;
- if there are other grounds to suspect that the customer or the transaction is involved with ML or terrorism financing.

275. The circumstances mentioned above are generally covering all the cases set out in the FATF standards where financial institutions should be required to undertake CDD measures, but there is no specific reference in the law to “carrying out occasional transactions that are wire transfers” as a case necessitating CDD measures as required by the FATF standards.

Required CDD measures

276. If the customer is an individual, the reporting entities must obtain his or her father’s or mother’s name, given name, registration number, residential address, contact phone number, and a notarized copy of citizen’s identity card (Article 5.2.1).

277. This legislative requirement, however, does not seem to satisfy the FATF standards that suggests that financial institutions be required to “identify” the customer and “verify” that customer’s identity. The Law on CMLTF requires the reporting entities to “obtain” customer information, which does not appear to cover one of the two essential components of the international standards: i.e. “verification” of the information that has been obtained from the customer. Verification doesn’t seem to be explicitly required under the new law.

278. The identification data that the reporting entities are allowed to rely on under the law is restricted to a citizen’s identity card, and the reporting entities are not explicitly obliged to ascertain the customer information using the original document. They are permitted to fulfil the legal duty by “obtaining” a notarized copy of the citizen’s card instead. This seems that the law trusts fully with notaries the responsibility for the reporting entities to verify the customer’s identity.

279. The Evaluation Team met with several financial institutions including banks and a securities company which explained that in practice these financial institutions have had internal policies and procedures whereby they check the original of a citizen’s identity card in addition to obtaining a notarized copy of it.

280. If the customer is a legal entity, the reporting entities must obtain the name of the entity, its address, national registration and tax payer number, contact phone number, a notarized copy of its national registration certificate, and detailed information on its management (Article 5.2.2).

281. This legal provision however does not oblige the reporting entities to verify that any person purporting to act on behalf of the legal entity is so authorized, and identify and verify the identity of that person as required by the FATF standards.

282. The reporting entities are required under Article 5.2.3 to obtain information on beneficiaries of transactions. This legal provision does not specify what kind of relevant information or data must be obtained from which reliable source(s) such that

the reporting entity is satisfied that it knows who the beneficial owner is. It is also unclear whether the reporting entities are expressly required by this legal provision to go as far as to determine for all customers whether each customer is acting on behalf of another person, and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person. In the case where a customer is a legal entity, the reporting entities are not explicitly obliged to take reasonable steps to determine who are the natural persons that ultimately own or control the customer.

283. The reporting entities are required under Article 5.2.3 to obtain information on purposes of transactions.
284. According to Article 6.1.6, the reporting entities are required to undertake special monitoring of transactions that are different from the customer's previous transactions and that have no clear purposes. Article 6.2 requires the reporting entities to undertake all possible measures to obtain additional information or an explanation of such transactions.
285. The legal requirements mentioned in the preceding paragraph appear to address the FATF standards that require financial institutions to conduct ongoing due diligence on the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.
286. The reporting entities are not required, however, to keep documents, data or information collected in the CDD process up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

Risk

287. The Law on CMLTF has no specific provision that would allow the reporting entities to vary their intensity of due diligence according to the different risk categories of customer, business relationship or transaction. The reporting entities are not required to enhance the level of due diligence for any higher risk circumstances; neither do they have any right of choice to apply reduced or simplified measures where there are low risks. The reporting entities are not permitted to determine the extent of the CDD measures on a risk sensitive basis.

Timing of Verification

288. Under the Law on CMLTF, the reporting entities are required to 'obtain' customer information all the time 'prior to' establishing a relationship or conducting a transaction; however, this requirement refers only to the timing of obtaining such customer information, not to the timing of verification. It is uncertain whether the reporting entities are required to 'verify' the identity of the customer or beneficial owner in the first place; nor is it clear whether they have to verify it 'before or during' the course of establishing a business relationship or conducting transactions for occasional customers.

Failure to satisfactorily complete CDD

289. Article 5.3 of the Law on CMLTF provides that if a customer refuses to provide the identification data, the reporting entities must refuse to open an account, to conduct a transaction, or to provide other financial services. There is no requirement for them, however, to consider making a suspicious transaction report if they have faced such a customer who refuses to provide his or her identification data.
290. In relation to those customers with whom the reporting entities have already commenced the business relationship but have later developed doubts about the veracity or adequacy of previously obtained customer identification data, there is no express requirement for the reporting entities to terminate the business relationship and to consider making a suspicious transaction report if the customers refuse to provide further details on or updated version of their identification data.

Existing Customers

291. Article 5.2 of the Law on CMLTF provides that the reporting entities must update, within one year from the enforcement, the information on all customers with whom it had established financial relationships prior to the adoption of the law in conformity with the requirements of customer identification data.

Recommendation 6 (Politically exposed persons)

292. Under Article 6.1.5 of the Law on CMLTF, the reporting entities are required to undertake special monitoring of transactions conducted in the name of a public official or a political party leader from a country listed by the Governor of the Bank of Mongolia. This list shall contain those countries which the Bank of Mongolia determines as having no financial monitoring mechanism to combat ML and FT. The list has not been prepared yet as of the on-site visit of the Evaluation Team.
293. Besides the above legal provision, there are no legal, regulatory or other enforceable means that would require the reporting entities to put in place appropriate risk management systems to determine a politically exposed person (PEP), to obtain senior management approval for establishing business relationships with a PEP, to take reasonable measures to establish the source of wealth or funds of a PEP, or to conduct enhanced ongoing monitoring on any business relationship with a PEP.

Recommendation 7 (Correspondent banking)

294. The Law on CMLTF has no specific provision that would require the reporting entities to take enhanced measures in relation to cross-border correspondent banking and other similar relationships in addition to performing normal CDD requirements.
295. According to the Bank of Mongolia, the financial sector in Mongolia is in its early stages of development. While there are currently no specific requirements in Mongolia related to this FATF Recommendation, Mongolian financial institutions are quite careful in practice with selection of correspondent banks. They perform preliminary analysis of financial conditions of banks with whom they would like to establish correspondent relationship. Economic, legal, political and reputation risks are also analyzed. They only establish correspondent relationships with those financial institutions which have good reputation and high credit rating. .

296. Those banks which the Evaluation Team met responded that they have internal policies and procedures in place where approval from senior management is always required before establishing new correspondent relationships. Mongolian banks also in practice assess and document respondent institutions' AML/CFT controls before establishing relationships as part of their broader risk management approach. Mongolian banks do not maintain payable-through accounts.

Recommendation 8 (New technologies & non-face-to-face business)

297. There is no law, regulation or other enforceable means that would require financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or FT schemes. Neither are they required by any enforceable means to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

298. According to the Bank of Mongolia, most financial transactions in Mongolia are conducted face-to-face due to lack of technological developments. For non-face-to-face financial transactions such as ATM machines, telephone banking and internet services, financial institutions have in place internal risk management guidelines which include requiring personal identification numbers and other identification measures. Those banks which the Evaluation Team met indicated that they had in place internal policies and procedures against electronic fraud and other misuse of technological developments. As an example, they issue unique customer identification numbers for e-banking and ATM, and report unusual and large transactions to senior officers of the institutions.

3.2.2 RECOMMENDATIONS AND COMMENTS

Recommendation 5

299. It is recommended that the Law on CMLTF be amended to:

- refer specifically to “carrying out occasional transactions that are wire transfers” as a case where the reporting entities must undertake CDD measures as required by the FATF standards;
- require the reporting entities explicitly both to identify the customer and verify that customer's identity as required by the FATF standards;
- oblige the reporting entities to verify that any person purporting to act on behalf of the legal entity is so authorized, and identify and verify the identity of that person as required by the FATF standards;
- specify what kind of relevant information or data the reporting entities must obtain from which reliable source(s) such that the reporting entities are satisfied that they know who the beneficial owner is, in relation to the current legal requirement imposed under Article 5.2.3 of the Law to obtain information on beneficiaries of transactions;
- impose an explicit legal duty on the reporting entities to determine for all customers whether each customer is acting on behalf of another person, and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person;

- specify that, in case where a customer is a legal entity, the reporting entities must take reasonable steps to determine who are the natural persons that ultimately own or control the customer; and
- obligate the reporting entities to keep documents, data or information collected in the CDD process up-to-date and relevant by undertaking reviews of existing records.

300. It is recommended that the reporting entities be required by any one of the law, regulation or other enforceable means to:

- verify the identity of the customer or beneficial owner “before or during” the course of establishing a business relationship or conducting transactions for occasional customers;
- consider making a suspicious transaction report if a customer refuses to provide his or her identification data, as a next obligatory step that the reporting entities must take after refusing the customer’s request to open an account, to conduct a transaction, or to provide other financial services as currently being required under Article 5.3 of the Law on CMLTF; and
- in cases where the reporting entities have already commenced a business relationship but have later developed doubts about the veracity or adequacy of previously obtained customer information data, terminate the business relationship and consider making a suspicious transaction report on those customers which refuse to provide further details on, or updated version of, their identification data.

Recommendation 6

301. It is recommended that:

- the Law on CMLTF be amended to expand the current definition of PEPs beyond a public official or a political party leader from a country listed by the Bank of Mongolia as having no financial monitoring mechanism to combat ML and FT to cover all the individuals defined as PEPs in the FATF Glossary; and
- the Bank of Mongolia and other supervisors issue detailed regulations that would require the reporting entities to put in place appropriate risk management systems to determine a PEP, to obtain senior management approval for establishing business relationships with a PEP, to take reasonable measures to establish the source of wealth or funds of a PEP, and to conduct enhanced ongoing monitoring on any business relationship with a PEP.

Recommendation 7

302. It is recommended that:

- the reporting entities be required to take enhanced measures in relation to cross-border correspondent banking and other similar relationship in addition to performing normal CDD measures; and
- the Bank of Mongolia and other supervisors issue detailed regulations on what kind of enhanced measures the reporting entities must take, such as gathering information about a respondent institution’s business and reputation, assessing

the respondent institution's AML/CFT controls, necessitating senior management approval before establishing relationships, and documenting the respective responsibilities of the reporting entity and its respondent institution.

Recommendation 8

303. It is recommended that:

- the reporting entities be required to have policies and procedures in place to prevent the misuse of technological developments in ML or FT schemes and to address any specific risks associated with non-face to face business relationships or transactions; and
- the Bank of Mongolia and other supervisors issue detailed regulations on what specific CDD procedures must be applied to non-face to face customers.

3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 TO 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • There is no legislative requirement for the reporting entities to take CDD measures for wire transfers; to both identify the customer and verify the identity of the customer; to verify any person purporting to act on behalf of a corporate customer is so authorized; to identify the beneficial owner; to determine for all customers whether the customer is acting on behalf of another person; to determine who are the natural persons that ultimately own or control a corporate customer; and to undertake reviews of existing records on CDD documents to keep them up-to-date and relevant. • No requirement to verify the identity of the customer or beneficial owner before or during establishing relationships or conducting transactions; • No requirement to terminate the relationship and consider making a suspicious transaction report if an existing customer refuses to provide further details on identification data in case where there are doubts about the data's veracity.
R.6	NC	<ul style="list-style-type: none"> • The definition of a PEP under the current law is not extensive enough to cover all the individuals defined as PEPs in the FATF Glossary. • There is no requirement for the reporting entities to take enhanced CDD measures in relation to PEPs.
R.7	NC	<ul style="list-style-type: none"> • There is no requirement for the reporting entities to take enhanced CDD measures in relation to cross-border correspondent banking and other similar relationships.
R.8	NC	<ul style="list-style-type: none"> • There is no requirement for the reporting entities to have policies in place to prevent the misuse of technological developments or non-face to face business in ML or FT schemes.

3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)

3.3.1 DESCRIPTION AND ANALYSIS

Recommendation 9 (Third parties and introducers)

304. As described in the previous sections regarding Recommendation 5, Article 5.2 of the Law on CMLTF provides that the reporting entities must obtain customer information such as name, address, telephone number and a notarized copy of either citizen's identity card or corporate registration certificate depending upon whether the customer is an individual or legal entity.
305. This requirement does not refer specifically to the duty of the reporting entities to conduct a verification of such customer information beyond its obtainment. It instead requires the reporting entities to obtain a "notarized copy" of any identification document. This could be interpreted as meaning that the reporting entities are permitted by law to rely on notaries to perform some of the elements of the CDD process, i.e. the verification of the customer's identity, through their notary activities called notarization.
306. The reporting entities, however, are not required by law, regulation or other enforceable means to immediately obtain from the notaries they relied on pertinent information on the notaries' customer identification and verification process including policies and procedures to determine the beneficiaries of the customers' transactions, etc. as recommended by the FATF standards.
307. As referred to above, under Article 5.2 of the Law on CMLTF, the reporting entities are specifically required to obtain copies of each customer's identification data from the notaries they relied upon, and make always available such documentation; therefore, such copies are available at the reporting entities at any time, which meet the international standards set out in the FATF Recommendations.
308. Although the reporting entities are not specifically required by law, regulation or other enforceable means to satisfy themselves that notaries are regulated and supervised (in accordance with FATF Recommendations 23, 24 and 29), and have measures in place to comply with the CDD requirements set out in Recommendations 5 and 10, the Law on Notary clearly provides for the regulatory and supervisory authorities that the Ministry of Justice has over the notarial activities as follows.
309. Under Articles 13 and 14 of the Law on Notary, a notary license shall be issued by the Ministry of Justice to a citizen who has passed the selection examination organized by the Notary Chamber, completed a higher education program in law and performed notary activities or had been a notary apprentice for not less than three months.
310. A licensed notary shall register with the Ministry of Justice to carry out his/her activities (Article 7). The Ministry of Justice shall exercise supervision over notary activities, and also inspect notarial documents. Notaries are subject to disciplinary sanctions if they violate notaries ethical norms or procedures established by the Law on Notary. The administrative penalties may be imposed on notaries if they break the Law on Notary and if the violation does not involve a criminal responsibility.
311. Under Article 28 of the Law on Notary, notaries shall establish the identification of clients who have requested performance of a notarial deed, based on the citizen's

passport. Notaries shall verify whether the client citizen or legal person is competent and the power of attorney and agency have been executed properly. In order to establish the identification of the client, notaries may where necessary request a reference from a competent agency or presence of two witnesses who know the client. Under Article 25 of the Law on Notary, certified copies of documents shall be taken at the request of the client and upon verification with the original text.

312. Under Article 27 of the Law on Notary, notaries shall maintain records of performed notarial deeds and keep minutes where necessary. In case of doubt as regards the authenticity of a document to be certified, a notary may decide to have such document examined by experts.

313. Those notaries upon whom the reporting entities are legally allowed to rely for CDD purposes are restricted to those performing their duties in Mongolia. No case seems to be anticipated where the reporting entities would have to determine in which countries the notaries meeting conditions are based; neither do the Mongolian authorities have to take into account information on whether those countries adequately apply the FATF Recommendations.

314. It seems unclear whether the ultimate responsibility for customer identification and verification remain with the reporting entities relying on notaries as the Law on CMLTF does not specifically provide for the reporting entities' duty to undertake the two procedures: i.e. identification and verification beyond obtaining of the customer information.

3.3.2 RECOMMENDATIONS AND COMMENTS

315. It is recommended that the Bank of Mongolia and other supervisors issue detailed regulations that would require:

- the reporting entities to immediately obtain from the notaries they relied on pertinent information on the notaries' customer identification and verification process including policies and procedures to determine the beneficiaries of the customers' transactions, etc. as recommended by the FATF standards; and
- the Law on CMLTF be amended to make it clear that the reporting entities have to undertake the two procedures: i.e. identification and verification of the customer information, and that the ultimate responsibility for these procedures remain with the reporting entities relying on notaries.

3.3.3 COMPLIANCE WITH RECOMMENDATION 9

	Rating	Summary of factors underlying rating
R.9	PC	<ul style="list-style-type: none"> • The reporting entities are permitted by the law to rely on notaries to perform some of the elements of the CDD process, whereby the reporting entities are required to obtain a notarized copy of customer identification data. • There is no requirement for the reporting entities to obtain from the notaries they relied on the policies, procedures and processes of the notaries' customer identification and verification. • There is no express requirement for the reporting entities to satisfy themselves that notaries are regulated and supervised, while the regulation and supervision of the notaries are conducted by the

		Ministry of Justice, which issues licenses and enforces requirements with administrative sanctions for non-compliance. <ul style="list-style-type: none"> • There is no express requirement for the reporting entities to take the ultimate responsibility for customer identification and verification.
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3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)

3.4.1 DESCRIPTION AND ANALYSIS

316. Mongolia does not have banking or financial institution secrecy legislation that would inhibit competent authorities gaining access to information. The Law on Confidentiality of Legal Persons, the Law on Personal Privacy, the Banking Law and other relevant acts do not inhibit the implementation of FATF Recommendations. The FIU, Bank of Mongolia and the FRC are authorised to obtain information from financial institutions and share that information with other competent authorities.

317. Given the newness of both the CMLTF and the Law on the Legal Status of the Financial Regulatory Commission (2005) the full effectiveness of this legislation could not be established and there were no statistics available to show the use of regulatory powers to override secrecy provisions.

3.4.2 RECOMMENDATIONS AND COMMENTS

318. Mongolia should ensure that regulatory powers are able to be used to override secrecy provisions.

3.4.3 COMPLIANCE WITH RECOMMENDATION 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> • Financial institution secrecy laws do not appear to inhibit the disclosure to and sharing of requisite information with the competent authorities, although effectiveness could not be fully established.

3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)

3.5.1 DESCRIPTION AND ANALYSIS

Recommendation 10 (Record keeping)

319. Under Article 8.1 of the CMLTF the reporting entities are required to retain for not less than five years information and documentation on customers' transactions and closed accounts.

320. However, there is no detailed rule or regulation to prescribe what specific items or components of the customers' transactions and closed accounts have to be retained; it appears unclear at this moment whether such documented information by the reporting entities would be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

321. As for records of identification data, account files and business correspondence, there are no specific legal requirements for the reporting entities to maintain such records for at least five years following the termination of an account or business relationship as being required by the FATF standards.
322. As far as the account files are concerned, however, Article 95.3 of the Company Law seems to address to some extent such files' record-keeping requirement for minimum of five years at a company and, thereafter, at national archives for ten more years, but this particular requirement is imposed for the purpose of public disclosure, because Article 95.2 of the Company Law provides that a company shall keep such documents at its principal place of business or at such other place that is disclosed to, and reasonably accessible by, the company's shareholders.
323. There is no specific legal or regulatory requirement for the reporting entities to keep all customer and transaction records and information available on a timely basis to domestic competent authorities upon appropriate authority.
324. As far as transaction records are concerned, the Governor of the Bank of Mongolia and the Prosecutor General are empowered under Article 7.4 of the Law on CMLTF to set down the procedure in accordance with which a reporting entity shall provide information on specific transactions and their participants. This procedure, however, has not been adopted as of the date of the on-site visit of the Evaluation Team.
325. Since the date of the on-site visit, Mongolia has taken some steps to address the identified weakness, although the changes were made after the period when they were able to taken into account for purposes of the rating in this report and does not appear to apply to NBFIs. On 2 July 2007 the Bank of Mongolia issued "Regulation on know your customer to prevent ML/FT for banks". Article 5 of this regulation includes additional record keeping requirements as follows:
- 5.1. Banks shall keep the relevant records of transactions with correspondent banks and foreign payment and settlement for a period of no less than 5 years.
 - 5.2. Banks shall keep documents ascertaining the name and address of the customer such as civil identification or equivalent document, copy of driver's license and information related to account registration and documentation for a period of no less than 5 years after closure of the account.
 - 5.3. Banks shall maintain availability of getting detailed information of a customer, such as transaction volume, record of currency exchange, and use of this information at court as evidence material shall be in place.
326. The effect of these obligations is not assessed in this report but is noted to highlight recent positive steps taken by Mongolia.

Special Recommendation VII (Wire transfer rules)

327. As mentioned in the previous sections regarding Recommendation 5, under Article 5.1 of the Law on CMLTF, there is no specific reference to “conducting wire transfers” as a case where the reporting entities must obtain customer information. Thus there is currently no specific requirement by law, regulation or other enforceable means for ordering financial institutions to obtain and maintain for all wire transfers information relating to the originator of the wire transfers.
328. If, however, certain wire transfers come under one or more of the six cases set out under Article 5.1, which inevitably trigger the legal requirement for the reporting entities to obtain customer information, the reporting entities must obtain the following information from the customers:
- if the customer is an individual, his or her father’s or mother’s name, given name, registration number, residential address, contact phone number, and a notarized copy of citizen’s identity card;
 - if the customer is a legal entity, name of the entity, its address, national registration and tax payer number, contact phone number, a notarized copy of its national registration certificate, and detailed information on its management;
 - information on purposes and beneficiaries of transactions; and
 - information about people who made wire transfers.
329. As there is no detailed instruction or supervisory guideline issued yet on what specific information would have to be obtained by the reporting entities as “information about people who made wire transfers” mentioned above, it is uncertain whether the full set of the originator information (such as name, address and account number) as defined by Special Recommendation VII would have to be obtained by ordering financial institutions in cases where the originator of a wire transfer is not the customer him or herself of that ordering financial institution. Neither is there any law, regulation or other enforceable means that would require ordering financial institutions to verify the identity of the originator for all wire transfers in line with FATF Recommendation 5.
330. With respect to inclusion of the full originator information in the message or payment form accompanying cross-border wire transfers, there is no requirement by law, regulation or other enforceable means for ordering financial institutions to include such information. For domestic wire transfers, there is also no such requirement.
331. There is no requirement by law, regulation or other enforceable means for intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers, or to keep a record of that information for five years if there are technical limitations to transmit any of it. Neither is there any requirement by law, regulation or other enforceable means for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.
332. There are no legislative, regulatory or supervisory measures in place to effectively monitor the compliance of ordering, intermediary or beneficiary financial institutions with respect to the FATF Special Recommendation VII as there are currently no specific rules or regulations to implement this recommendation in

Mongolia as explained above, neither is there any sanction mechanism related to this FATF Recommendation.

3.5.2 RECOMMENDATIONS AND COMMENTS

Recommendation 10

333. It is recommended that:

- the Bank of Mongolia and other supervisors prescribe what specific items or components of the customers' transactions have to be retained, whereby such documented information by the reporting entities would be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity;
- the reporting entities be required specifically by law to maintain the records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship; and
- the reporting entities be required to keep all customer and transaction records and information available on a timely basis to domestic competent authorities upon appropriate authority. This requirement of the reporting entities' providing information on specific transactions and their participants could be specifically set down in the procedure to be adopted under Article 7.4 of the Law on Combating Money Laundering and Terrorism Financing by the Governor of the Bank of Mongolia and the Prosecutor General.

Special Recommendation VII

334. It is recommended that the Bank of Mongolia and other supervisors:

- require ordering financial institutions to obtain and maintain information relating to the originator of wire transfers;
- issue detailed interpretative note or supervisory guidelines on what specific information would have to be obtained by the reporting entities as 'information about people who made wire transfers' pursuant to Article 5.2 of the Law on CMLTF. Such information must include the full set of the originator information (such as name, address and account number) as defined by Special Recommendation VII particularly if the originator of a wire transfer is not the customer him or herself of that ordering financial institution;
- require ordering financial institutions to verify the identity of the originator for all wire transfers;
- require ordering financial institutions to include full originator information in the message or payment form accompanying cross-border wire transfers;
- require intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers, or to keep a record of that information for five years if there are technical limitations to transmit any of it;
- require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. These procedures must include

assessment of whether a wire transfer or related transactions without complete originator information are suspicious enough to be reported to the FIU, and whether the beneficiary financial institutions should restrict or even terminate their business relationship with financial institutions that fail to meet the SR.VII standards; and

- put measures in place to effectively monitor the compliance of ordering, intermediary or beneficiary financial institutions with the above requirements to be set down, and establish sanction mechanisms against non-compliance.

3.5.3 COMPLIANCE WITH RECOMMENDATION 10 AND SPECIAL RECOMMENDATION VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • There is no requirement for the reporting entities to make transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • There is no legal or regulatory requirement for the reporting entities to maintain information on customers' identification data for five years following the termination of an account or business relationship, and to keep all customer and transaction records available on a timely basis to competent authorities.
SR.VII	NC	<ul style="list-style-type: none"> • There is no requirement for ordering financial institutions to obtain and maintain information relating to the originator of wire transfers, to verify the identity of the originator, and to include full originator information in the message or payment form accompanying cross-border wire transfers. • There is no requirement for intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers. • There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Unusual and Suspicious Transactions

3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

3.6.1 DESCRIPTION AND ANALYSIS

Recommendation 11 (Unusual transactions)

335. Under Article 6 of the Law on CMLTF, the reporting entities shall undertake special monitoring of the following transactions:

- transactions equal to or more than 20 million togrogs (or equivalent foreign currency);
- transactions with no clear purpose;
- transactions made via countries listed pursuant to Provision 3.2 of the Law;
- transactions that have no adequate information on the entity or the individual who undertook or who had someone undertake a wire transfer;
- transactions conducted in the name of a public official or a political party leader from a country listed pursuant to Provision 3.2 of the Law; and,
- transactions that are different from the customer's previous transactions and that have no clear purposes.

336. The reporting entities must undertake all possible measures to obtain additional information or an explanation of the transactions described above under the law. Based on this requirement, the background and purpose of such transactions would have to be examined as far as possible; however, the reporting entities are not specifically required by law, regulation or other enforceable means to set forth their findings in writing and to keep such findings available for competent authorities for at least five years as required by the FATF standards.

Recommendation 21 (Special attention for higher risk countries)

337. Article 3.2 of the Law on CMLTF authorizes the Bank of Mongolia to prepare a list of countries that do not have a financial monitoring mechanism to combat ML and terrorism financing.

338. As of the date of the on-site visit of the Evaluation Team, there was no such list prepared yet but once it has been issued, the reporting entities must undertake special monitoring of the transactions made via those countries listed by the Bank of Mongolia, and must undertake all possible measures to obtain additional information or an explanation of such transactions in accordance with Article 6.2 of the Law.

339. However, the reporting entities are not specifically required by law, regulation or other enforceable means to go as far as to keep any findings obtained from such additional information or explanation available in writing so as to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) as required by the FATF standards.

340. What kind of counter-measures could be taken to those countries which continue to be on the list prepared by the Bank of Mongolia is unclear as the Law on CMLTF is silent on such circumstances.

3.6.2 RECOMMENDATIONS AND COMMENTS

Recommendation 11

341. It is recommended that the Bank of Mongolia and other supervisors issue regulations to impose on the reporting entities a duty to:

- set forth in writing their findings on the background and purpose of those transactions subject to special monitoring under Article 6.1 of the Law on CMLTF, besides taking measures to obtain additional information or explanation of the transactions as required under Article 6.2 of the Law; and
- keep such findings available for competent authorities for at least five years.

Recommendation 21

342. It is recommended that the Bank of Mongolia and other supervisors:

- require the reporting entities to keep available in writing any findings obtained from additional information or explanation of those transactions made via countries listed by the Bank of Mongolia as having no financial monitoring mechanism to combat ML and terrorism financing so as to assist competent authorities; and
- issue regulations to set down what kind of counter-measures may be taken to those countries which continue to be on the list prepared by the Bank of Mongolia.

3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none">• There is a legislative requirement for the reporting entities to undertake special monitoring of unusual transactions such as those having no clear purpose, and to obtain additional information or explanation of those transactions.• There is no requirement for the reporting entities to keep the additional information or explanation available for competent authorities for at least five years.
R.21	PC	<ul style="list-style-type: none">• There is no requirement for the reporting entities to keep any findings obtained through the additional information or explanation available in writing so as to assist the competent authorities.• There is no rule or regulation on what kind of counter-measures may be taken to those countries which continue to be put on the list prepared by the Bank of Mongolia.

3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

3.7.1 DESCRIPTION AND ANALYSIS

Recommendations 13 & SR IV

343. There are very serious deficiencies in the obligations contained in Mongolia's new Law on CMLTF to report suspicious transactions in relation to ML and FT.

While obligations to report STRs do exist, they fall well short of the international standards and provide for only very narrow circumstances in which an STR may be filed. STRs are not required in cases of non-cash transactions of any kind, nor domestic transactions under 20 million togrogs (approx \$20,000).

344. Article 3.1.1 of the CMLTF defines “money laundering” for the purposes of the Law. The definition is a narrow one and only relates to *conversion of assets, though known as illicitly gained, for the purpose of concealing their origin and legalizing the right to possess, use and administer them*. The definition includes ‘knowingly’ as the mental element.
345. Article 3.1.2 of the CMLTF defines “errorist financing” for the purposes of the Act. The definition is a narrow one and only relates to *accumulating, transferring and spending in any form assets, being aware that they will be used for financing terrorist organizations and terrorist acts*. The definition does not cover financing for individual terrorists and includes ‘knowingly’ as the mental element.
346. Article 3.1.5 defines “suspicious transaction”, however this provision is not subsequently applied within any other Article of the law to create obligations to identify or report such suspicious transactions. The definition of suspicious transaction at 3.1.5 is considerably narrower in scope than the requirements under the FATF standards. The standards envisage reporting reasonable suspicion of funds that are proceeds of criminal activity.
347. Article 5.1.6 obliges reporting institutions to pay particular attention to in case there are other grounds to view that a particular customer or a particular transaction is linked to ML and FT. There is no subsequent obligation or provision for reporting entities to file an STR in relation to the circumstances set out in Article 5.1.6.
348. Transaction reporting obligations are contained under Article 7, but this Article provides only a very narrow set of circumstances in which STRs may be reported to the FIU. Transaction reporting obligations only extend to cash transactions, which are defined at Article 3.1.6 to include Mongolian or foreign currency in cash, as well as cheques, promissory notes and securities commonly used for international payments.
349. The obligations in Article 7 confuse threshold cash reporting (CTRs) foreign payment transactions and suspicious transactions. Article 7.1 establishes a CTR obligation on financial institutions to report to the FIU individual cash transactions above 20 million togrogs and combined cash transactions that total 20 million or more. Article 7.1 also requires reporting of cash transactions related to foreign payments without threshold (Articles 5.1.2, 5.1.3. and 5.1.5). These reports must be provided to the FIU within 7 days.
350. The STR obligation is contained at Article 7.2 which requires financial institutions to file an STR to the FIU only in the case where cash transactions above MNT 20 million or foreign payment (no threshold) are also suspected to be linked to ML or FT. In such limited circumstances, reporting entities must report an STR to the FIU within 24 hours. There is no obligation to report a suspicious transaction that is not conducted in cash, that is domestic and below the threshold or that is related to ML which may have occurred more than seven days previously.
351. Beyond the very narrow circumstances described above, there is no obligation to make an STR where there are reasonable grounds to suspect that funds are related to terrorism or FT. This is a very serious deficiency.

352. There is no obligation to report attempted transactions when there is suspicion that they involve ML or the proceeds of a crime.

353. There does not appear to be any specific impediment to report suspicious transactions that involve tax matters.

Developments since the on-site visit

354. On July 2 2007 the Governor of the Bank of Mongolia issued Resolution No.313, a regulation on reporting STRs and CTR. This Central Bank regulation seeks to clarify the obligation on commercial banks to monitoring unusual transactions and report STRs. The law was issued under Article 19 of the Law of Mongolia on Central Bank (Bank of Mongolia) and Article 14.3 of the CMLTF. While this regulation take steps to more extensively define the STR obligation beyond the narrow confines outlined above, it appears to be limited in its coverage (restricted to banks) and its legal force and only partially addresses the requirements in the international standards. For example, it is not clear that 'safe harbour' could be extended to entities reporting STRs beyond the narrow confines of the CMLTF.

355. Mongolian authorities indicate that they plan to extend the definition of STRs in due course by issuing a guideline or advisory. The Evaluation Team is concerned, however, that guidelines or advisories will have insufficient legal force and would not meet the requirement in the international standard that a comprehensive STR reporting obligation should be required by law or regulation.

Recommendation 14

356. Article 12 of the CMLTF provides 'safe harbour' for financial institutions who report STRs and other threshold reports to the FIU in good faith. It is not clear that the directors, officers and employees of the financial institutions are adequately protected from criminal and civil liability if they report in good faith.

357. Article 13.1 prohibits reporting institutions and the FIU from 'tipping off' the fact that an STR or related reports are being made to the FIU. The CMLTF provides for sanctions in cases where reporting institutions tip off customers about STRs.

358. Article 11 of the CMLTF allows the FIU to suspend a transaction for up to three days while the FIU collects information to consider whether reported information is linked to ML or FT. Exercise of this power will tip off the customer that a suspicious transaction report has been made, by virtue of the transaction having been frozen.

359. There are no laws or regulations that ensure the names and personal details of staff financial institutions that make STRs are kept confidential by the FIU.

360. Given the newness of the law, confusion in relation to the nature of the STR obligations and the recent establishment of the FIU, no STR reports had been filed to the FIU as of the date of the on-site visit, so effectiveness could not be established.

Recommendation 19

361. Mongolia has considered the feasibility of requiring a threshold reporting system where all financial institutions report to the FIU transactions above a certain threshold.

362. The AML law has a requirement for cash transaction reporting of all transactions above 20 million MNT. While the FATF standards do not set an absolute threshold for cash transaction reporting, the current threshold in Mongolia appears to be high

and out of step with international comparisons and the practical realities of typical transactions in Mongolia.

363. Unfortunately, the requirement in the AML law for this threshold reporting is confusing as the law is drafted in such a way as to create some confusion with obligations on financial institutions to file STRs.
364. Given the recent passage of the AML law and the preliminary development of the FIU, systems for reporting large cash transactions are not yet in place and there is no database within the FIU to receive the threshold cash transaction reports or ensure their safe custody and use.

Recommendation 25

365. Given the newness of the AML law, the lack of STR reports and the recent establishment of the FIU, at the time of the on-site visit competent authorities had not yet provided financial institutions with guidance or appropriate feedback in relation to reporting suspicious transactions.

3.7.2 RECOMMENDATIONS AND COMMENTS

366. There are very serious deficiencies with the current STR reporting obligations.

Recommendations 13 & SR IV

- As a matter of priority, Mongolia should amend the Law on CMLTF or issue a law or regulation to clarify the suspicious transaction reporting obligation to ensure that:
 - all reporting institutions are required to report to the FIU when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity;
 - all suspicious transactions, including attempted transactions, should be reported;
 - STRs should be made regardless of the amount of the transaction or whether the transaction involves cash (no threshold); and
 - the obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.
- Article 5.1.6 of the CMLTF should be amended to oblige reporting institutions to pay particular attention to in case there are other grounds to view that a particular customer or a particular transaction is linked to ML and terrorism financing and to file an STR in relation to those circumstances.
- The threshold cash transaction reporting (CTR) obligations should be clarified to ensure that there is no confusion between the CTR and STR obligation.

Recommendation 14

- Article 12 of the CMLTF should be amended to provide 'safe harbour' for the directors, officers and employees of the financial institutions are adequately protected from criminal and civil liability if they report STRs in good faith.
- Regulations should be enacted to ensure the names and personal details of staff financial institutions that make STRs are kept confidential by the FIU.

Recommendation 19

- Mongolia should consider lowering the threshold for cash transaction reporting to a figure of approximately 10 million MNT.
- The FIU should establish a database for receiving and analysing large cash transactions and to ensure the safe custody and use of such information.

Recommendation 25

- The CMLTF should be amended to allow the FIU to issue regulations to support implementation of the CMLTF.
- Competent authorities should provided financial institutions with guidance or appropriate feedback in relation to reporting suspicious transactions.

3.7.3 COMPLIANCE WITH RECOMMENDATIONS 13, 14, 19 AND 25 (CRITERIA 25.2), AND SPECIAL RECOMMENDATION IV

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none">• Serious deficiencies with the current STR reporting obligation.• Very narrow set of circumstances in which STRs can be lodged.
R.14	PC	<ul style="list-style-type: none">• A lack of clear 'safe harbour' for the directors, officers and employees of the financial institutions if they report STRs in good faith.• Names and personal details of staff financial institutions that make STRs are not adequately covered by confidentiality provisions.
R.19	C	<ul style="list-style-type: none">• This Recommendation is fully observed.
R.25	NC	<ul style="list-style-type: none">• No clear power for the FIU or other competent authority to issue regulations under the CMLTF.• No guidance or appropriate feedback has been provided to financial institutions in relation to reporting suspicious transactions.
SR.IV	NC	<ul style="list-style-type: none">• There is no obligation to make an STR where there are reasonable grounds to suspect that funds are related to terrorism or FT.

Internal controls and other measures

3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

Recommendation 15 (Internal controls, compliance & audit)

367. Under Article 14 of the Law on CMLTF, the reporting entities must develop and implement an internal monitoring program to combat ML and FT. The program must contain the following:

- policies and procedures on detecting suspicious transactions, security and confidentiality of information, reporting and transfer of documents to the FIU and other relevant entities;
- rules and procedures for the appointment and discharge of officers who will supervise and monitor the implementation of laws to combat ML and FT, specifying the powers and obligations of such staff and the implementation of the policies and procedures on suspicious transaction reporting; and
- requirements for providing professional training for the staff appointed for supervising and monitoring the implementation of the reporting entities' AML/CFT measures.

368. In line with the FATF standards, these legislative requirements refer specifically to the reporting entities' AML/CFT procedures and policies to be established, compliance officers to be appointed and their duties/responsibilities to be discharged including their obligation to take professional training.

369. With respect to the independent audit function that the FATF standards suggest being maintained, however, the reporting entities are not required by law, regulation or other enforceable means to have in place such a function to test compliance (including sample testing) with their AML/CFT internal procedures, policies and controls.

370. In relation to training, the above legislative requirements seem to be referring only to the training need for those staff who supervise and monitor the implementation of AML/CFT measures. According to the FATF standards, all employees of the reporting entities must be kept informed of new developments, including information on current ML and FT techniques, methods and trends, through their ongoing employee training program.

371. As of the on-site visit of the Evaluation Team, several banks had already started establishing their own internal framework regarding AML/CFT measures in accordance with the legislative requirements. They have appointed compliance officers who would be responsible for effective implementation of internal AML/CFT related rules and regulations.

372. Under Articles 14.2 and 14.3 of the Law on CMLTF, the reporting entities must submit their internal monitoring program for registration to the FIU, and get an approval from the Bank of Mongolia. The Bank of Mongolia has started reviewing these programs submitted by banks.

373. There is no requirement by law, regulation, or other enforceable means for the reporting entities to put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22 (Foreign branches and subsidiaries)

374. Article 17 of the Banking Law requires a locally incorporated bank to obtain approval from the Bank of Mongolia for the establishment of a subsidiary or a branch or representative office in a foreign country.

375. However, the Law on CMLTF is silent with regard to the application of AML/CFT policies and procedures to foreign branches and subsidiaries of locally incorporated financial institutions.
376. At the time of the on-site visit there was no requirement by law, regulation or other enforceable means for the reporting entities to have their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.
377. Neither is there any requirement for the reporting entities to inform their Mongolian supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.
378. The above weakness, however, is mitigated at this moment by the fact that none of the locally incorporated financial institutions in Mongolia currently have overseas branches or subsidiaries

3.8.2 RECOMMENDATIONS AND COMMENTS

Recommendation 15

379. It is recommended that the Bank of Mongolia and other supervisors issue regulations to:
- specify what kind of elements must be incorporated in the internal monitoring program that each reporting entity has to develop and implement under the law, such as CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation, as well as authorization for compliance officers to have timely access to customer identification data and other CDD information, transaction records, and other relevant information;
 - impose on the reporting entities a duty to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the policies, rules and procedures set out under their internal monitoring programs;
 - require the reporting entities to establish ongoing employee training to ensure that their employees be kept informed of new developments, including information on current ML and FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting; and
 - obligate the reporting entities to put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22

380. Anticipating future expansion of the banking sector it is recommended that the Bank of Mongolia and other supervisors issue regulations to impose on the reporting entities a duty to:

- have their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit; and
- inform the supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> • There is a legislative requirement for the reporting entities to develop and implement an internal monitoring program to combat ML and FT, which contains rules and procedures for compliance officers with their powers and obligations being specified. • There is no requirement for the reporting entities to maintain an independent audit function to test compliance with the internal monitoring programs, to establish ongoing employee training on AML/CFT issues and measures, and to put in place screening procedures to ensure high standards when hiring employees.
R.22	NA	<ul style="list-style-type: none"> • No financial institutions have foreign branches or subsidiaries at this stage.

3.9 SHELL BANKS (R.18)

3.9.1 DESCRIPTION AND ANALYSIS

381. Mongolia prohibits the establishment of shell banks. Article 4 of the Banking Law of Mongolia defines the types of banks that may operate in Mongolia.
382. Mongolia does not allow its financial institutions to have correspondent banking relationships with shell banks. On-site supervision of banks in Mongolia confirms that Mongolian banks do not enter into or continue correspondent banking relationships with shell banks.
383. At the time of the on-site visit Mongolia had yet issued a positive obligation requiring their financial institutions to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by a shell bank.
384. Since the date of the on-site visit, Mongolia has taken some steps to address the identified weakness, although the changes were made after the period when they were able to taken into account for purposes of the rating in this report. On 2 July 2007 the Bank of Mongolia issued “Regulation on know your customer to prevent ML/FT for banks”, which precludes banks (Section 2.6) from having financial relationship with shell banks and their related legal entities. This would appear to require banks to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by a shell bank.

3.9.2 RECOMMENDATIONS AND COMMENTS

385. Mongolia should provide for a positive obligation requiring financial institutions to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by a shell bank.

3.9.3 COMPLIANCE WITH RECOMMENDATION 18

	Rating	Summary of factors underlying rating
R.18	LC	<ul style="list-style-type: none"> No obligation requiring financial institutions to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by a shell bank.

Regulation, supervision, guidance, monitoring and sanctions

3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SRO's ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25)

3.10.1 DESCRIPTION AND ANALYSIS

Recommendation 23 (Regulation and supervision of financial institutions)

386. Those financial institutions operating in Mongolia which are subject to AML/CFT regulation and supervision under the Law on CMLTF are:

- banks;
- non-bank financial institutions;
- insurance companies;
- licensed securities market entities;
- savings and credit cooperatives; and
- natural or legal persons conducting foreign currency exchange activities.

387. Pursuant to Article 16 of the Law on CMLTF, the Bank of Mongolia has established within its body a Financial Information Service (the FIU), whose strategic plan and structure must be approved by the Governor of the Bank of Mongolia. The Director of the FIU must be appointed by the Governor of the Bank of Mongolia upon consultation with the Minister of Finance.

388. Besides basic functions as the Mongolian FIU including receiving, collecting and analyzing suspicious or currency transaction reports submitted from those financial institutions mentioned above, the FIS has the power to examine the implementation of the laws to combat ML and FT and to require rectification of any breaches of the Law by financial institutions, or to make recommendations to the competent authorities for further action including the cancellation of special licenses. The FIU also monitors how the financial institutions and their officers fulfil their obligations imposed by the Law (Article 17).

389. The FIU is thus the primary AML/CFT regulator and supervisor of all financial institutions in Mongolia but its parental body, the Bank of Mongolia, has more comprehensive powers to regulate and supervise banks from wider safety and soundness perspectives. All the other financial institutions than banks are subject to the regulation and supervision of the Financial Regulatory Commission.

390. Bank supervision conducted by the BOM is aimed to ensure the security of banking system and protecting the interests of depositors and customers (Article 19 of the Law on Central Bank). For this purpose, the BOM has been issuing regulations, instructions and resolutions, and undertaking supervision and enforcement activities relating to: the licensing of banks; the requirements of banks; the maintenance of adequate capital and liquidity assets (Article 19).
391. Supervision by the FRC is aimed to ensure the stability of the financial market, and protecting the rights and legal interests of the public (Article 5 of the FRC law). For this purpose the FRC is able to issue regulations, instructions and resolutions and undertake supervision and enforcement activities relating to: granting special license for financial services; suspending, continuing and revoking licenses; and supervising the financial activities of a special license holder.
392. Article 6.2 of the FRC law also provides for the FRC to exercise the powers that are outlined in the following laws, each of which address elements of supervision for covered entities:
- the Law on Non-Bank Financial Activities for the non-bank financial activities;
 - the Law on Securities Market for the activities of participants in the securities market;
 - the Law on Insurance for the insurance activities;
 - the Law on Professional Participants in the Insurance Industry for the activities of professional participants in the insurance industry; and
 - the Law on Cooperatives for the activities related to deposit and lending.
393. The FRC is relatively new and has been rolling out new regulation and undertaking supervision on a staged basis in accordance with risk ratings of particular sectors. Authorities have recognised that corporate governance is weak in the securities sector, with poor compliance with reporting obligations by listed companies and regular complaints against small brokerage firms. The newly formed FRC is seeking to address a number of these issues of poor governance, but there is a need for increased AML/CFT supervision and monitoring of this sector.

Recommendation 30 (Structure and resources of the supervisory authorities)

394. There are three divisions across two different departments at the BOM which are currently working on bank regulation and supervision related to AML/CFT measures: i.e. the Legal Division of the Administration Department, and the Supervision Division and the Policy Regulation Division of the Supervision Department.
395. The Legal Division is currently reviewing several banks' internal monitoring programs to combat ML and terrorism financing, which have been submitted pursuant to Article 14 of the Law on Combating Money Laundering and Terrorism Financing. The Supervision Division conducts on-site and offsite analyses of banking activities, and the Policy Regulation Division formulates banking regulatory policies and procedures.
396. It appears that these divisions being involved in combating ML and FT are adequately structured, funded, staffed, and provided with sufficient technical and other resources to perform their functions. The Supervision Department is currently relying on the Legal Division to review the internal monitoring programs submitted by banks, but once a new enhanced offsite monitoring system has been implemented

soon, some of the current 14 offsite analysts could be reallocated to join the on-site workforce staffed at present with 13 examiners, all of whom together could then monitor more closely how each bank's AML/CFT internal controls work subsequently to initial reviews of banks' draft internal monitoring programs.

397. The FIU, on the other hand, is currently staffed with two officials: the director and one analyst, who rely substantially on the above three divisions of the BOM to discharge many of the proprietary roles and responsibilities of the FIS given under the Law on CMLTF.
398. Under Article 29 of the Law on Central Bank, employees of the Bank of Mongolia are prohibited from engaging in the following activities:
- representing the interests of any individuals and legal entities;
 - procuring advantageous or preferred conditions for him/herself or family members, relatives, business counterparts or other acquaintances;
 - disclosing to others official information relating to accounts, account transactions or payments of any bank, legal person or individual, or relating to any agreement or contract on banking activities, unless the law provides otherwise;
 - to pursue any other activities prohibited by legislation.
399. Article 29 of the Law on Central Bank also provides that the Bank of Mongolia's employee, chair or member of the Supervisory Board cannot disclose confidential information obtained during the course of duties even after the discharge except in cases indicated in laws.
400. According to the BOM, its bank supervisory staff is required to follow an internal regulation approved by the Governor, in which eligibility criteria for supervisors (including academic and professional experience), codes of conduct, and prohibited activities are being specified. Every two years supervisors are required to take professional exams and tests. Privileges and powers of supervisors who fail the test are taken away.
401. The FRC is a relatively new agency, having been established in January 2006 to bring together a number of previously separate agencies, namely the SEC, the NBFI division of the Bank of Mongolia and the insurance inspection authority.
402. The FRC has a total of 60 staff in total and just 20 staff in the supervision department. This is too few to effectively implement the various supervision responsibilities across more than 1400 institutions regulated by the FRC. The very low levels of AML/CFT supervision reflect the low capacity of the FRC at this time.
403. Article 6.1.7 of the Law on FRC gives powers to the Commissioner to adopt rules on ethics for the employees of the FRC, and to monitor compliance with the rules.
404. Very few staff of the Bank of Mongolia and none of the FRC have participated in relevant AML/CFT courses. Taking into consideration that AML/CFT is a new field in Mongolia, few introductory seminars have been held for supervisors of the Bank of Mongolia. Therefore, there is a necessity for more staff enrolment (especially on-site supervisors) of the relevant authorities in AML/CFT courses.

Recommendation 29 (Power to examine)

405. The supervisor appointed by the Bank of Mongolia shall review and examine banks and individuals and legal persons with regard to the implementation of and compliance with the banking legislation, state monetary policy, the rules and regulations of the Bank of Mongolia, and the decisions of the Governor of the Bank of Mongolia. (Article 25 of the Law on Central Bank).
406. The supervisor appointed by the Bank of Mongolia shall have the following additional powers (Article 25 of the Law on Central Bank):
- to enter into the premises of banks and other relevant institutions;
 - to examine a bank's accounts, books, balance sheets and financial statements, to require preparation of explanations and information, and to have questions answered;
 - to receive free of charge from a bank's customers, including individuals and business entities, banks and financial and other institutions, copies of evidence and documentation that is required;
 - to examine documents of legal entities, institutions and individuals which relate to bank activities;
 - to impose administrative sanctions on persons or entities who violate the banking legislation;
 - to transfer the relevant documents to the competent organizations if a violation of the law represents a criminal offence;
 - to stop payment of dividends to the shareholders of a bank if that bank has failed to comply with the requirements concerning the criteria set for banks or the requirement to maintain a compulsory reserve fund to cover possible losses on loan payments.
407. Under Article 17.2 of the Law on CMLTF, inspectors of the FIU have the power to examine the implementation of the laws to combat ML and FT and:
- to require rectification of any breaches of the Law by reporting entities, or
 - to make recommendations to the competent authorities for further action including the cancellation of special licenses.
408. Article 24 of the Law on Legal Status of the FRC outlines the supervisory powers of the FRC. Article 24.1 provides for supervision of the compliance of special license holders with the FRC Law, other relevant legislation, related rules and procedures. Inspectors of the FRC. Article 24.2 gives powers to appoint inspectors and Article 24.4 sets out the triggers for an inspection. 24.4. The FRC may conduct an inspection at any time if it deems a special license holder has violated this Law, other relevant legislation, and related rules and procedures.
409. Article 24.5 of the FRC Law provides for inspection to be carried out in relation to the FRC law, Provisions 19.1, 19.2 and 19.3 of the Law on Non-Bank Financial Activities, Provision 37.1 and 37.2 of the Law on Securities' Market, Provisions 61, 62, 63, 64 and 65 of the Law on Insurance, and Provisions 30, 31, 32, 33 and 34 of the Law on Professional Participants in the Insurance Industry.

Recommendation 17 (Sanction)

410. Criminal sanctions in Mongolia are only available in the Mongolian Criminal Code, which does not currently include any provisions to criminalize breaches of key

provision of the Law on CMLTF. For example, wilful failure to report an STR or 'tipping off' in relation to ML or FT do not attract criminal sanctions.

411. Dissuasive criminal sanctions are available under the Criminal Code in relation to violation of the banking legislation (Article 156) with offences punishable by a fine equal to 51 to 500 amounts of minimum salary with confiscation of property or imprisonment for a term of more than five to eight years. Violation of the Securities Law (Article 158) is punishable by penalties of 151 to 250 amounts of minimum salary with or imprisonment for up to five years with deprivation of the right to hold specified positions or engage in specified business for a term of five years.
412. The Bank of Mongolia has extensive legal power to apply administrative sanctions to deal with banks that fail to comply with the Banking Law or any other decisions made by the Bank of Mongolia which could include the AML/CFT requirements to be imposed on banks.
413. Depending on the nature of the requirement that is not complied with, the Bank of Mongolia could issue written warnings against a bank or order it to take remedial action by a fixed date. It could also limit or suspend a bank's activities, or even revoke the bank's license. Besides these actions against a non-compliant bank as a legal person, the Bank of Mongolia may also take action against directors of the bank such as dismissing the executive director from office or stop his/her receipt from the bank of any remuneration or benefits.
414. Article 31 of the Banking Law provides that the Bank of Mongolia may take the following measures of compulsion or impose the following penalties if a bank has broken this law or decisions made by the Bank of Mongolia on matters within its powers:
- issue written warnings;
 - pass an order requiring remedial action to be taken by a fixed date;
 - limit or stop activities of the bank;
 - impose administrative punishments specified in Article 49 of this Law;
 - suspend temporarily or dismiss the executive director from office and stop his/her receipt from the bank of any remuneration or benefits;
 - to appoint a controller responsible for controlling the activities of a bank, and reporting it to the Bank of Mongolia;
 - impose a conservatorship;
 - appoint a receiver;
 - revoke the license of the bank
415. Administrative punishments being referred to in Article 31 contain such financial sanctions as a fine of 50,000 to 100,000 togrogs (approximately US\$50-\$100) for employees and officers of a bank and of 500,000 to 1,000,000 togrogs (approximately US\$500-\$1000) for banks if the failure of the banks to comply with banking legislation or decisions of the Governor of the Bank of Mongolia for implementing the law does not constitute a criminal offence (Article 49 of the Banking Law).
416. On the other hand, the Financial Information Service as the Mongolian FIU has limited power under Article 21 of the Law on CMLTF to apply administrative sanctions to the reporting entities in the following cases where the reporting entities or their officials have:

- opened an anonymous or numbered account or an account in fictitious names, or made a transaction from or to such accounts, or use closed accounts (Article 4.3);
 - opened an account, conducted a transaction, or provided other financial services even if a customer has refused to provide requisite information (Article 5.3); and,
 - disclosed information on clients' transactions to any other person than those legally provided for (Article 13).
417. Article 21 of the Law on CMLTF provides that if the violation of the CMLTF does not constitute a criminal offence, then the Inspector of the Financial Information Service shall impose the following administrative sanctions against individuals:
- an official who violates the provisions of Article 4.3 and 5.3 of this Law shall be imposed a fine up to 250,000 togrogs, a legal entity – a fine of up to 1,000,000 togrogs;
 - an official who violates the provisions of Article 13 of this Law shall be fined for up 500,000 togrogs, legal entity for up to 1,000,000 togrogs.
418. The following Articles in the CMLTF Law, while containing very significant preventative measures, but are not subject to any administrative or criminal sanction:
- Article 5 (examination of customer information);
 - Article 6 (transactions subject to special monitoring);
 - Article 7 (reporting STRs);
 - Article 8 (record keeping);
 - Article 9 (Information required in STRs);
 - Article 11 (Suspension of Transactions);
 - Article 13 (Confidentiality of reports);
 - Article 14 (Internal controls); and
 - Article 15 (Cross border currency movements and declarations).
419. The FRC has various powers to apply administrative sanctions on NBFIs under its supervision.
420. Article 20 of the Law on Non-Bank Financial Activities spell out administrative sanctions available to the FRC for violations of the legislation. Examples of the range of sanctions available include:
- opening a branch of a NBFi without a license - confiscation earnings and a fine of togrogs equal to 20-40 amounts of monthly minimum salary;
 - failure to comply with the legislation and the decisions of the FRC - a fine of togrogs equal to 5-10 amounts of monthly minimum salary against an employee or an officer of the NBFi or equal to 20-40 amounts of monthly minimum salary against the NBFi;
 - intentional impediment to supervisory actions - a fine of togrogs equal to 2-5 amounts of monthly minimum salary against individuals or 5-10 amounts of monthly minimum salary against an employee or an officer of a NBFi; and
 - losses and damages resulting from a breach of the legislation on NBFi activities shall be compensated in accordance with the Civil Code.

Recommendation 23 (Market Entry and Ownership/Control)

421. The authority to grant a license to incorporate a bank in Mongolia lies solely with the Bank of Mongolia. On the basis of this authority the Bank of Mongolia is empowered to take legal or regulatory measures to prevent criminals or their associates from holding a significant or controlling interest or a management function, including in the executive or supervisory boards, councils, etc in a bank.
422. Under Article 18.1 of the Banking Law, the founder of a bank shall compile the following documents:
- an application requesting a license to incorporate a bank;
 - founding agreement;
 - the charter of the bank;
 - an economic feasibility study;
 - the name and address of the founders and persons who will own 10 percent or more of the paid-in capital of the bank and audited financial statements of such business entities for the past two years; and
 - a detailed description of the management, staff, technical facilities and premises of the proposed bank in the form prescribed by the Bank of Mongolia.
423. If the Bank of Mongolia considers the documents above are incomplete or unclear, it may request an applicant to submit additional information within the framework of the required documents. If necessary, the Bank of Mongolia may apply to the Court or law enforcement agencies to provide information or materials regarding the founders, shareholders, or proposed management of the bank (Article 18.2 of the Banking Law).
424. Article 19 of the Banking Law provides that if a foreign bank or financial institution applies for a license to open a bank or a branch or representative office of the bank or financial institution in Mongolia, the Bank of Mongolia collects the following documents in addition to those documents described in Article 18.1 above:
- the decision of the foreign bank or financial institution to incorporate a bank or a branch or representative office of a bank on the territory of Mongolia;
 - evidence of the registration of the foreign bank or financial institution in the respective country and its audited financial statements for the past three years; and
 - other documents required by other laws and legislation.
425. In the process of reviewing an application for a license to incorporate a bank and other documents, the Bank of Mongolia shall determine whether the following requirements are satisfied (Article 20):
- whether the bank has capital consisted of paid-in capital sufficient to carry out stable and effective banking activities;
 - whether the Executive Director, members of the Representative Governing Board and other managers have sufficient knowledge, education and experience to conduct fair and profitable operations of a bank, and whether the Executive Director and members of the Representative Governing Board of the bank satisfy the criteria established in subsections 6 and 8, Article 25 and

- whether the establishment of the bank will not have an adverse effect on national economic security.
426. With respect to the “fit and proper” criteria that apply to the chairman and members of the Representative Governing Board, Article 25, Subsection 6 of the Banking Law prescribes that they:
- do not have any debts under a loan or guarantee agreement, which have exceeded the payment date;
 - be a shareholder of the bank;
 - do not have any criminal record; and
 - their ethical and business reputation will not affect the management of a bank.
427. Article 25 of the Banking Law also lays it down in Subsection 8 that the Executive Director of a bank shall satisfy the following criteria:
- to have not less than three years working experience in the banking, financial sector and to have management skills and experience in this field;
 - does not have a debt under a loan or guarantee contract which exceeded the payment term; and
 - does not have any criminal record.
428. If an Executive Director of a bank does not satisfy the criteria above or has committed an unfair act, or does not have the required professional skills and his service is not satisfactory, the Governor of the Bank of Mongolia may suspend or release the Executive Director of a bank from his/her duties (Subsection 9, Article 25 of the Banking Law).
429. The above Banking Law provisions are supplemented by a regulation approved by the Bank of Mongolia’s Decree titled “Regulation on Licensing of the Bank and its Units”. This licensing regulation sets up general design of application forms and stipulates minimum requirements necessary for the Bank of Mongolia’s final decision on licensing. These documents include, but not limited to, clearance from the police that individuals holding key positions at the bank do not have any past criminal offences, clearance from taxation and customs authorities about outstanding obligations.
430. Under Article 3.1.6 of the Regulation on Licensing of the Bank and its Units, the Supervision Department of the BOM shall verify whether shareholders, the chairman and members of the Board of Directors (BOD), the director of the Internal Audit Department, management of other departments, divisions, units and committees, the chief accountant and staff of the internal audit and credit department of the bank comply with legal and ethical requirements as well as the criteria of professional knowledge and work skills to undertake banking business. The BOD of banks must obtain a no-objection/permission from the Governor of the Bank of Mongolia before appointing the Chief Executive Officer.
431. The law on NBFIs sets out the market entry and fit and proper requirements for non-bank financial institutions (Articles 13). The law requires the chairman, members of the Board of Directors and the executive director to meet the following criteria:

- no overdue obligations under a loan or guarantee contract;
 - no criminal records;
 - ethical and business reputation shall not adversely affect the management of the NBF; and
 - the executive management of the NBF shall have education and work experience in the field of banking and finance.
432. FRC Regulation 19 (June 2006) sets out fit and proper requirements for Insurance and Professional Insurance Appointee Activities. The Regulation requires authorized officials of an ordinary insurance company to possess skills in insurance activity and management; have graduate degrees in banking, finance, law or economics; have attended short or longer period course on insurance; have no previous record of crime as a financial market participant or with a lucrative motive; and have served the sentence or been acquitted if the official has committed a crime other than as provided in paragraph 2.7.2 of the Regulation.
433. FRC Regulation 29 (2006) stipulates minimum requirements necessary for the Bank of Mongolia's final decision on licensing securities market professionals, including re-licensing entities previously licensed. The Regulation does not address fit and proper requirements, but goes into details in relation to staff qualifications, technical requirements and the like.
434. The FRC is undertaking a program of re-licensing SCCs, which has included a focus on fit and proper requirements for beneficial owners and directors.

Recommendation 32 (Ongoing supervision and monitoring)

435. The Bank of Mongolia conducts on-site inspection and off-site surveillance of banks, both of which satisfy most of the international standards set out in the Core Principles of the Basel Committee on Banking Supervision according to a self-assessment made with assistance from the IMF. On-site inspections are based on the CAMELS framework, the key components of which are evaluations of capital adequacy, asset quality, management, earnings, liquidity and sensitivity to market risks. Comprehensive on-site inspections of banks are conducted at least once a year, while partial examinations can be initiated at any time. Off-site inspections are based on monthly regulatory reports submitted by banks. Financial analysis, basic stress testing, and early warning indicators, such as CAEL rating, are the major tools for off-site monitoring and surveillance.
436. Overall, supervision frameworks of all relevant competent authority should be enhanced further to enforce the newly introduced AML/CFT legislation. The FIU has been established since November 2006 as the primary AML/CFT regulator and supervisor in Mongolia, and it has not started fully operating yet as of the date of the on-site visit of the Evaluation Team. No AML/CFT-focused on-site examination has been carried out by the Bank of Mongolia in relation to banks. No AML/CFT-focused on-site examination has been carried out by the FRC toward NBFs. Neither has there been any sanction taken against non-compliance by banks or NBFs with AML/CFT requirements.

Recommendation 25 (AML/CFT Guidelines)

437. The CMLTF does not include provision for the FIU or any other authority to issue regulations. Given this deficiency there will be a need for authorities to rely on

powers granted to the Bank of Mongolia and the FRC under various pieces of legislation, to issue binding regulations to support AML/CFT implementation.

438. Prior to the enforcement of the Law on CMLTF, the Bank of Mongolia issued in December 2002 a guideline titled "Recommendation on issues related to fighting money laundering activities for the banking and financial organization". This guideline was aimed at protecting financial institutions from risks related to ML activities, and enhancing awareness of their management, officers, and employees on AML/CFT-related issues.
439. The Recommendation consists of four main sections: i.e. the regulation of customer recognition and registration, improving the efforts of financial institutions, problems to be solved by countries which do not fight at all or take insufficient measures against ML, and liabilities of supervisory and other relevant authorities.
440. Succeeding the main sections, the Recommendation describes the following issues as what the banks and other financial institutions must take into account:
- settlements that do not correspond to the customer's main core business;
 - rare and uncommon payments, that occur in bank's activity;
 - customer who attempted to avoid a formal registration;
 - issues to be considered during the cash transfer;
 - a customer who provided fictitious and non-satisfactory information;
 - banks officers and workers; and
 - services and transfers that changed their payment terms.
441. This Recommendation, however, has not been put into practice as a regulatory requirement with sanctions for non-compliance. There has been no specific supervisory follow-up action taken by the Bank of Mongolia to see if the banks and other financial institutions have been in fact following this Recommendation.
442. Since the Law on CMLTF was adopted, the Bank of Mongolia has planned to renew this previous Recommendation by issuing a new regulation in line with the recent developments of AML/CFT regulations.
443. Article 35 of the Laws on Financial Regulatory Commission outlines AML/CFT measures to be taken by the FRC and provides for the FRC to issue enforceable regulations, including in relation to AML/CFT on licensed NBFIs.
444. Since the date of the on-site visit, Mongolia has taken some steps to address the identified weaknesses, although the changes were made after the period when they were able to taken into account for purposes of the rating in this report. On 2 July 2007 the Bank of Mongolia issued Resolution No.313 "Regulation on reporting suspicious and cash transactions" which, in addition to clarifying obligations on banks to report suspicious and cash transactions, outlines obligations for banks to establish internal controls for AML/CFT and conduct appropriate training.
445. Resolution 313 calls for:
- 2. Directors of all commercial banks shall be responsible in implementing the following:*
- a) In accordance with "Law of Mongolia on combating money laundering and terrorism financing" banks should approve and comply with internal monitoring program as at third quarter of 2007,*

- b) Appoint an official to be responsible in ensuring compliance with “Law of Mongolia on combating money laundering and terrorism financing”,*
 - c) Deliver training for officers of the commercial banks to promote “Law of Mongolia on combating money laundering and terrorism financing”*
- 3. In connection with this order, director of “Financial information unit”(B.Tumurbat) and director of “Bank training center”(B.Lhagvasuren) are required to develop training program for officers of the commercial banks and report on progress by August 15, 2007.*
- 4. Director of “Financial information unit” shall follow up on the implementation of this resolution.*

3.10.2 RECOMMENDATIONS AND COMMENTS

Recommendation 17

446. It is recommended that:

- the Law on CMLTF be amended to give the FIU greater power to apply persuasive administrative sanctions against, inter alia, those cases where the reporting entities have broken legal requirements to submit suspicious or currency transaction reports or to keep records on customers' transactions; and
- the Financial Information Service (FIU) set down detailed rules and procedures on how it may require the reporting entities to rectify any breaches found against the Law on CMLTF and how it may make recommendations to the competent authorities for further action including the cancellation of special licenses pursuant to the authorities given under Article 17.2 of the law.

Recommendation 23

447. It is recommended that:

- the Bank of Mongolia, as the national bank supervisor, should start its first round of an AML/CFT-focused on-site examination toward banks as soon as possible. This type of examination could be done either on a stand-alone basis or as part of a comprehensive safety and soundness examination program. On-site examination manuals for this purpose should be developed and implemented, based upon which examiners could identify efficiently weaknesses in banks' AML/CFT risk management policies and procedures, and advise them effectively on how to address such weaknesses;
- the FRC, as the NBFIs supervisor, should start its first round of AML/CFT-focused on-site examinations towards NBFIs as soon as possible. This type of examination could initially be done on the basis of risk profiling to specific sectors which the authorities deem to be at higher risk for AML/CFT; and
- the Financial Information Service, as the Mongolian FIU, coordinate with the other supervisors including the FRC and the Bank of Mongolia about its on-site examination schedules and programs, so that maximum results would be obtained on an ongoing basis in the course of monitoring the reporting entities' compliance with the AML/CFT rules and procedures.

Recommendation 25

448. It is recommended that the Bank of Mongolia, the FRC and other supervisors issue detailed guidelines to assist banks, NBFIs and other reporting entities in:

- reporting suspicious transactions efficiently and effectively by exemplifying what kind of specific transactions could be those which must be submitted to the FIU including an explanation of the latest ML and FT techniques and methods being used by criminals; and
- developing in-house training programs to educate their directors and employees with the recent developments of the national AML/CFT regulations as well as additional measures that these institutions should take to ensure that their internal AML/CFT measures are effective.

Recommendation 29

449. The FRC should take steps to implement its powers to examine NBFIs under its supervision.

Recommendation 30

450. It is recommended that:

- the FIU be staffed with more analysts and inspectors so as to be able to discharge fully the roles and responsibilities given under the Law on CMLTF. With such strengthened human resources the Mongolian FIU would be able to ensure its sufficient operational independence and autonomy free of any undue influence or interference from other organizations;
- the FRC be staffed with more inspectors to be able to discharge the roles of supervision of NBFIs, including their compliance with AML/CFT obligations issued by the FRC and the FIU; and
- the Bank of Mongolia and other supervisors provide their staff involved in AML/CFT issues with adequate and relevant training for combating ML and FT.

Recommendation 32

451. It is recommended that the FIU, Bank of Mongolia, FRC and other supervisors develop and keep available relevant statistics on AML/CFT-focused on-site examinations as well as sanctions against non-compliance with AML/CFT requirements so that the effectiveness of their AML/CFT systems could be reviewed on a regular basis.

3.10.3 COMPLIANCE WITH RECOMMENDATIONS 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	PC	<ul style="list-style-type: none">• The FIU has limited power to apply administrative sanctions to those reporting entities which have opened an anonymous account, conducted a transaction with insufficient customer information, etc.• The FRC has strong sanctions, but their application is weak and they are unable to sanction unlicensed entities.

R.23	PC	<ul style="list-style-type: none"> Non-bank financial institutions have not yet undergone AML/CFT supervision and the FRC lacks resources to implement its supervisory role.
R.25	NC	<ul style="list-style-type: none"> Prior to the enforcement of the Law on CMLTF, the Bank of Mongolia issued recommendations on AML for the banking and financial organization; however, this recommendation has had no regulatory power with sanctions for non-compliance. Neither the Bank of Mongolia nor the FIU have prepared detailed regulations in line with the new AML/CFT obligations. FRC has not prepared detailed regulations in line with the new AML/CFT obligations.
R.29	LC	<ul style="list-style-type: none"> The Bank of Mongolia has adequate monitoring powers and inspection authority under the Banking Law. The FIU has adequate monitoring powers and inspection authority under the Law on CMLTF, but effectiveness is an issue. The FRC has adequate monitoring and inspection authority, but has not effectively implemented those powers.
R.30	PC	<ul style="list-style-type: none"> The Bank of Mongolia is adequately structured, funded, staffed and provided with certain technical and other resources but sufficient training opportunities have not been supplied to its employees on AML/CFT issues. The FIU has not been resourced properly as compared to its roles and functions given under the new law. The FRC is not adequately resourced to fulfil its supervisory and regulatory functions.
R.32	NC	<ul style="list-style-type: none"> No statistics are available since the Bank of Mongolia, FRC or FIU have neither conducted any AML/CFT focused on-site examination nor taken any sanction against non-compliance with AML/CFT requirements.

3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)

3.11.1 DESCRIPTION AND ANALYSIS (SUMMARY)

452. Mongolia has a very large informal sector overall with authorities estimating that up to 10% of GDP is within the informal sector. As part of that, figures provided by Mongolian authorities indicate that Mongolia's informal remittance sector is very large.
453. There are over 100,000 Mongolians working overseas who remit funds back to Mongolia. Frequent informal remittance occurs with China, particularly related to trade transactions, and with South Korea (overseas foreign workers). Both of those countries outlaw remittance through channels other than banking channels.
454. There is a significant population of workers from North Korea living in Mongolia, however no banks in Mongolia hold correspondent banking relationships with Mongolian banks and authorities are not aware of the situation with use of alternative remittance systems by North Korean workers.
455. The World Bank, in conjunction with Mongolian authorities, is conducting a remittance corridor study between Mongolia and South Korea which will provide evidence of key aspects of the informal remittance channels and opportunities for Mongolia to ensure effective support and regulation of those channels to ensure AML/CFT coverage.
456. Pending the findings of that study it appears that more needs to be done to encourage the movement of remittance activity into formal regulated channels.

Registration or licensing

457. As discussed earlier in Section 3 of this report, Mongolian banks carry out international money transfer services according to licenses issued by the Bank of Mongolia for international money transfer services (MVTs). Bank of Mongolia maintains record of all registered MVTs. Fourteen of 16 banks have become independent members of SWIFT.
458. At present, there are two international service providers: MoneyGram and Western Union. They provide services only in US dollars. Almost every bank has MoneyGram or Western Union services. Starting from April 2005, the Capital Bank has implemented a new express transfer service, Travelex. In comparison with the above two, it is cheaper and available for currencies other than USD.
459. Overall, the cost of using banking channels for remittance is high and the speed is slow. There has been significant growth in the volume of remittance conducted through regulated NBFIs remittance channels in recent years, given the lower cost and greater speed of these regulated, but less formal providers.
460. Mongolia has designated the FRC to license legal persons who conduct remittance activities outside of banks. Under the law on NBFIs, the FRC is responsible for licensing providers of "Electronic payment and remittance service" which shall mean wire transferring other's cash through own current account with a bank, or settlement of payments using Internet, automatic equipment or electronic payment means (Article 4.1.5). Such NBFIs remittance providers do not have to use banking channels for settlement of remittance and are able to operate as "alternative remittance providers" with equivalent counterparts outside of Mongolia.

461. Statistics were not provided on the number of NBFI remittance providers licensed by the FRC in Mongolia or their share of the remittance business in Mongolia.
462. Under the terms of the CMLTF Law, all licensed NBFI remittance providers are reporting entities and are subject to the CDD, record keeping and STR obligations. Under the terms of the Law on NBFIs, there are requirements for market entry and fit and proper requirements.
463. The FRC requires each branch of the NBFI remittance provider to be licensed, but does not require licensing of agents. There are currently no requirements for NBFI remittance providers to maintain a current list of agents.
464. Prior to the introduction of the law on CMLTF, the FRC did not have specific requirements on NBFI remittance providers to keep records of financial transactions or record keeping requirements.
465. The FRC or FIU have not yet issued any guidance or directions to the NBFI remittance providers in relation to their obligations under the law on CMLTF.
466. The FRC has done only limited inspections of licensed NBFI remittance providers and not yet done any inspection for their compliance with AML/CFT obligations. The FRC indicates that it is not aware of the methods of settlement used by NBFI remittance providers.
467. Sanctions are available to competent authorities under the Law on NBFIs and the law on CMLTF for non-compliance with obligations in relation to preventative measures.

3.11.2 RECOMMENDATIONS AND COMMENTS

468. There is a need to encourage the movement of remittance activity into formal regulated channels by supporting low cost, fast regulated remittance business in Mongolia.
469. There is a need for the FRC and FIU to work with NBFI remittance industry representatives to design and issue guidance or directions to the NBFI remittance providers in relation to their obligations under the law on CMLTF and to raise awareness of ML and FT risks.
470. The FRC should conduct inspections of licensed NBFI remittance providers on a risk-targeted basis to understand the compliance with AML/CFT obligations in the sector.
471. The FRC, Bank of Mongolia and other authorities should work with the remittance sector and competent authorities in relevant countries to support licensed low-cost remittance channels that are subject to AML/CFT controls.

3.11.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> While NBFI remittance providers exist outside banking providers, there is little evidence of AML/CFT implementation with the regulated NBFI sector. No guidance has been provided to money value transfer

		<p>providers to support their compliance with obligations under the CMLTF.</p> <ul style="list-style-type: none"> • Money value transfer service operators are not required to maintain a current list of their agents. • There appears to be a very significant sector of informal remittance which is not yet included under AML/CFT regulated channels.
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4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

(applying R.5, 6, and 8 to 11)

4.1.1 DESCRIPTION AND ANALYSIS

472. With the exception of trust service providers, DNFBPs, as set out in the FATF standards, have not yet been brought into the AML/CFT regime in Mongolia. Mongolian law prohibits any casino businesses in Mongolia.
473. The Evaluation Team considered the situation with lawyers, notaries, accountants, gem and gold dealers and real estate agents in Mongolia. Mongolia has not yet undertaken ML threat assessments for the DNFBP sectors in Mongolia.
474. There are no CDD requirements on any of the above DNFBPs operating in Mongolia, nor are there any obligations to maintain records of customer identification or transaction data. For the most part, these DNFBPs have obligations to report incomes to the tax authorities. Lawyers are obliged to be licensed by the Ministry of Justice. Notaries are registered by the Mongolian Chamber of Notary. Accountants are registered with their self-regulatory organization.
475. Real estate market intermediaries are a very new business in Mongolia and are largely free from government control. At the same time, the real estate sector in Mongolia is rapidly expanding and there are poor statistics on the number of real estate intermediaries operating.
476. Trust service providers are regulated as non-bank financial institutions in Mongolia and are separately addressed in this report at section 5.2.

4.1.2 RECOMMENDATIONS AND COMMENTS

477. It is recommended that:
- DNFBPs are brought into the framework of the CMLTF Law;
 - special attention is paid to regulating lawyers, notaries, the emerging real estate sector and gold dealers;
 - DNFBPs be educated on the AML/CFT risks in their sector and be provided guidance on how they can protect against/combat these risks; and
 - DNFBP regulatory and supervisory organizations be provided with the tools to support effective AML/CFT implementation as per the FATF Recommendations.

COMPLIANCE WITH RECOMMENDATION 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none">• DNFBPs have not yet been included in the AML/CFT regime in Mongolia, with the exception of trust service providers.

4.2 SUSPICIOUS TRANSACTION REPORTING (R.16)

4.2.1 DESCRIPTION AND ANALYSIS

478. There are a number of significant ML risks from the DNFBP sector in Mongolia, including the emerging real estate sector, use of intermediaries and dealers in precious metals and stones, in particular gold dealing.

479. As AML/CFT controls have not been extended to the DNFBPs, with the exception of trust service providers, the suspicious transaction reporting obligations under Article 7 of the CMLTF have not been extended to the DNFBP. No guidance has been provided to NBF trust service providers in relation to STR reporting obligations and no reports have been filed.

480. While the CMLTF law appears to allow all manner of legal entities to file STRs, it does not provide safe harbour to protect them from civil liability when making such reports. Article 4.2 of the law provides for any legal person to make an STR. Conceivably this could include DNFBPs as well as other businesses. However, the 'safe harbour' provisions at Article 12.2 do not cover those legal persons mentioned at Article 4.2 who might file an STR.

4.2.2 RECOMMENDATIONS AND COMMENTS

481. It is recommended that:

- DNFBPs are brought into the framework of the CMLTF Law;
- special attention is paid to regulating lawyers, notaries, the emerging real estate sector and dealers in precious metals;
- the CMLTF law be amended to oblige DNFBPs to report suspicious transaction reports; and
- DNFBP regulatory and supervisory organizations work with professional bodies and self-regulatory organisations to design specific AML/CFT controls that compliment current controls in the various DNFBP sectors.

4.2.3 COMPLIANCE WITH RECOMMENDATION 16

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.16	NC	<ul style="list-style-type: none">• DNFBPs have not yet been included in the AML/CFT regime in Mongolia and there is no obligation to report suspicious transactions.• The existing provision in the CMLTF which allows any legal person to file STRs does not provide adequate 'safe harbour' to reporting entities and is insufficient to include DNFBPS

4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25)

4.3.1 DESCRIPTION AND ANALYSIS

482. Casinos businesses are prohibited under the Law on Prohibition of Establishment and Operation of Casinos.

483. As AML/CFT controls have not been extended to the DNFBPs, with the exception of trust service providers, the obligations under Article 17.2 of the CMLTF in relation to supervision and monitoring have not been extended to the other DNFBP.

484. Trust service providers are regulated as an NBFi in Mongolia. There are provisions in both the CMLTF and the FRC Law which provide for authorities to obtain information from NBFIs providing trust services, however, the absence of clear obligations on NBFIs to obtain or ensure access to the beneficial ownership information means that such powers cannot be effective.

485. Given the newness of the CMLTF Law and the relative newness and limited capacity of the FRC, the measures in the CMLTF have not yet been implemented in relation to NBFIs, and there is no indication that particular attention has yet be paid to trust service providers.

486. Self-regulatory organizations have only a limited role at present and no role in relation to AML/CFT measures for DNFBPs.

4.3.2 RECOMMENDATIONS AND COMMENTS

487. It is recommended that:

- DNFBPs are brought into the framework of the CMLTF Law;
- special attention is paid to regulating lawyers, notaries, the emerging real estate sector and dealers in precious metals;
- DNFBP regulatory and supervisory organizations work with professional bodies and self-regulatory organisations to design specific AML/CFT controls that compliment current controls in the various DNFBP sectors;
- the powers for the FIU, FRC and other competent authorities to supervise and monitor for AML/CFT compliance should extended to cover the full range of DNFBPs operating in Mongolia.

4.3.3 COMPLIANCE WITH RECOMMENDATIONS 24 & 25 (CRITERIA 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> • Casino businesses are prohibited in Mongolia. • As AML/CFT controls have not been extended to the DNFBPs, the powers for the FIU to supervision and monitoring AML/CFT implementation have not been extended to the DNFBPs.

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 DESCRIPTION AND ANALYSIS

488. Mongolia has taken steps to consider risks posed by other non-financial businesses and professions and to apply some AML/CFT preventative measures to a number of high risk sectors.

489. In response to risks identified with pawn shops and gaming businesses, Mongolia included both of those sectors under the CMLTF Law. Article 7.2 of the Law on CMLTF obliges pawnshops and gambling businesses to conduct CDD measures and report cash transaction threshold reports and STRs to the Financial Intelligence Unit. In fact, pawn shops and gaming businesses are subject to the exact same obligations as banks and other financial institutions.
490. In 2006 the Ministry of Justice and Home Affairs withdrew the licenses of all remaining gaming providers (slot machines), due to vulnerabilities to criminal abuse. The police were involved in ensuring compliance with the revocation of gaming licenses.
491. Mongolia has identified a number of threats from smuggling high value goods, including antiquities and fossils. Mongolia may consider extending AML/CFT obligations to such businesses.
492. Mongolia has taken a number of steps to encourage the development of modern and secure techniques, including the development of ATM networks, telephone banking, online banking services and e-pay banking. Not all of these services are available from all commercial banks, but there is a growing uptake of these services.

4.4.2 RECOMMENDATIONS AND COMMENTS

493. Mongolia has identified a number of threats from smuggling high value goods, in particular antiquities and fossils.
- Mongolia may consider extending AML/CFT obligations to businesses that deal with antiquities or fossils.

4.4.3 COMPLIANCE WITH RECOMMENDATION 20

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
R.20	C	<ul style="list-style-type: none"> • This recommendation is fully observed

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

5.1.1 DESCRIPTION AND ANALYSIS

494. Companies, partnerships, foundations, cooperatives and associations may be formed in Mongolia under Article 25 of the Civil Code (10 January 2002). Foreign citizens and business entities may establish companies or own shares of a company. This relationship is regulated by the Civil Code, Company Law and Foreign Investment Law.
495. Companies and other legal persons are required to register with the State Register, located within the National Tax Authority. Companies and other legal persons are only required to provide limited information on the company's charter, address and a contact person and are not required to report detailed information in relation to ownership or control of legal persons.
496. Companies are required to maintain a register of shareholders, including names and addresses of share holders.
497. Legal persons in Mongolia can be divided into profit and non-profit. For-profit legal persons can be in the form of company or partnership. (Article 33.1 Civil Code). Company and partnerships are required to be registered with State Registration Agency, which is part of the National Tax Administration (Article 7.1.1 of the Law on State Registration of Legal Persons). Non-profit type of legal persons can be in the form of association, foundation or cooperative. (Article 33.2 Civil Code).
498. The rules for registering a company are set out in Article 15 of the Company Law. Article 15.2 requires the following information to be provided to the State Registration Agency in order to register a company:
- company name and address;
 - the company's charter; and
 - the required minimum owner's equity.
499. There is no requirement for any information on the shareholders, directors or beneficiaries to be submitted to any authority on registration.
500. Article 15.3 of the Company Law limits the powers of the State Registration Agency and specifically precludes them from requiring presentation of documents or further information except the documents submitted with an application for registration as set out in Article 15.2.
501. Article 11.1.5 of the Law on State Registration of Legal Persons requires that the information on the "founder" be provided, as well as the full details (name, address, identification documents) of the official authorised to represent the company, to be submitted for registration. This requirement does not include current shareholders, rather the details of those persons (natural or legal) who founded the company. The State Registration Agency, upon registering a company issues a certificate of registration (Article 15.5 Company Law). As such, a company can be registered without any examination or verification of those directing, controlling or benefiting from the company.

502. Article 22 of the State Registration of Legal Persons only obliges companies to notify the State Registration Agency of any change of the company's charter or the articles of association. It does not require any updated information on ownership or control of the company to be lodged with the State Registry.
503. Each company in Mongolia is under a statutory obligation to maintain a share register in which the names and addresses of the holders of its shares are recorded under Article 46 of the Company Law. This obligation does not extend to the disclosure of beneficial ownership of shares. The Register of shareholders must include the particulars of the holders and the number and class of securities held (Article 46.2). A holder must inform the company in time of any changes in the holder's name, address and the number and class of securities held. (Article 46.4). However, the law makes no mention as to what amounts to "in time". In practice, if the holder fails or delays in informing the company of changed details, this will affect the accuracy of the information on the company's register.
504. Article 67 of The Partnership and Company Law of Mongolia requires companies to keep a register of members which shall record the surname and name of each member, the number and the par and total value of shares held, and any change in the composition of the membership.
505. Competent authorities are able to obtain all information held by the State Registrar, including information on the registration of legal persons. Under the Criminal Procedure Code, law enforcement agencies are empowered to obtain information on the register of shareholders held by each company. There are no provisions in any law regarding the formation or operation of legal persons that would inhibit investigators from lawfully obtaining necessary information in the course of a ML or FT investigation.
506. Pursuant to Article 193.1 – 193.21 of the Criminal Procedure Code, law enforcement agents have access to the company registers, as for example, in Article 193.21, it states that :
- "Prosecutor is able to require any organization or official to provide free of charge data, study or documents necessary for an inquiry, investigation or supervision, to be presented with them on the spot, or to require to issue professional opinion or conclusion."
507. Bearer shares are not specifically prohibited, but in practice, bearer shares are not a feature of the Mongolian market.

5.1.2 RECOMMENDATIONS AND COMMENTS

- Mongolia should implement measures to ensure enhanced transparency for the registration of legal persons, including requiring public disclosure of those directing, managing and controlling companies, including beneficial owners of legal persons.
- The requirement on companies to maintain a share register should be extended to include an obligation to maintain accurate information on beneficial ownership, which be made available to competent authorities, including the FIU, in a timely fashion.

- Authorities should ensure that persuasive sanctions are available to address delayed or failure to notify the State Register of any changes to as those set out in Article 11.3 & 11.4 of the Law on State Registration of Legal Persons.

5.1.3 COMPLIANCE WITH RECOMMENDATION 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> • Details of persons directing or controlling companies or other legal persons are not publicly available. • No requirement for companies to record the beneficial ownership of shareholders or to make beneficial ownership information available in a timely fashion. • No effective penalty provision to ensure prompt report of any change of information on charter or activities by companies.

5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 DESCRIPTION AND ANALYSIS

508. Trusts operating in Mongolia are defined in Article 406 of the Civil Code in relation to “trust contracts”. Such trust contracts are concluded between the settlor and the trustee. Trust contract enables the trustee to assume ownership of the trust assets for his disposal.

509. Common trust services in Mongolia are limited to the conditions set out under Article 4.1.7 of the Law on Non Bank Financial Activities (It also refers to Article 406 of the Civil Code). Under the Law a trust service may be provided only by non-bank financial institutions (Article 7.1.8) with a license issued by the FRC. Non-bank financial institutions, including those providing trust services, are defined under Article 4.1.2 of the Law on CMLTF as a reporting entity. As such they are responsible for conducting customer due diligence on all transactions and customers. As outlined in section 3.2 of this report, current CDD obligations in the Law on CMLTF do not adequately require beneficial ownership information to be obtained by financial institutions. In the case where a customer is a legal entity, the reporting entities are not explicitly obliged to take reasonable steps to determine who are the natural persons that ultimately own or control the customer, in particular the settlor, trustees or beneficiaries.

510. The Civil Code provisions in relation to trusts (Article 406) do not address requirements for identification of trustees or settlors.

511. There are provisions in both the CMLTF Law and the FRC Law that provide for authorities to obtain information from NBFIs providing trust services, however, the absence of clear obligations on NBFIs to obtain or ensure access to the beneficial ownership information means that such powers cannot be effective.

512. Given the newness of the CMLTF Law and the relative newness and limited capacity of the FRC, the measures in the CMLTF have not yet been implemented in relation to NBFIs, and there is no indication that particular attention has yet be paid

to trust service providers. As such it is not possible to determine the effectiveness of the measures at this time.

5.2.2 RECOMMENDATIONS AND COMMENTS

513. Overall the mechanisms to obtain and have access in a timely manner to beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts, are insufficient. It is recommended that:
- authorities should impose an explicit legal duty on the NBFIs providing trust services to take reasonable steps to obtain sufficient identification data to verify the identity of the settlors, trustees and beneficiaries.

5.2.3 COMPLIANCE WITH RECOMMENDATIONS 34

	Rating	Summary of factors underlying rating
R.34	PC	<ul style="list-style-type: none"> • Non-bank financial institutions are not currently required to obtain or ensure access to the beneficial ownership information on the express trusts that they manage.

5.3 NON-PROFIT ORGANISATIONS (SR.VIII)

5.3.1 DESCRIPTION AND ANALYSIS

Overview

514. Non-profit legal persons (NPOs) in Mongolia can take the form of associations, foundations or cooperatives (Article 33.2 of the Civil Code). Laws that regulate such legal persons include the Civil Code, are the Cooperative Law of Mongolia and the Law of Mongolia on Non-Governmental Organizations (NGOs). NPOs rely on donations or contributions for their activities (Article 36.2 of the Civil Code; Article 8 of the Cooperative Law, Article 19 of the Law on NGOs).
515. Authorities indicate that there are approximately 6000 NPOs registered in Mongolia at present.
516. NPOs are not specifically included in the new Law on CMLTF. Article 4.2 of the CMLTF allows any legal person, which would include NPOs, to file STR reports to the FIU, however there is no safe harbour provided in the CMLTF to support such reporting.
517. Mongolia has not yet undertaken a review of its domestic NPO sector, however the ministry of Justice and Home Affairs indicates that a new law addressing NPOs is being considered at present.

NPO sector outreach and oversight

518. Mongolia has not undertaken outreach to the NPO sector to raise awareness of the risks for ML or FT abuse, nor to help the sector understand AML/CFT measures applicable to NPOs. A number of measures have been undertaken to promote transparency and good governance.

519. Associations and Foundations must register with the Ministry of Justice and Home Affairs. All NPOs must also register with the State Registry as legal persons. Cooperatives must register with the General Department of National Taxation. Registration information on NPOs is publicly available via the State Registry and Ministry of Justice and is able to be accessed by competent authorities. (Article 8.1.1 Law on State Registration of Legal Persons)
520. While the Ministry of Justice and Home Affairs has a role to play in registering non-profit organisations, it has no role in monitoring their activities.
521. NPOs are required to set out the purpose and objective of their organisation and provide a copy of such with the State Registry. Any change to the purpose and objectives must be reported to the State Registry within three working days (Article 11.3 & Article 11.4 of the Law on State Registration of Legal Persons). However, the liability for any delay or non-notification of the change is not clear. The obligations at Articles 11.3 & 11.4 only require notification of changes in the name and registration number of the association or foundation and the changes in their foundation documents, including charter of activities (including purpose). There is no provision to notify the State Register regarding those who control NPOs or their finances.
522. On registration with the Ministry of Justice and Home affairs, NPOs must nominate the bank account which will be used for the funds of the Association or Foundation.
523. Under the Law on NGOs (Article 23.2), NPOs registered with the Ministry of Justice are obliged to provide the Ministry of Justice and Home Affairs, on an annual basis, with the following information:
- the non-governmental organization's address;
 - a summary of its activities;
 - a balance sheet showing income and expenses for the year by the following categories:
 - contributions;
 - income from mission-related economic activities;
 - inheritance;
 - a list of donors with cumulative donations, cash or in-kind, greater than 700,000 togrogs, and the specific amount or value of in-kind contributions; and
 - names and addresses of the Chairperson and members of the Governing Board and the Executive Director.
524. In effect, this means that updated information on the identities of trustees and the NPO's financial activities are only provided to authorities once per year. The authorities indicate that this information is made available to the public within the Ministry of Justice.
525. The law on NGOs also requires yearly financial reports to be filed with the Tax Office by February 15 of the following year.
526. Article 23 (4) requires the Ministry of Justice and the NGO to maintain the records of an NPO's activities, including financial transactions, for a period of at least 10 years.

527. The Ministry of Justice and Home Affairs does not have any role in supervising compliance with these reporting obligations, although it may refer identified cases of non-compliance to the police if there are concerns of criminal breaches. The Ministry of Justice does not have adequate capacity or resources to conduct comprehensive oversight or monitoring of NPOs.
528. Article 24 of the Law on NGOs provides for administrative sanctions in cases where a breach of the law does not constitute a criminal offence, including the following provisions:
- 24(1) illegal distribution of income - a fine of 40,000-60,000 togrogs on the guilty executive, and 100,000-150,000 togrogs on the organization;
 - 24(2) use by the Governing Board or staff of an NGOs assets and finances for personal gain, a fine of 40,000-60,000 togrogs on the guilty executive and the earned income shall be confiscated;
 - 24 (4) failure to file annual reports - 10,000-20,000 togrogs fine on the guilty executive.
529. The sanctions outlined above are neither proportionate nor dissuasive and do not provide an adequate range of sanctions for the regulator. There are no clear powers for the registering authorities to freeze accounts or remove trustee in the case of a serious breach. There is a provision to de-register an NPO for non-compliance.
530. Investigative agencies are able to access information held by the Ministry of Justice and the State Registry in the course of an investigation. The police are situated under the Ministry of Justice and there is close coordination between the two. The FIU has not yet had a role in sharing information with the Ministry of Justice in relation to NPOs.
531. It is anticipated that an MOU or some other instrument to support domestic cooperation and information sharing will be established to share information between the FIU and the Ministry.
532. The Ministry of Justice has not yet identified appropriate points of contact and procedures to respond to international requests for information regarding NPOs that are suspected of FT. It should be noted that the Ministry is the competent authority for dealing with MLA requests and is experienced with dealing with responding to requests from foreign counterparts.

5.3.2 RECOMMENDATIONS AND COMMENTS

- As a matter of priority Mongolia should conduct a review of its NPO sector and should utilise the finding of such a review to assist the preparation of the draft law on NPOs to ensure that targeted AML/CFT measures can be effectively designed and implemented to enhance good governance of the sector.
- Authorities should provide additional resources to undertake outreach and awareness raising to the NPO sector on best practices to support good governance and to address ML and FT risks in the sector. Such outreach should be done in consultation with a range of competent authorities and NPO sector representatives, including the supervising Ministry, the FIU and other authorities.

- Statutory requirements should be introduced to address enhanced transparency, improved AML/CFT measures and enhanced powers of competent authorities, including:
 - prompt reporting of information on the identity of persons who own, control or direct NPOs' activities;
 - Increased transparency of collection and expenditure of funds for those NPOs which account for a significant portion of the financial resources under control of the sector;
 - enhanced requirements for oversight and monitoring in addition to registration;
 - appropriate measures to sanction violations of oversight measures or rules by NPOs or those acting on behalf of NPOs; and
 - clarification of the role of competent authorities to cooperate with equivalent foreign parties in relation to NPOs and FT.
- There is a need for additional resources to be made available to ensure effective oversight of the NPO sector, including awareness raising, training to the sector and targeted monitoring of NPOs for compliance with record keeping and reporting obligations as well as identifying cases of abuse of NPOs.
- Steps should be taken to further support domestic cooperation between relevant competent authorities in relation to implementing SR VIII, in particular the Ministry of Justice and Home Affairs, the State Registry Agency, the FIU, the Police and the GIA.

5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> • No domestic NPO sector review. • No outreach to the sector on AML/CFT. • Registration requirements do not include obligations to record the details of person who own, control or direct NPOs. • Sanctions available to competent authorities in cases of breaches of controls over NPOs are ineffective.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31)

6.1.1 DESCRIPTION AND ANALYSIS

533. Mongolia has established a number of formal mechanisms to support cooperation and coordination between domestic authorities in combating ML and FT. All Mongolian agencies met during the on-site visit highlighted the need for close cooperation to effectively implement the laws relevant to AML/CFT. However, a number of agencies indicated some problems with inter-agency cooperation and coordination up to this point.
534. There has been cooperation and coordination at the highest policy level in the preparation of the AML/CFT law and amendments to the Criminal Code to criminalise ML and FT. A Working Group was formed in 2004 to prepare the draft AML/CFT law prior to its consideration by the parliament. This Working Group was formed under the Ministry of Justice and Home Affairs and provided policy level cooperation in the framing of the law, which was passed in July 2006.
535. The Bank of Mongolia has taken a leading role to coordinate AML/CFT efforts in the years leading up to the passage of the CMLTF law and the formation of the FIU. The Bank of Mongolia has taken numerous steps to bring together policy makers, law enforcement, supervisors and other competent authorities to cooperate in relation to AML/CFT awareness raising, training, legislative drafting and preparation for the Mutual Evaluation.
536. Article 20 of the CMLTF Law includes statutory provisions for the creation and operation of a Cooperation Council at the FIU, whose functions include:
- ensuring the implementation of laws to combat ML and terrorism financing;
 - exchanging information: and
 - preparing recommendations on preventative measures.
537. The composition and rules of the Cooperation Council shall be approved by the Governor of the Bank of Mongolia. As of the date of the on-site visit, the Cooperation Council had not been established. The Bank of Mongolia has issued Terms of Reference for operation of the Cooperation Council. The Cooperation Council subsequently had its first meeting on 10 June 2007 and will meet every three months.
538. Article 6 of the Anti-terrorism Law (2004) provides for the establishment of the National Coordinative Council which has responsibility to exchange information and support cooperation between organisations in the efforts against terrorism. The National Coordinative Council is headed by the Head of Central Intelligence Organisation
539. In April 2006 Mongolia issued Decree 66 of 2006 to approve its procedures for operations and cooperation in combating terrorism. The National Coordinative Council meets quarterly to:
- support policy cooperation;
 - supervise implementation laws on preventing the terrorism;

- propose to competent authorities to sanction persons who violate legislation on fighting the terrorism;
- enhance international cooperation on fighting terrorism;
- develop comprehensive plans on terrorism prevention measures;
- assist government agencies implementation and coordinate their cooperation;
- create a united information database on terrorism and provide advice to the government , including proposals for further actions;
- organize joint training exercises; and
- arrange public awareness activities through media outlets.

540. In order to give effect to the National Coordinative Council's intelligence collection and advice giving role, an Intelligence Unit has been established to develop intelligence on counter terrorism, which is headed by staff from the GIA.
541. At this stage there are a number of significant omissions from the membership of the National Coordinative Council. The Ministry of Foreign Affairs is not a regular participant. The FIU has not yet been invited to take part in the Council, but an indication was given of the intention to include the FIU in order to bring due focus to CFT. The Evaluation Team was not able to determine if the Bank of Mongolia, FRC or FIU are currently included on the National Coordinative Council for counter terrorism.
542. The Evaluation Team notes the close cooperation between the Bank of Mongolia, the FRC, the new FIU, the Prosecutors Office, the Police and the Customs Department to work to develop AML/CFT measures and capacities in Mongolia. There is a need to ensure that the new Anti-Corruption Committee is included in these cooperative efforts.
543. As mentioned above, there is a need for further support for domestic cooperation between relevant competent authorities in relation to implementing AML/CFT measures for NPOs.
544. At a policy level there is a lack of coordinated actions to establish policies and undertake operational level actions to implement Mongolia's commitments under UNSCR 1267 and the UN Convention on the Suppression of Terrorist Financing. Under Decree 226 of October 2001, the Government of Mongolia resolved that the Minister of Foreign Affairs, the Minister of Finance and Economy and the Minister of Justice and Internal Affairs were charged with the task of to arrange specific activities on implementation of respective UN SCRs to combat terrorism. To date, there has not been effective policy level coordination between these agencies to support implementation of UNSCR 1267.
545. There were some coordination problems noted in the implementation of provisions for international cooperation, particularly in relation to coordinated responses to requests for mutual legal assistance. The Ministry of Foreign Affairs receives requests for MLA, but passes them on to the Ministry of Justice. There is not clear communication regarding actions arising from MLA requests.

6.1.2 RECOMMENDATIONS AND COMMENTS

546. It is recommended that Mongolia:

- ensures support for and the effective operation of the Cooperation Council as provided for in Article 20 of the CMLTF Law. Ensure adequate resources are made available to the FIU to support the work of the Cooperation Council;
- ensures that the new Anti-Corruption Committee is included in cooperative AML/CFT efforts;
- ensures that the Ministry of Foreign Affairs, the FIU and others are included on the Counter Terrorism Committee to address CFT considerations; and
- establishes a coordination mechanism under the National Coordinative Council to support effective action to implement Mongolia's obligations under UNSCR 1267 and UNSCR 1373.

6.1.3 COMPLIANCE WITH RECOMMENDATION 31

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none">• The Co-operation Council has been set up for the purpose of co-ordination, but they still have not had rules and procedures in place.• CT Coordinative Council has been established and is operating effectively, but has not yet included all relevant CFT stakeholders in its work;• CT Coordinative Council has not taken steps to coordinate agencies in relation to implementing UNSCR 1267
R.32	NC	<ul style="list-style-type: none">•

6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 DESCRIPTION AND ANALYSIS

547. Mongolia has ratified the Vienna Convention and the Terrorist Financing Convention, but is not yet a party to the Palermo Convention.

548. Concerning the Vienna Convention and the Terrorist Financing Convention, Mongolia has complied with a number of terms of these two conventions, including the exercise of the powers on seizure, freezing and confiscation on request by other members of the mutual legal assistance treaties such as Russia and PRC. Besides, there is information sharing between Mongolia and many other jurisdictions. Mongolia has also sent representatives to attend a number of training courses provided by the United States, Egypt, South Korea, and Russia. Police officers have attended courses organized by US Bar Association, and conferences in Moscow. In addition, the Bank of Mongolia has also invited foreign experts to come to Mongolia to provide training on anti-money laundering and combating terrorist financing.

549. However, certain terms of the Vienna Convention or the Terrorist Financing Convention have not yet been complied with such as:

- the offences of ML and terrorist financing have not yet been passed;
- only natural person can be criminally liable and not legal persons; and

- there is no mechanism in place for asset sharing with other jurisdictions in respect of mutual legal assistance.

6.2.2 RECOMMENDATIONS AND COMMENTS

- Mongolia should become a party to and fully implement the Palermo Convention as soon as possible.
- Measures should be taken to fully implement the Vienna Convention and the International Convention for the Suppression of the Financing of Terrorism as well as UN SCR 1267 and 1373.

6.2.3 COMPLIANCE WITH RECOMMENDATION 35 AND SPECIAL RECOMMENDATION I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> • Mongolia is not yet a party to or has not implemented the elements of the Palermo Convention. • Not all the terms of the Vienna Convention and the Terrorist Financing Convention have been fully implemented.
SR.I	NC	<ul style="list-style-type: none"> • Not all the terms of the Terrorist Financing Convention have been fully implemented. • Mongolia has not yet fully implemented the UNSCR 1267 & 1373.

6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)

6.3.1 DESCRIPTION AND ANALYSIS

550. Chapter 45 of the Criminal Procedure Code sets out the provisions on *“Mutual Legal Assistance with respect to criminal cases between court, prosecutors’ office, investigation and inquiry agencies of Mongolia and relevant foreign institutions.”* Article 19 of CMLTF states :

“Financial Information Service shall cooperate with foreign and international institutions which conduct similar activities and have similar confidentiality requirements imposed by law.”

551. In practice, Mongolia provides mutual legal assistance to other member states relating to AML/CFT or other predicate offences on investigations, prosecutions and related proceedings such as assistance on:

- taking testimonies from persons (Articles 81 – 84 Criminal Procedure Code);
- collecting evidence (Article 92 Criminal Procedure Code);
- search, freezing and seizure of assets and equipment (Articles 132 – 141 Criminal Procedure Code);
- confiscation of property (Article 49 Criminal Code); and
- confiscation of proceeds of crime (Articles 163.2 & 163.3 Criminal Code).

552. Mongolia would also provide assistance on fiscal matters and matters relating to the secrecy or confidential requirements on financial institutions.
553. In 2005, Mongolia, on request by Russia, conducted investigations on the assets of a Russian in Mongolia. Mongolia also provided assistance to Japan on a person who is being investigated in Japan. Similar assistance was also provided to Pakistan on a Pakistani relating to second hand cars and the United States on information concerning Banco Delta Asia.
554. It is unfortunate that there is no indication that Mongolia is considering the establishment of an asset forfeiture fund for law enforcement, health, education or other appropriate purposes. In addition, Mongolia has not given any consideration to the sharing of the confiscated assets.
555. Statutes in Mongolia are not clear on whether Mongolia would provide mutual legal assistance in the absence of dual criminality. Discussions with authorities at the Ministry of Justice indicated that any technical difference such as the difference in the use of the wording of the offence should not pose an impediment to the provision of mutual legal assistance. This is evidenced in Article 401 of the Criminal Procedure Code which states that:
- 401.1 Instructions of authorized organization or official of foreign country on execution of procedural actions shall be implemented by inquiry officers, investigator, procurator and court according to normal rules provided by this law.*
- 401.2 In implementing the instruction, norms and provisions of foreign procedural actions may be applied if international agreements provide so.*
556. An example to uphold the spirit of Article 401 is that the Mongolian General Prosecutors' Office provided assistance to prosecutors of Russian Federation to investigate "Yukos" case by carrying over investigation to "Yum Trade" affiliated company of "Yudos" in Mongolia.
557. The Evaluation Team understands that Mongolia does not have an arrangement for the sharing of confiscated assets because Mongolia provides assistance to the requesting state and hands over all assets confiscated to that foreign state. In return, when Mongolia requests assistance from a foreign state, that state will provide assistance and hand over all the assets confiscated to Mongolia. Therefore, there is no need for arrangements for the sharing of assets confiscated.

Statistics

558. According to statistics, since 2000 Mongolia has provided mutual legal assistance on eight occasions to foreign countries including Russia, China and South Korea. While these eight cases reflect on the assistance provided by Mongolia to foreign countries it was not clear whether this represents the total number of requests received since 2000. Statistics concerning assistance requested by Mongolia have not been made available.

6.3.2 RECOMMENDATIONS AND COMMENTS

- Mongolia should consider setting up an asset forfeiture fund for law enforcement, health, education or other appropriate purposes so that assets

forfeited will be able to provide a useful purpose for Mongolia. Besides, this also serves a good incentive for law enforcement agencies on anti-money laundering and combating terrorist financing.

- Mongolia should retain detailed statistics on the various nature of mutual legal assistance provided, the requesting states; the requests Mongolia has acceded to and the requests refused and grounds of refusal.
- Mongolia should retain statistics on the nature of requests made by Mongolia, requested states and the number of requests carried out by the foreign states and the number of requests refused by the foreign states.

6.3.3 COMPLIANCE WITH RECOMMENDATIONS 36 TO 38 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.32	NC	<ul style="list-style-type: none"> • Mongolia has provided only limited statistics on mutual legal assistance.
R.36	LC	<ul style="list-style-type: none"> • Mongolia has provided assistance on requests including on fiscal matters, however, statistics on other form of assistance are not detailed enough to confirm effectiveness.
R.37	LC	<ul style="list-style-type: none"> • While requests from China and South Korea for extradition have been acceded to, there are concerns that cases that do not involve dual criminality will not be entertained.
R.38	LC	<ul style="list-style-type: none"> • Mongolia has not given any consideration to establishing an asset forfeiture fund or sharing of confiscated assets with the requesting state.
SR.V	PC	<ul style="list-style-type: none"> • The absence of an FT offence could limit the possibility of mutual legal assistance requests for search, seizure, confiscation and extradition.

6.4 EXTRADITION (R.37, 39, SR.V)

6.4.1 DESCRIPTION AND ANALYSIS

559. Mongolia requires dual criminality for the offence to be extraditable. During the on-site visit with the Ministry of Justice, it was raised that it was the spirit rather than a technical difference such as the wording of the offence that matters. The General Prosecutors' Office stated that Mongolia requires dual criminality to extradite the convicts and fugitives. It is not clear how flexible it can be in the interpretation of dual criminality before Mongolia can provide mutual legal assistance on extradition.

560. During the on-site visit, it was indicated that ML should be an extraditable offence when it is criminalised. Article 163 of Criminal Code, which implicitly criminalised ML, is extraditable provided it does not fall within one of the grounds of refusal of extradition in Article 406. Article 406 sets out the following grounds for refusing extradition:

- the person is a citizen of Mongolia;

- the criminal has been awarded asylum in Mongolia;
- the grounds for the request to transfer are not considered to be a crime in Mongolia;
- the offender has already served the sentence, or the criminal liability has been previously relieved/acquitted;
- the statute of limitation for the particular crime has expired according to legislation of Mongolia or there are circumstances based on other grounds excluding initiating of criminal case or sentencing.

561. The absence of an FT offence could present grounds to refuse an extradition request.

562. While requests from China and South Korea for extradition have been acceded to, there are concerns that those that are not of dual criminality will not be entertained.

563. Mongolia has provided mutual legal assistance, but there are concerns that those that are not of dual criminality will not be entertained.

564. As mentioned above, one of the grounds of refusing extradition is that the person is a citizen of Mongolia. In other words, Mongolia does not extradite its own nationals and therefore, given that there is one of the grounds as set out in Article 166 of Criminal Procedure Code, a criminal case will be initiated. Article 166 of Criminal Procedure Code states :

“Criminal case shall be initiated if there exists one of the following grounds and if there does not exist any condition that prevents from carrying out criminal proceedings and if there is sufficient evidence proving the commission of the crime :

- Complaint filed by a citizen on a committed crime.
- Report of business entities, organization and officials on a crime.
- Appearing to confess in committing a crime.
- Direct discovery of indicia of a crime by an inquiry officer, investigator and prosecutor.
- Information on a crime obtained and documented through undercover operation.”

565. Therefore, if the person is a Mongolian national, and the conditions in Article 166 of Criminal Procedure Law are satisfied, criminal proceedings against the person will be initiated without delay. Chapter 46 of the Criminal Procedure Law sets out the provisions on extradition, the procedures and the grounds of refusal. There is some flexibility in providing mutual legal assistance to foreign countries on procedural and evidential aspects to ensure the efficiency of the prosecution pursuant to Article 401 of the Criminal Procedure Code.

6.4.2 RECOMMENDATIONS AND COMMENTS

566. It was raised during the on-site visit that pursuant to Article 408.2 of the Criminal Procedure Law, 30 days would not be sufficient for the person detained for extradition to be received. This would result in having the person released. However, Article 408.3 states *“The person released as provided in Article 408.2 may be again confined under guard if new request has been made.”*

- It is recommended that the 30-day period available under the Criminal Procedure Code be amended to a longer period of time, such as 60 days, so that there will be sufficient time for the rules and procedures and other formalities be complied with for extradition.

567. According to the statistics provided, there were two requests for extradition made by China and South Korea. Both of them were acceded to by Mongolia. However, it is not certain whether or not other requests had been made over the last five years.

- Mongolia should retain accurate statistics in relation to extradition, including requests made and received, consideration given to requests received, and actions taken pursuant to any requests for extradition.

6.4.3 COMPLIANCE WITH RECOMMENDATIONS 37 & 39, AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.32	PC	
R.37	LC	<ul style="list-style-type: none"> • While requests from China and South Korea for extradition have been acceded to, there are concerns that those that are not of dual criminality will not be entertained.
R.39	LC	<ul style="list-style-type: none"> • While requests have been received and acceded to, statistics cannot confirm effectiveness and those that are not of dual criminality will not be entertained.
SR.V	PC	<ul style="list-style-type: none"> • The absence of an FT offence could present grounds to refuse an extradition request.

6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)

6.5.1 DESCRIPTION AND ANALYSIS

568. Mongolia has signed a number of bilateral and multi-lateral treaties and international conventions and is thereby in a position to provide assistance to counterparts. The General Prosecutors' Office, the FIU are the agencies which provide mutual legal assistance. The judicial authorities and the law enforcement agencies can be reached through the General Prosecutors' Office or the Ministry of Justice and Home Affairs relating to mutual legal assistance. They are able to provide assistance and cooperation within their functions.

569. There are clear and efficient mechanism on assistance and information sharing:

- *Customs Office* : joined the Customs International Commission in 1991 and signed treaties with 14 countries including PRC and Russia on mutual legal assistance. Mongolia shares information with these countries;
- *The Central Intelligence Unit* has co-operation with its counterparts including Japan, Russia and Pakistan under mutual legal assistance;
- *The General Police Department* has communications with its counterparts under the mutual legal assistance treaties as for example, the Economic Crime Division of the Criminal Police Department provides assistance to

Russia and the Chinese Customs Office, information sharing with FBI of the USA;

- *The Tax Office* also shares information with countries under MLA treaties; and
- *FRC* is a member of the International Securities Organisation and the International Insurance Organisation. *FRC* planned to sign an MOU with its counterpart in Poland and is negotiating an MOU with corresponding authorities in China.

570. Assistance provided to Pakistan on a case relating to the smuggling of cars and assistance to the United States relating to North Korea are some of the examples of assistance and information sharing not only on AML and CFT but also on other predicate offences. It is understood that cooperation also involves fiscal matters or matters relating to secrecy or confidential requirements on financial institutions.

571. In the absence of a clear system of MOUs or other formal instruments between Mongolian authorities and foreign counterparts, there are some concerns regarding the controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner.

572. Although some clear examples of cooperation with foreign counterparts in relation to both ML and FT matters were provided, comprehensive statistics were not recorded.

Developments since the on-site visit

573. In the “Financial Information Unit Chapter” which was implemented by the Governor of the Bank of Mongolia on 7 May 2007, Part Five of the said Chapter sets out the cooperation of FIU with other state and federal agencies, their counterparts of foreign countries and the possibility of joining international and regional institutions will be able to illustrate its duties on mutual legal assistance. Since the FIU is still in its infancy stage, its effectiveness has yet to be seen.

6.5.2 RECOMMENDATIONS AND COMMENTS

574. Overall Mongolia has demonstrated a strong commitment to share information with foreign counterparts, in particular through the BoM, FRC, Customs Office and law enforcement agencies. There are various mechanisms and pathways in place, which are being utilised. The new FIU is actively pursuing opportunities to establish mechanisms to share information with foreign counterparts.

575. Mongolia should:

- establish controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner; and
- retain accurate statistics in relation to other forms of international cooperation.

6.5.3 COMPLIANCE WITH RECOMMENDATION 40 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
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R.32	NC	<ul style="list-style-type: none"> Statistics are not yet available.
R.40	PC	<ul style="list-style-type: none"> There are no established controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner. Statistics on mutual cooperation are limited.
SR.V	PC	<ul style="list-style-type: none"> While some cooperation has occurred with foreign counterparts in relation to intelligence probes related to FT, no comprehensive statistics were available.

7 OTHER ISSUES

7.1 RESOURCES AND STATISTICS

The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report.

There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	PC	<ul style="list-style-type: none">• Inadequate resources in the FIU to be able to discharge fully the roles and responsibilities given under the Law on CMLTF.• Inadequate resources in the FRC to be able to discharge fully their AML/CFT roles and responsibilities, including regulation, monitoring and inspection.• Additional resources need to be applied in the Bank of Mongolia to support AML/CFT supervision in the banking sector• There is a need for comprehensive AML/CFT awareness raising and training across a range of competent authorities.• There is a lack of resources to implement AML/CFT measures and ensure effective oversight of the NPO sector.• No AML/CFT focused on-site examination was carried out by the Bank of Mongolia toward banks.
R.32	NC	<ul style="list-style-type: none">• Accurate statistics are kept on use of the provisions in the Criminal Code and Criminal Procedure code, however the Team had difficulty receiving these statistics in translation.• As there have been no terrorism offences prosecuted there are no statistics on CFT.• No STRs or CTRs or cross-border declarations have been received by the FIU to date.• Statistics appear to have been maintained for supervision, monitoring and application of sanctions across the banking sector, however statistics for the NBF and DNDBP sectors appear to be less comprehensive.• Detailed statistics in relation to various aspects of international cooperation were not made available to the team, although details of illustrative cases were provided.

8 TABLES

Table 1:	Ratings of Compliance with FATF Recommendations
Table 2:	Recommended Action Plan to improve the AML/CFT system
Table 3:	Authorities' Response to the Evaluation (if necessary)

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations are made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

These ratings are based only on the essential criteria, and defined as follows:

Compliant (C)	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant (LC)	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant (PC)	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant (NC)	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable (NA)	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating ⁹
Legal systems		
1. ML offence	PC	<ul style="list-style-type: none"> The scope of the ML offence does not meet the requirement of the Palermo Convention the effectiveness of the offence is not able to be established
2. ML offence – mental element and corporate liability	PC	<ul style="list-style-type: none"> The offence, as it is currently set out, does not allow intention to be inferred from objective factual circumstances. Criminal liability for ML is not extended to legal

⁹ These factors are only required to be set out when the rating is less than Compliant.

		<p>persons</p> <ul style="list-style-type: none"> • Legal persons are not subject to effective or proportionate sanctions for ML.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Powers of confiscation, seizure, freezing, identification and tracing are not set out clearly in any statutory provisions
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • Financial institution secrecy laws do not appear to inhibit the disclosure to and sharing of requisite information with the competent authorities, although effectiveness could not be fully established.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • There is no legislative requirement for the reporting entities to take CDD measures for wire transfers; to both identify the customer and verify the identity of the customer; to verify any person purporting to act on behalf of a corporate customer is so authorized; to identify the beneficial owner; to determine for all customers whether the customer is acting on behalf of another person; to determine who are the natural persons that ultimately own or control a corporate customer; and to undertake reviews of existing records on CDD documents to keep them up-to-date and relevant. • No requirement to verify the identity of the customer or beneficial owner before or during establishing relationships or conducting transactions; • No requirement to terminate relationship and consider making a suspicious transaction report if an existing customer refuses to provide further details on identification data in case where there are doubts about the data's veracity.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • The definition of a PEP under the current law is not extensive enough to cover all the individuals defined as PEPs in the FATF Glossary. • There is no requirement for the reporting entities to take enhanced CDD measures in relation to PEPs
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There is no requirement for the reporting entities to take enhanced CDD measures in relation to cross-border correspondent banking and other similar relationships.
8. New technologies & non-face-to-face business	NC	<ul style="list-style-type: none"> • There is no requirement for the reporting entities to have policies in place to prevent the misuse of technological developments or non-face to face business in ML or FT schemes.
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • The reporting entities are permitted by the law to rely on notaries to perform some of the elements of the CDD process, whereby the reporting entities are required to obtain a notarized copy of customer identification data.

		<ul style="list-style-type: none"> • There is no requirement for the reporting entities to obtain from the notaries they relied on the policies, procedures and processes of the notaries' customer identification and verification. • There is no express requirement for the reporting entities to satisfy themselves that notaries are regulated and supervised, while the regulation and supervision of the notaries are conducted by the Ministry of Justice, which issues licenses and enforces requirements with administrative sanctions for non-compliance. • There is no express requirement for the reporting entities to take the ultimate responsibility for customer identification and verification.
10. Record keeping	PC	<ul style="list-style-type: none"> • There is no requirement for the reporting entities to make transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • There is no legal or regulatory requirement for the reporting entities to maintain information on customers' identification data for five years following the termination of an account or business relationship, and to keep all customer and transaction records available on a timely basis to competent authorities.
11. Unusual transactions	PC	<ul style="list-style-type: none"> • There is a legislative requirement for the reporting entities to undertake special monitoring of unusual transactions such as those having no clear purpose, and to obtain additional information or explanation of those transactions. • There is no requirement for the reporting entities to keep the additional information or explanation available for competent authorities for at least five years.
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • DNFBP have not yet been included in the AML/CFT regime in Mongolia, with the exception of trust service providers
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • Serious deficiencies with the current STR reporting obligation • Very narrow set of circumstances in which STRs can be lodged
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • A lack of clear 'safe harbour' for the directors, officers and employees of the financial institutions if they report STRs in good faith. • Names and personal details of staff financial institutions that make STRs are not adequately covered by confidentiality provisions.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • There is a legislative requirement for the reporting entities to develop and implement an internal monitoring program to combat ML and terrorism

		<p>financing, which contains rules and procedures for compliance officers with their powers and obligations being specified.</p> <ul style="list-style-type: none"> • There is no requirement for the reporting entities to maintain an independent audit function to test compliance with the internal monitoring programs, to establish ongoing employee training on AML/CFT issues and measures, and to put in place screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> • DNFBP have not yet been included in the AML/CFT regime in Mongolia and there is no obligation to report suspicious transactions. • The existing provision in the CMLTF which allows any legal person to file an STRs does not provide adequate 'safe harbour' to reporting entities and is insufficient to include DNFBPS
17. Sanctions	PC	<ul style="list-style-type: none"> • The FIU has limited power to apply administrative sanctions to those reporting entities which have opened an anonymous account, conducted a transaction with insufficient customer information, etc. • The FRC has strong sanctions, but their application is weak and they are unable to sanction unlicensed entities.
18. Shell banks	LC	<ul style="list-style-type: none"> • No obligation requiring financial institutions to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by a shell bank.
19. Other forms of reporting	C	<ul style="list-style-type: none"> • This recommendation is fully observed
20. Other DNFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • This recommendation is fully observed
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • There is a legislative requirement for the reporting entities to undertake special monitoring of transactions via countries with no financial monitoring mechanism to combat ML and FT. • There is a legislative requirement for the reporting entities to obtain additional information or explanation of the transactions made via those countries put on the above list. • There is no requirement for the reporting entities to keep any findings obtained through the additional information or explanation available in writing so as to assist the competent authorities. • There is no rule or regulation on what kind of counter-measures may be taken to those countries which continue to be put on the list prepared by the Bank of Mongolia.
22. Foreign branches & subsidiaries	NA	<ul style="list-style-type: none"> • No financial institutions have foreign branches or subsidiaries at this stage.

23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> Non-bank financial institutions have not yet undergone AML/CFT supervision and the FRC lacks resources to implement its supervisory role.
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> As AML/CFT controls have not been extended to the DNFBPs, the powers for the FIU to supervision and monitoring AML/CFT implementation have not been extended to the DNFBPs.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> No clear power for the FIU or other competent authority to issue regulations under the CMLTF No guidance or appropriate feedback has been provided to financial institutions in relation to reporting suspicious transactions. Prior to the enforcement of the Law on CMLTF, the Bank of Mongolia issued recommendations on AML for the banking and financial organization; however, this recommendation has had no regulatory power with sanctions for non-compliance. Neither the Bank of Mongolia nor the FIU have prepared detailed regulations in line with the new AML/CFT obligations. FRC has not prepared detailed regulations in line with the new AML/CFT obligations Casinos businesses are prohibited in Mongolia As AML/CFT controls have not been extended to the DNFBPs, the powers for the FIU to supervision and monitoring AML/CFT implementation have not been extended to the DNFBP.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> The FIU has not begun to receive STRs or CTRs There is a lack of clarity of the FIU's authority to disseminate information to investigative agencies in all cases At the time of the on-site visit the FIU had not issued guidance to reporting institutions on the form and method of reporting STRs and had not provided guidance to reporting institutions on monitoring accounts and identifying suspicious transactions
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> Law enforcement authorities are not yet designated to investigate FT, as the offence has not yet been established. As FIU has only just commenced methods, techniques and trends are not reviewed & information not analysed or disseminated.
28. Powers of competent authorities	C	<ul style="list-style-type: none"> The Recommendation is fully observed.
29. Supervisors	PC	<ul style="list-style-type: none"> The Bank of Mongolia has adequate monitoring powers and inspection authority under the Banking

		<p>Law.</p> <ul style="list-style-type: none"> • The FIU has adequate monitoring powers and inspection authority under the Law on CMLTF, but effectiveness is an issue. • The FRC has adequate monitoring and inspection authority, but has not effectively implemented those powers.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • The resources to be devoted to investigate ML & FT are insufficient. • Adequate and relevant training programs on ML and FT need to be implemented. • The Bank of Mongolia is adequately structured, funded, staffed and provided with certain technical and other resources but sufficient training opportunities have not been supplied to its employees on AML/CFT issues. • The FIU has not been resourced properly as compared to its roles and functions given under the new law. • The FRC is not adequately resourced to fulfil its supervisory and regulatory functions. • Inadequate resources in the FIU to be able to discharge fully the roles and responsibilities given under the Law on CMLTF. • Inadequate resources in the FRC to be able to discharge fully their AML/CFT roles and responsibilities, including regulation, monitoring and inspection. • Additional resources need to be applied in the Bank of Mongolia to support AML/CFT supervision in the banking sector • There is a need for comprehensive AML/CFT awareness raising and training across a range of competent authorities. • There is a lack of resources to implement AML/CFT measures and ensure effective oversight of the NPO sector. • No AML/CFT focused on-site examination was carried out by the Bank of Mongolia toward banks.
31. National co-operation	PC	<ul style="list-style-type: none"> • The Co-operation Council has been set up for the purpose of co-ordination, but they still have not had rules and procedures in place. • CT Coordinative Council has been established and is operating effectively, but has not yet included all relevant CFT stakeholders in its work; • CT Coordinative Council has not taken steps to coordinate agencies in relation to implementing UNSCR 1267
32. Statistics	NC	<ul style="list-style-type: none"> • Statistics on the Prosecution of Article 163 indicate that the offence has not been used in practice.

		<ul style="list-style-type: none"> • No STRs or CTRs have been received by the FIU to date no comprehensive statistics on effectiveness. • STRs not received or disseminated as yet. • No statistics are available since the Bank of Mongolia, FRC or FIU have neither conducted any AML/CFT focused on-site examination nor taken any sanction against non-compliance with AML/CFT requirements. • Mongolia has provided some statistics on mutual legal assistance but not detail enough. • Accurate statistics are kept on use of the provisions in the Criminal Code and Criminal Procedure code, however the Team had difficulty receiving these statistics in translation. • As there have been no terrorism offences prosecuted there are no statistics on CFT. • No STRs or CTRs or cross-border declarations have been received by the FIU to date. • Statistics appear to have been maintained for supervision, monitoring and application of sanctions across the banking sector, however statistics for the NBFI and DNDBP sectors appear to be less comprehensive. • Detailed statistics in relation to various aspects of international cooperation were not made available to the team, although details of illustrative cases were provided.
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • Details of persons directing or controlling companies or other legal persons are not publicly available. • No requirement for companies to record the beneficial ownership of shareholders or to make beneficial ownership information available in a timely fashion. • No effective penalty provision to ensure prompt report of any change of information on charter or activities by companies.
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> • Non-bank financial institutions are not currently required to obtain or ensure access to the beneficial ownership information on the express trusts that they manage.
International Co-operation		
35. Conventions	PC	<ul style="list-style-type: none"> • Mongolia is not yet a party to or implemented the elements of the Palermo Convention. • Not all the terms of the Vienna Convention and the Terrorist Financing Convention have been fully implemented
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • Statistics MLA are not detailed enough to confirm effectiveness.
37. Dual criminality	LC	<ul style="list-style-type: none"> • While requests from China and South Korea for extradition have been acceded to, there are concerns

		that those that do not offer dual criminality will not be entertained.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> Mongolia has not given any consideration to establishing an asset forfeiture fund or sharing of confiscated assets with the requesting state.
39. Extradition	LC	<ul style="list-style-type: none"> While requests have been received and acceded to, statistics cannot confirm effectiveness and those that are not of dual criminality will not be entertained.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> There are not established controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner. Statistics on mutual cooperation are limited.
Nine Special Recommendations	Rating	
SR.1 Implement UN instruments	NC	<ul style="list-style-type: none"> Not all the terms of the Terrorist Financing Convention have been fully implemented Mongolia has not yet fully implemented the UNSCR 1267 & 1373.
SR.II Criminalise terrorist financing	NC	<ul style="list-style-type: none"> FT has not yet been criminalised
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> Mongolia does not have effective laws and procedures to freeze terrorist funds or other assets of entities designated under UNSCR 1267. Mongolia does not have effective laws or procedures to implement UNSCR 1373
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> there is no obligation to make an STR where there are reasonable grounds to suspect that funds are related to terrorism or FT
SR.V International co-operation	PC	<ul style="list-style-type: none"> The absence of a FT offence could limit the possibility of mutual legal assistance requests for search, seizure, confiscation and extradition.
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> While NBFIs remittance providers exist outside banking providers, there is little evidence of AML/CFT implementation with the regulated NBFIs sector; No guidance has been provided to money value transfer providers to support their compliance with obligations under the CMLTF money value transfer service operators are not required to maintain a current list of its agents There appears to be a very significant sector of informal remittance which is not yet included under AML/CFT regulated channels.
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> There is no requirement for ordering financial institutions to obtain and maintain information relating to the originator of wire transfers, to verify the identity of the originator, and to include full originator information in the message or payment form accompanying cross-border wire transfers.

		<ul style="list-style-type: none"> • There is no requirement for intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers. • There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • No domestic NPO sector review • No outreach to the sector on AML/CFT • Registration requirements do not include obligations to record the details of person who own, control or direct NPOs; • Sanctions available to competent authorities in cases of breaches of controls over NPOs are ineffective.
SR. IX Cash couriers	PC	<ul style="list-style-type: none"> • Bearer negotiable instruments are inadequately covered in the declaration system • no mechanism to ascertain origin of the currency and its intended use • There is no procedure in place to ensure that the FIU is notified on suspicious cross-border transport of currency • Sanctions available for false declaration are inadequate.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • Amend the Criminal Code to widen the ML offence to bring it into compliance with the international standards. • Consider including tax offences as predicate offences for ML. • Extend criminal liability to legal persons for ML. • Ensure civil or administrative liability applies to legal persons. • Ensure effective and proportionate sanctions are available for legal persons. • provide training and support information sharing for law enforcement, prosecutors and judges on the concept of ML, the modus operandi of ML and the legal application of the law on ML.
Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • As a priority, adopt the offence of FT in keeping with the requirements of the offence as set out in the UN Convention on the Suppression of Terrorist Financing. • Provide additional training for judges, prosecutors, law enforcement agencies, FIU on the understanding of the offence of FT and CFT measures.
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • Mongolia could consider passing a Law on Proceeds of Crime to consolidate the law and procedures on seizure, freezing and confiscation of proceeds of ML, FT and other predicate offences. This will be an improvement on the existing provisions in Criminal Code and the Criminal Procedure Code which are too general. • The confiscation action should include proceeds of, instrumentalities used in or intended to be used in the commission of, any ML, FT or other predicate offences. • The confiscation action should also set out clearly that it applies to profits, income or other benefits generated from the proceeds of crime as well as property of corresponding value. • There should be clear mechanism on the freezing of the assets, such as the application has to be ex parte and that the management of the assets can be by receivers if the assets are of different varieties such as cash, real property, stock and shares, foreign currencies, insurance policies, jewelleries, antiques etc. • There should be rules and procedures on the rights of those persons affected by the freezing order and the confiscation order. • There should be a mechanism whereby fraudulent or void transactions designed to hide or dissipate assets to defeat the freezing and confiscation actions may be voided or ignored by the authorities for this purpose.

	<ul style="list-style-type: none"> • The civil forfeiture regime should be set out clearly
Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • Mongolia should establish clear legal provisions and procedures to freeze terrorist funds or other assets of persons designated in the list pursuant to UNSCR 1267. • The freezing action should be ex parte and without delay. • Mongolia should have effective laws and procedures to freeze terrorist funds or other assets of person designated pursuant to UNSCR 1373. • The said freezing pursuant to UNSCR 1373 should be ex parte and without delay. • Mongolia should have effective laws and procedures to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions. • The freezing actions should extend to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisation. • Mongolia should have effective systems for communicating actions taken under the freezing mechanisms to the financial sector. • Mongolia should provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. • Mongolia should have effectively and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed person or entities. • Mongolia should have effective and publicly-known procedures for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. • There should be clear provisions for persons or entities affected by the freezing actions to obtain relief. • There should be procedures for persons or entities whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Amend the CMLTF to clearly outline the FIU's authority disseminate information to investigation authorities in any case where the FIU suspects ML or FT. • The FIU should issue an STR reporting form as a matter of priority and detailed guidance to reporting institutions to elaborate the procedures for reporting STRs. • The FIU should issue additional guidance to reporting entities on

	<p>monitoring accounts and identifying suspicious transactions.</p> <ul style="list-style-type: none"> • The FIU should settle the procedure for dissemination in consultation with the Prosecutors' Office. • the Governor of the Bank of Mongolia should approve the procedures for maintaining the FIU database of STRs and CTRs. • Support mechanisms for the FIU to access information with other agencies (police, GIA, FRC etc) and with foreign partners. • Establish a procedure for the FIU to monitor accounts suspected of being related to ML or FT (Article 10 of CMLTF). • Establish a procedure and protocol for the exercise of the powers outlined in Article 7.4 of the CMLTF. • Consider extending the time available under Article 11 to suspend a transaction while the FIU collects information to consider whether reported information is linked to ML or FT. • Additional staff should be seconded to the FIU, from regulatory and law enforcement agencies to support the work of this important new agency.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • Appropriate law enforcement agencies should be designated to investigate the new offences of ML and FT once the Criminal Code is amended. • Law enforcement agencies should consider establishing specialist AML investigation units to conduct investigation of ML offences. • Coordinated training should be arranged for enforcement and prosecution agencies on investigation and prosecution of ML/FT offences. • Comprehensive statistics should be maintained on matters relevant to ML and FT so as to ensure the a review of effectiveness can be done. • FIU and law enforcement agencies and all competent authorities in combating ML and FT should be sufficiently funded, staffed and adequately structured so as to ensure operational independence and that they are able to perform their functions effectively.
Cross-border declaration or disclosure (SR.IX)	<ul style="list-style-type: none"> • Customs, border agencies and the FIU should coordinate efforts to implement an effective cross-border declaration and detection system that allows information to flow freely between border agencies and the FIU and that support investigation of suspicious cross-border movement of cash and bearer negotiable instruments. • An effective mechanism should be established to allow the FIU to have direct access to data arising from currency declarations. • Effective and dissuasive sanctions should be made available to competent authorities (Customs) in cases of false or non-declaration of cross-border movement of currency. • There should be mechanism set up to allow suspicious cross-border currency transportation incidents to be investigated by

	<p>competent authorities in relation to the origin of currency and its intended use.</p> <ul style="list-style-type: none"> • Cross-border transportation of precious metals or stones should be declared with information made available to the FIU. • A mechanism to maintain comprehensive statistics on cross-border transportation of currency should be established. • Customs and the Border Patrol Department should establish relationships to enhance coordination with other enforcement agencies (domestic and foreign) for intelligence sharing and cooperation on cross-border transportation reports.
3. Preventive Measures – Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • It is recommended that the Law on CMLTF be amended to: <ul style="list-style-type: none"> •refer specifically to “carrying out occasional transactions that are wire transfers” as a case where the reporting entities must undertake customer due diligence (CDD) measures as required by the FATF standards. •require the reporting entities explicitly both to identify the customer and verify that customer’s identity as required by the FATF standards. •oblige the reporting entities to verify that any person purporting to act on behalf of the legal entity is so authorized, and identify and verify the identity of that person as required by the FATF standards. •specify what kind of relevant information or data the reporting entities must obtain from which reliable source(s) such that the reporting entities are satisfied that they know who the beneficial owner is, in relation to the current legal requirement imposed under Article 5.2.3 of the Law to obtain information on beneficiaries of transactions. •impose an explicit legal duty on the reporting entities to determine for all customers whether each customer is acting on behalf of another person, and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person. •lay it down that, in case where a customer is a legal entity, the reporting entities must take reasonable steps to determine who are the natural persons that ultimately own or control the customer. •obligate the reporting entities to keep documents, data or information collected in the CDD process up-to-date and relevant by undertaking reviews of existing records. •verify the identity of the customer or beneficial owner “before or during” the course of establishing a business relationship or conducting transactions for occasional customers. •consider making a suspicious transaction report if a customer refuses to provide his or her identification data, as a next obligatory step that the reporting entities must take after refusing the customer’s request to open an account, to conduct a transaction,

	<p>or to provide other financial services as currently being required under Article 5.3 of the Law on CMLTF.</p> <ul style="list-style-type: none"> • terminate business relationship and consider making suspicious transaction report on those customers which refuse to provide further details on or updated version of their identification data in case where the reporting entities have already commenced a business relationship but have later developed doubts about the veracity or adequacy of previously obtained customer information data. • The Law on CMLTF be amended to expand the current definition of PEPs beyond a public official or a political party leader from a country listed by the Bank of Mongolia as having no financial monitoring mechanism to combat ML and terrorism financing to cover all the individuals defined as PEPs in the FATF Glossary. • The Bank of Mongolia and other supervisors issue detailed regulations that would require the reporting entities to put in place appropriate risk management systems to determine a PEP, to obtain senior management approval for establishing business relationships with a PEP, to take reasonable measures to establish the source of wealth or funds of a PEP, and to conduct enhanced ongoing monitoring on any business relationship with a PEP. • The reporting entities be required to take enhanced measures in relation to cross-border correspondent banking and other similar relationship in addition to performing normal CDD measures. • The Bank of Mongolia and other supervisors issue detailed regulations on what kind of enhanced measures the reporting entities must take, such as gathering information about a respondent institution's business and reputation, assessing the respondent institution's AML/CFT controls, necessitating senior management approval before establishing relationships, and documenting the respective responsibilities of the reporting entity and its respondent institution. • The reporting entities be required to have policies and procedures in place to prevent the misuse of technological developments in ML or FT schemes and to address any specific risks associated with non-face to face business relationships or transactions. • The Bank of Mongolia and other supervisors issue detailed regulations on what specific CDD procedures must be applied to non-face to face customers.
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • The reporting entities to immediately obtain from the notaries they relied on pertinent information on the notaries' customer identification and verification process including policies and procedures to determine the beneficiaries of the customers' transactions, etc. as recommended by the FATF standards. • The Law on CMLTF be amended to make it clear that the reporting entities have to undertake the two procedures: i.e. identification and verification of the customer information, and that the ultimate responsibility for these procedures remain with the reporting

	entities relying on notaries.
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • Mongolia should ensure that regulatory powers are able to be used to override secrecy provisions
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • The Bank of Mongolia and other supervisors prescribe what specific items or components of the customers' transactions have to be retained, whereby such documented information by the reporting entities would be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • The reporting entities be required specifically by law to maintain the records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship. • The reporting entities be required to keep all customer and transaction records and information available on a timely basis to domestic competent authorities upon appropriate authority. This requirement of the reporting entities' providing information on specific transactions and their participants could be specifically set down in the procedure to be adopted under Article 7.4 of the Law on CMLTF by the Governor of the Bank of Mongolia and the Prosecutor General. • Require ordering financial institutions to obtain and maintain information relating to the originator of wire transfers. • Issue detailed interpretative note or supervisory guidelines on what specific information would have to be obtained by the reporting entities as "information about people who made wire transfers" pursuant to Article 5.2 of the Law on CMLTF. Such information must include the full set of the originator information (such as name, address and account number) as defined by Special Recommendation VII particularly if the originator of a wire transfer is not the customer him or herself of that ordering financial institution. • Require ordering financial institutions to verify the identity of the originator for all wire transfers. • Require ordering financial institutions to include full originator information in the message or payment form accompanying cross-border wire transfers. • Require intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers, or to keep a record of that information for five years if there are technical limitations to transmit any of it. • Require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. These procedures must include assessment of whether a wire transfer or related transactions without complete originator information are

	<p>suspicious enough to be reported to the Financial Information Service, and whether the beneficiary financial institutions should restrict or even terminate their business relationship with financial institutions that fail to meet the SR.VII standards.</p> <ul style="list-style-type: none"> • Put measures in place to effectively monitor the compliance of ordering, intermediary or beneficiary financial institutions with the above requirements to be set down, and establish sanction mechanisms against non-compliance.
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • It is recommended that the Bank of Mongolia and other supervisors issue regulations to impose on the reporting entities a duty to: • set forth in writing their findings on the background and purpose of those transactions subject to special monitoring under Article 6.1 of the Law on CMLTF, besides taking measures to obtain additional information or explanation of the transactions as required under Article 6.2 of the Law, and • keep such findings available for competent authorities for at least five years. • Require the reporting entities to keep available in writing any findings obtained from additional information or explanation of those transactions made via countries listed by the Bank of Mongolia as having no financial monitoring mechanism to combat ML and terrorism financing so as to assist competent authorities; and • Issue regulations to set down what kind of counter-measures may be taken to those countries which continue to be on the list prepared by the Bank of Mongolia.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> • As a matter of priority, Mongolia should amend the Law on CMLTF or issue a law or regulation to clarify the suspicious transaction reporting obligation to ensure that: <ul style="list-style-type: none"> • all reporting institutions are required to report to the FIU when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. • All suspicious transactions, including attempted transactions, should be reported • STRs should be made regardless of the amount of the transaction or whether the transaction involves cash (no threshold). • The obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. • Article 5.1.6 of the CMLTF should be amended to oblige reporting institutions to pay particular attention to in case there are other grounds to view that a particular customer or a particular transaction is linked to ML and terrorism financing and to file an STR in relation to those circumstances.

	<ul style="list-style-type: none"> • The threshold cash transaction reporting (CTRs) obligations should be clarified to ensure that there is no confusion between the CTR and STR obligation. • Article 12 of the CMLTF should be amended to provide 'safe harbour' for the directors, officers and employees of the financial institutions are adequately protected from criminal and civil liability if they report STRs in good faith. • Regulations should be enacted to ensure the names and personal details of staff financial institutions that make STRs are kept confidential by the FIU. • Mongolia should consider lowering the threshold for cash transaction reporting to a figure of approximately 10 million MNT. • The FIU should establish a database for receiving and analysing large cash transactions and to ensure the safe custody and use of such information. • The CMLTF should be amended to allow the FIU to issue regulations to support implementation of the CMLTF. • Competent authorities should provide financial institutions with guidance or appropriate feedback in relation to reporting suspicious transactions.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Specify what kind of elements must be incorporated in the internal monitoring program that each reporting entity has to develop and implement under the law, such as CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation, as well as authorization for compliance officers to have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • Impose on the reporting entities a duty to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the policies, rules and procedures set out under their internal monitoring programs. • Require the reporting entities to establish ongoing employee training to ensure that their employees be kept informed of new developments, including information on current ML and FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. • Oblige the reporting entities to put in place screening procedures to ensure high standards when hiring employees. • the Bank of Mongolia and other supervisors issue regulations should impose on the reporting entities a duty to have their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit; and inform the supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures

	because this is prohibited by local (i.e. host country) laws, regulations or other measures.
Shell banks (R.18)	<ul style="list-style-type: none"> Clearly oblige financial institutions to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by a shell bank.
<p>The supervisory and oversight system - competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions)</p> <p>(R. 23, 30, 29, 17, 32, & 25).</p>	<ul style="list-style-type: none"> the Law on CMLTF be amended to give the FIU greater power to apply persuasive administrative sanctions against, inter alia, those cases where the reporting entities have broken legal requirements to submit suspicious or currency transaction reports or to keep records on customers' transactions. the FIU should set down detailed rules on how reporting entities should rectify any breaches found against the Law on CMLTF and how it may make recommendations to the competent authorities for further action including the cancellation of special licenses pursuant to the authorities given under Article 17.2 of the law. the Bank of Mongolia, as the national bank supervisor, should start its first round of an AML/CFT focused on-site examination toward banks as soon as possible. This type of examination could be done either on a stand-alone basis or as part of a comprehensive safety and soundness examination program. On-site examination manuals should be developed and implemented, based upon which examiners could identify efficiently weaknesses in banks' AML/CFT risk management policies and procedures, and advise them effectively on how to address such weaknesses. The FRC, as the NBFIs supervisor, should start its first round of AML/CFT focused on-site examinations towards NBFIs as soon as possible. This type of examination could initially be done on the basis of risk profiling to specific sectors which the authorities deem to be at higher risk for AML/CFT. the FIU should coordinate with the other supervisors including the FRC and the Bank of Mongolia about its on-site examination schedules and programs, so that maximum results would be obtained on an ongoing basis in the course of monitoring the reporting entities' compliance with the AML/CFT rules and procedures. the Bank of Mongolia, the FRC and other supervisors should issue detailed guidelines to assist banks, NBFIs and other reporting entities to report suspicious transactions efficiently and effectively by exemplifying what kind of specific transactions could be those which must be submitted to the FIS including an explanation of the latest ML and FT techniques and methods being used by criminals; and developing in-house training programs to educate their directors and employees with the recent developments of the national AML/CFT regulations as well as additional measures that these institutions should take to ensure that their internal AML/CFT measures are effective.

	<ul style="list-style-type: none"> • The FRC should take steps to implement its powers to examine NBFIs under its supervision. • The FIU be staffed with more inspectors so as to be able to discharge fully the roles and responsibilities given under the Law on CMLTF. • The FRC be staffed with more inspectors to be able to discharge full the roles of supervision of NBFIs, including their compliance with AML/CFT obligations issued by the FRC and the FIU. • The Bank of Mongolia and other supervisors provide their staff involved in AML/CFT issues with adequate and relevant training for combating ML and FT. • It is recommended that the FIU, Bank of Mongolia, FRC and other supervisors develop and keep available relevant statistics on AML/CFT focused on-site examinations as well as sanctions against non-compliance with AML/CFT requirements so that the effectiveness of their AML/CFT systems could be reviewed on a regular basis.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • There is a need to encourage the movement of remittance activity into formal regulated channels by supporting low cost, fast regulated remittance business in Mongolia. • There is a need for the FRC and FIU to work with NBFi remittance industry representatives to design and issue guidance or directions to the NBFi remittance providers in relation to their obligations under the law on CMLTF and to raise awareness of ML and FT risks. • The FRC should conduct inspections of licensed NBFi remittance providers on a risk-targeted basis to understand the compliance with AML/CFT obligations in the sector. • The FRC, Bank of Mongolia and other authorities should work with the remittance sector and competent authorities in relevant countries to support licensed low-cost remittance channels that are subject to AML/CFT controls.
4. Preventive Measures – Non-Financial Businesses and Professions	
DNFBPs	<ul style="list-style-type: none"> • DNFBPs should be brought into the framework of the CMLTF Law • Special attention should be paid to regulating lawyers, notaries, the emerging real estate sector and gold dealers. • DNFBP regulatory and supervisory agencies should work with professional bodies and self-regulatory organisations to design specific AML/CFT controls that compliment current controls in the various DNFBP sectors.
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • DNFBPs should be educated on the AML/CFT risks in their sector and be provided guidance on how they can protect against/combat these risks. • DNFBP regulatory and supervisory organizations should be provided with the tools to support effective AML/CFT

	implementation as per the FATF Recommendations.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> The CMLTF law be amended to oblige DNFBPs to report suspicious transaction reports.
Regulation, supervision and monitoring (R. 24-25)	<ul style="list-style-type: none"> DNFBPs are brought into the framework of the CMLTF Law Special attention is paid to regulating lawyers, notaries, the emerging real estate sector and dealers in precious metals. The powers for the FIU, FRC and other competent authorities to supervise and monitor for AML/CFT compliance should be extended to cover the full range of DNFBPs operating in Mongolia.
Other Non-Financial Businesses And Professions – Modern Secure Transaction Techniques (R.20)	<ul style="list-style-type: none"> Mongolia may consider extending AML/CFT obligations to businesses that deal with antiquities or fossils.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> Mongolia should implement measures to ensure enhanced transparency for the registration of legal persons, including requiring public disclosure of those directing, managing and controlling companies, including beneficial owners of legal persons. The requirement on companies to maintain a share register should be extended to include an obligation to maintain accurate information on beneficial ownership, which be made available to competent authorities, including the FIU, in a timely fashion. Authorities should ensure that persuasive sanctions are available to address delayed or failure to notify the State Register of any changes to as those set out in Article 11.3 & 11.4 of the Law on State Registration of Legal Persons.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> Authorities should impose an explicit legal duty on the NBFIs providing trust services to take reasonable steps to obtain sufficient identification data to verify the identity of the settlors, trustees and beneficiaries.
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> As a matter of priority Mongolia should conduct a review of its NPO sector and should utilise the finding of such a review to assist the preparation of the draft law on NPOs to ensure that targeted AML/CFT measures can be effectively designed and implemented to enhance good governance of the sector. Authorities should provide additional resources to undertake outreach and awareness raising to the NPO sector on best practices to support good governance and to address ML and FT risks in the sector. Such outreach should be done in consultation with a range of competent authorities and NPO sector representatives, including the supervising Ministry, the FIU and other authorities. Statutory requirements should be introduced to address enhanced

	<p>transparency, improved AML/CFT measures and enhanced powers of competent authorities, including:</p> <ul style="list-style-type: none"> ▪ prompt reporting of information on the identity of persons who own, control or direct NPOs' activities; ▪ Increased transparency of collection and expenditure of funds for those NPOs which account for a significant portion of the financial resources under control of the sector; ▪ enhanced requirements for oversight and monitoring in addition to registration; ▪ appropriate measures to sanction violations of oversight measures or rules by NPOs or those acting on behalf of NPOs; ▪ clarification of the role of competent authorities to cooperate with equivalent foreign parties in relation to NPOs and FT. <ul style="list-style-type: none"> • There is a need for additional resources to be made available to ensure effective oversight of the NPO sector, including awareness raising, training to the sector and targeted monitoring of NPOs for compliance with record keeping and reporting obligations as well as identifying cases of abuse of NPOs. • Steps should be taken to further support domestic cooperation between relevant competent authorities in relation to implementing SR VIII, in particular the Ministry of Justice and Home Affairs, the State Registry Agency, the FIU, the Police and the GIA.
6. National and International Co-operation	
National co-operation and coordination (R.31)	<ul style="list-style-type: none"> • Ensure support for and the effective operation of the Cooperation Council as provided for in Article 20 of the CMLTF Law. Ensure adequate resources are made available to the FIU to support the work of the Cooperation Council. • Ensure that the new Anti-Corruption Committee is included in cooperative AML/CFT efforts. • Ensure that the Ministry of Foreign Affairs, the FIU and others are included on the Counter Terrorism Committee to address CFT considerations. • Establish a coordination mechanism under the National Coordinative Council to support effective action to implement Mongolia's obligations under UNSCR 1267 and UNSCR 1373.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Mongolia should become a party to and fully implement the Palermo Convention as soon as possible. • Measures should be taken to fully implement the Vienna Convention and the International Convention for the Suppression of the Financing of Terrorism as well as UN SCR 1267 and 1373
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> • Mongolia should consider setting up an asset forfeiture fund for law enforcement, health, education or other appropriate purposes so that assets forfeited will be able to provide a useful purpose for Mongolia.

	<ul style="list-style-type: none"> • It is hoped that Mongolia can provide more detail statistics on the various nature of mutual legal assistance provided, the requesting states; the requests Mongolia has acceded to and the requests refused and grounds of refusal. • Mongolia should retain statistics on the nature of requests made, requested states and the number of requests carried out by the foreign states and the number of requests refused by the foreign states.
Extradition (R.32, 37 & 39, & SR.V)	<ul style="list-style-type: none"> • The 30-day period available under the Criminal Procedure Code should be amended to a longer period of time, such as 60 days, so that there will be sufficient time for the rules and procedures and other formalities be complied with for extradition. • Mongolia should retain accurate statistics in relation to extradition, including requests made and received, consideration given to requests received, and actions taken pursuant to any requests for extradition.
Other Forms of Co-operation (R.32 & 40, & SR.V)	<ul style="list-style-type: none"> • Mongolia should establish controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner. • Mongolia should retain accurate statistics in relation to other forms of international cooperation, including FT.

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION

Statement by Mongolia during discussion of the Mutual Evaluation Report of Mongolia at the APG Annual Meeting in Perth, Australia,

24 July 2007

Dear Co-Chairs,
Distinguished Ladies and Gentlemen,

First of all, I would like to express my sincere thanks to APG, its member countries, observers, multilateral organizations and institutions for their assistance and support of Mongolia's effort to establish anti money laundering and combating terrorist financing system. It's my great honor to speak on behalf of Mongolia and present my country in this important event.

The Mutual evaluation report of Mongolia which is presented here today reflects accurately the basic situation of Mongolia's AML/CFT regime. This report is of utmost importance for Mongolia as it is the document where Mongolia can call upon peer countries and multilateral institutions to tighten cooperation in the areas of AML/CFT. The report fully demonstrates our legal, economic situation not only in relation to AML/CFT but other areas too. We truly appreciate APG secretariat and specialists involved in this report for doing an incredible amount of work in order to put this report together and present here today to our esteemed colleagues.

We saw the ratings related to Mongolia's AML/CFT regime in this report and we fully acknowledge what is in this report. Being assessed by peer countries gives us an opportunity to realize where we are and how we are doing now. It also gives us directions to change things in the future.

After reading the report we noticed that Mongolia is falling short in areas such as criminalization of terrorism financing and money laundering, receiving STR and CTRs, issuing KYC and CDD requirements for reporting institutions and implementing UN resolutions on suppressing terrorism financing. We fully admit these shortcomings that we are facing today. However, I am pleased to inform you that the progresses have already been made to address these issues. Regulations on KYC, CDD for banks and filing STRs and CTRs to FIU were approved by the Bank of Mongolia right before our departure to Perth. Amendment to Mongolian Criminal Code and Criminal procedure code, by which terrorism financing and money laundering should be criminalized is well underway at the Parliament session for discussion. We can assure you that the basic principles and prerequisites to tackle with these shortcomings are already in place.

Mongolia adopted the AML/CFT law on July 8, 2006 and our Financial Intelligence Unit, known as the Financial Information Unit of Mongolia was established in November 30, 2006 within the Central Bank of Mongolia. Since its establishment, the FIU of Mongolia has made some significant steps toward better organization in its work. Four internal procedures and two bank regulations have been developed. It is expected to receive first STRs and CTRs before August this year. Keeping the circumstances in mind the specific to Mongolia, either political or economical, our FIU is following carefully to design its work in order to establish an FIU of high standard.

In order to meet international standards in the areas of AML/CFT, particularly FATF 40 + 9 recommendations, we need to have a deep political and personal commitment as it will serve the rights of Mongolian citizens and foreign investors, partners and clients interested to cooperate with Mongolia.

The coordination of activities of all regulatory and supervisory bodies for the purpose of implementing the AML/CFT law is of crucial significance. The Bank of Mongolia's supervision department, where the primary function is to supervise and set the standards for banks in order to protect the rights of depositors has been actively involved in AML/CFT effort. In January 2006 the Financial Regulatory Commission was established to regulate and supervise non-bank financial institutions. As a chairman of the Commission I also would like assure you that Financial Regulatory Commission will be committed to fight with ML/TF.

I am proud to announce that the Bank of Mongolia and Financial Regulatory Commission are ready to assist FIU, specifically in the areas of AML/CFT.

Mongolia has been striving to open market economy and democracy since 1990. There have a lot that have been achieved and lot that are missed too. But, in general we have already seen the signs of improvements and development.

The concept of money laundering and terrorism, terrorist financing is absolutely new to Mongolia. Because of that, public is a bit hesitant to quickly accept the importance of fighting with money laundering and terrorist financing which made it more difficult to move forward in order to establish the efficient system in a short period of time. Hence, information and awareness programs are going to be priority for Mongolian FIU, BoM and FRC in the next coming months. Without having them understand this concept, it will be very difficult to reach our goal. Comprehensive and technologically advanced customer registration, identification and monitoring systems and efficient use of these systems will help improve our AML/CFT regime.

We are learning, researching a lot from other countries' experiences as well as employing Mongolia's own experiences in fighting with major crimes. We admit that Mongolia is vulnerable toward money laundering and terrorism financing. Fraud, corruption and smuggling are major predicate crime types that occur in Mongolia.

Finally, I'd like to declare that we'll take necessary actions to improve AML/CFT regime and fight with ML/CFT in Mongolia.

Mr. D.Bayarsaikhan
Chairman of Financial Regulatory Commission of Mongolia (FRC)

9 ANNEXES

ANNEX 1: LIST OF ABBREVIATIONS

AML/CFT	Anti-Money Laundering and Counter Financing of Terrorism
BoM	Bank of Mongolia
CDD	Customer Due Diligence
CMLTF	Law on Combating Money Laundering and Terrorist Financing
CTR	Cash Transaction Report
DNFBPs	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force on Money Laundering
FIU	Financial Intelligence Unit
FRC	Financial Regulatory Commission
GDP	Gross Domestic Product
GIA	The General Intelligence Agency
KYC	Know Your Customer
MCN	Mongolian Chamber of Notaries
MFA	Ministry of Foreign Affairs
ML	Money Laundering
MLA	Mutual Legal Assistance
MNT	Mongolian Togrog (national currency)
NBFI	Non-bank financial institutions
NPOs	Non-profit Organisation
SCC	Savings and Credit Cooperatives
SRO	Self-Regulatory Organisation
STR	Suspicious Transaction Report
TF	Terrorist Financing
UN SCR	United National Security Council Resolution

**ANNEX 2: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION -
MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE
SECTOR REPRESENTATIVES AND OTHERS.**

Bank of Mongolia
Mongolian Parliament Secretariat
State Secretary of Ministry of Finance
FIU, Bank of Mongolia
Ministry of Foreign Affairs
Advisor of President of Mongolia
Financial Regulatory Committee (FRC)
Ministry of Finance
Ministry of Justice and Internal Affairs
State General Prosecutors Office
General Authority for Border Protection
General Police Department
General Customs Office
General Department of National Taxation
Mongolian Association of Banks
Mongol Post Bank
Credit Mongol (NBFi)
Khaan Bank
Anti-terrorism counsel
Intelligence Agency
The Mongolian Chamber of Notaries
The Mongolian professional accountants union
Mongolian Bank Training Center
Advisor of the President of Mongolia

ANNEX 3: COPIES OF KEY LAWS, REGULATIONS AND OTHER MEASURES

LAW OF MONGOLIA

8 July 2006

Ulaanbaatar City

ON COMBATING MONEY LAUNDERING AND TERRORISM FINANCING

CHAPTER ONE

General provisions

Article 1. Purpose of the Law

- 1.1. The purpose of this Law is to combat and prevent money laundering and terrorism financing.

Article 2. Legislation

- 2.1. The law on combating money laundering and terrorism financing shall consist of the Constitution of Mongolia, the Criminal Code, this Law and other legal acts adopted in conformity with these laws.
- 2.2. If an international treaty to which Mongolia is a party is inconsistent with this Law then the provisions of the international treaty shall prevail.

Article 3. Definitions of terms

- 3.1. The meaning of the following terms used in this Law shall be as follows:
 - 3.1.1. “**money laundering**” means to conduct a transaction that involves assets, knowing that they were obtained by illegal means, in order to legalize the right to possess, use or dispose of these assets and to conceal the sources of these assets.
 - 3.1.2. “**terrorism financing**” means to accumulate, transfer or use assets in any form knowing that these assets are intended to be used for terrorism financing.
 - 3.1.3. “**reporting entity**” refers to the natural or legal persons, described in Article 4 of this Law.

- 3.1.4. “**assets derived from illegal activities**” means assets derived from committing less grave, grave and exceptionally grave offences other than those described in Article 166 of the Criminal Code.
- 3.1.5. “**suspicious transaction**” means a transaction that involves funds with no clear source or recipient or a transaction that is conducted via a country that does not have a financial monitoring mechanism to combat money laundering and terrorism financing or a transaction that is suspected of money laundering and terrorism financing.
- 3.1.6. “**cash transaction**” means a transaction involving local and foreign currency as well as checks, bills and securities widely used in international settlement.
- 3.1.7. “**suspension of transaction**” means to suspend a transaction to enable the FIS to determine if the transaction is related to money laundering or terrorist financing.
- 3.2. The Governor of the Bank of Mongolia shall, pursuant to Provision 3.1.5 of this Law, prepare a list of countries, that do not have a financial monitoring mechanism to combat money laundering and terrorism financing,.

CHAPTER TWO

Preventive measures

Article 4. Reporting entities

- 4.1. The following natural or legal persons, (Reporting Entities), shall report to the Financial Information Service on transactions described in Article 7 of this Law.
- 4.1.1. banks;
 - 4.1.2. non-bank financial institutions;
 - 4.1.3. insurance companies;
 - 4.1.4. licensed securities market entities ;
 - 4.1.5. natural or legal persons conducting pawnbroker activities;
 - 4.1.6. savings and credit cooperatives;
 - 4.1.7. natural or legal persons conducting foreign currency exchange activities;
 - 4.1.8. Natural or legal persons conducting gambling activities.

- 4.2. The natural or legal persons, other than those described in Article 4.1 of this Law, may report to the Financial Intelligence Unit any transactions that they suspect of money laundering or terrorism financing or any cash transactions of 20 million togrogs (or equivalent foreign currency) or above.
- 4.3. Reporting entities shall not open an anonymous or numbered account or an account in fictitious names, or make a transaction from or to such accounts, or use closed accounts.

Article 5. Examination of information on customers

- 5.1. Reporting entities shall obtain customer information in the following cases:
 - 5.1.1. prior to providing a financial service;
 - 5.1.2. prior to conducting a transaction equal to or more than 20 million togrogs (or equivalent foreign currency);
 - 5.1.3. if the total sum of several inter-related transactions is 20 million togrogs (or equivalent foreign currency) or above, the individual value of any of these transactions is less than the threshold specified in Article 5.1.2, and there is a ground to suspect that the transactions are conducted with the intent to avoid the reporting requirement of Provision 5.2 of this Law.
 - 5.1.4. if there is a need to verify the accuracy of previously obtained information on customers;
 - 5.1.5. prior to conducting an international settlement transaction;
 - 5.1.6. if there are other grounds to suspect that the customer or the transaction is involved with money laundering or terrorism financing;
- 5.2. Reporting entities shall obtain the following information from their customers:
 - 5.2.1. if the customer is an individual, his or her father's or mother's name, given name, registration number, residential address, contact phone number, and a notarized copy of citizen's identity card;
 - 5.2.2. if the customer is a legal entity, name of the entity, its address, national registration and tax payer number, contact phone number, a notarized copy of its national registration certificate, and detailed information on its management;
 - 5.2.3. information on purposes and beneficiaries of transactions;

- 5.2.4. information about people who made wire transfers.
- 5.3. If a customer refuses to provide the information provided for in Article 5.2 of this Law reporting entities shall be obliged to refuse to open an account, to conduct a transaction, or to provide other financial services.
- 5.4. Reporting entities Law shall update, within one year, the information on all customers with whom it had established financial relationships prior to the adoption of this Law in conformity with the requirements of Article 5.2 of this Law.

Article 6. Transactions of special monitoring

- 6.1. Reporting entities shall undertake special monitoring of the following transactions:
 - 6.1.1. transactions equal to or more than 20 million togrogs (or equivalent foreign currency);
 - 6.1.2. transactions with no clear purpose;
 - 6.1.3. transactions made via countries listed pursuant to Provision 3.2 of this Law;
 - 6.1.4. transactions that have no adequate information on the entity or the individual who undertook or who had someone undertake a wire transfer;
 - 6.1.5. transactions conducted in the name of a public official or a political party leader from a country listed country pursuant to Provision 3.2 of this Law.
 - 6.1.6. transactions that are different from the customer's previous transactions and that have no clear purposes;
- 6.2. Reporting entities shall undertake all possible measures, to obtain additional information or an explanation of the transactions described in Article 6.1 of this Law.

Article 7. Reporting on suspicious transactions

- 7.1. Reporting entities shall report to the Financial Information Service on cash transactions pursuant to Articles 5.1.2, 5.1.3 and 5.1.5 of this Law.
- 7.2. The relevant information together with its documentation shall be submitted to the Financial Information Service in the prescribed form within 7 working days

after conducting a transaction described in Provision 7.1 of this Law or within 24 hours if there is a ground to suspect that the transaction involved has the intent of money laundering or terrorism financing.

7.3. Reporting entities shall deliver the information to the Financial Information Service by fax, in electronic form or in writing and it should be confirmed immediately by fax or in writing if the information was delivered by phone.

7.4. If the authorities make a written request to a reporting entity, it shall provide information to them on specific transactions and their participants in accordance with the procedure jointly adopted by the Governor of the Bank of Mongolia and the Prosecutor – General on providing information.

Article 8. Retaining the information and documentation on customers

8.1. Reporting entities shall retain, for not less than 5 years, information and documentation on customers' transactions and closed accounts.

Article 9. Information on suspicious transactions

9.1. The following information on suspicious transactions shall be submitted to the Financial Information Service:

- 9.1.1. name and addresses of the reporting entity and the identity of the officials who submitted the information;
- 9.1.2. information on customers and beneficiaries;
- 9.1.3. information on purpose, value, form, date, account number, account holder and participants of the transaction;
- 9.1.4. brief explanation of grounds and circumstances to suspect the transaction;
- 9.1.5. other related documents.

Article 10. Monitoring of accounts

10.1. If there are grounds to suspect that the account(s), mentioned in the reports from reporting entities, are being used for money laundering or terrorism financing, then the Financial Information Service may monitor the account(s).

Article 11. Suspension of transactions

- 11.1. If there are grounds to suspect that the transaction(s) has or will be made by clients for the purpose of money laundering or terrorism financing, then the Financial Information Service may decide to suspend the transactions.
- 11.2. A decision to suspend a transaction shall be delivered to the reporting entity in writing, or, if this is not possible, by phone and the written decision shall be delivered within 24 hours.
- 11.3. The suspension of a transaction shall not exceed three working days and the Financial Information Service shall undertake the following measures during this period:
 - 11.3.1. obtain necessary information from related local and foreign institutions;
 - 11.3.2. if the established facts are sufficient grounds to suspect that the given transaction(s) had the purpose of money laundering or terrorism financing, then it shall be reported to the relevant authorities and the related documents shall be sent to those parties for investigation;
 - 11.3.3. if it is established that the given transaction(s) did not have the purpose of money laundering or terrorism financing, then the suspension decision shall be annulled and the reporting entity shall be immediately informed.

Article 12. Relieving from liabilities

- 12.1. The provision of reports by reporting entities to the Financial Information Service and other relevant institutions, in accordance with provisions of this Law, shall not be considered as a breach of banking and professional confidentiality.
- 12.2. Notwithstanding that the transaction to which a report relates was established not to have the purpose of money laundering or terrorism financing, it is forbidden to impose administrative and criminal charges against the reporting entity.
- 12.3. Neither the Financial Information Service nor a reporting entity is liable for any damages arising from the suspension of a specific transaction, in accordance with Article 11 of this Law,

12.4. If damages are inflicted on a person or legal entity due to wrongful actions undertaken by a reporting entity, and in violation of this Law, then the damages issue shall be settled according to the Civil Code.

Article 13. Confidentiality of reports

13.1. Reporting entities and the Financial Information Service are prohibited from disclosing information on clients' transactions to any other person other than as provided for in Article 7.4 of this Law.

13.2. The Director and Inspectors of the Financial Information Service shall not disclose at any time confidential information related to transactions.

Article 14. Internal monitoring of reporting entities

14.1. Reporting entities shall develop and implement an internal monitoring program to combat money laundering and terrorism financing. The program shall contain the following:

14.1.1. Policies and procedures on detecting suspicious transactions, security and confidentiality of information, reporting and transfer of documents to the Financial Information Service and other relevant entities;

14.1.2. Rules and procedures for the appointment and discharge, of officers who will supervise and monitor the implementation of laws to combat money laundering and terrorism financing, specifying the powers and obligations of such staff and the implementation of the rules provided for in Article 14.1.1 of this Law.

14.1.3. Requirements for providing professional training for the staff provided for in Article 14.1.2 of this Law.

14.2. The program provided for in Article 14.1 of this Law shall be submitted for registration to the Financial Information Service.

14.3. Model rules for the purposes of Article 14.1.1 of this Law shall be approved by the Governor of Bank of Mongolia.

Article 15. Transportation of money across the borders of Mongolia

- 15.1. Travellers carrying between 5 and 20 million togrogs (or its equivalent in foreign currency in cash), across the Mongolian border shall declare truly the amount of cash in customs forms.
- 15.2. If a person crosses the Mongolian border carrying more than 20 million togrogs in cash (or the equivalent in foreign currency) he or she shall make a declaration to the authorized representative of the Financial Information Service in the prescribed form.
- 15.3. A person who evades or objects to making a declaration or makes a false declaration under Articles 15.1 or 15.2 of this Law shall be liable as provided for in the Law.
- 15.4. Declaration forms for the purposes of Article 15.2 shall be approved by the Governor of the Bank of Mongolia.

CHAPTER THREE

Financial Information Service

Article 16. Financial Information Service

- 16.1. The Financial Information Service, whose functions will be to implement laws to combat money laundering and terrorism financing, shall be established in the Bank of Mongolia.
- 16.2. The strategic plan and structure of the Financial Information Service shall be approved by the Governor of the Bank of Mongolia.
- 16.3. The Director of the Financial Information Service shall be appointed by the Governor of the Bank of Mongolia upon consultation with the Minister of Finance.
- 16.4. The Director and Inspectors of the Financial Information Service shall meet the following requirements:
- 16.4.1. have served in banking, financial or legal professions for not less than three years;
 - 16.4.2. have no overdue debts or liabilities;
 - 16.4.3. have no criminal record

Article 17. Functions of the Financial Information Service

- 17.1. The Financial Information Service shall have the following functions, in addition to those provided for in Articles 10, and 11 of this Law:
- 17.1.1. receive, collect and analyze information reported from reporting entities as well as information contained in data bases of relevant local and similar foreign institutions;
 - 17.1.2. using reports from authorized institutions compile database on suspicious and cash transactions;
 - 17.1.3. regularly report to the reporting entities and competent state institutions on measures taken by the FIS on the basis of reports on suspicious and cash transactions;
 - 17.1.4. develop, provide to and ensure the implementation by reporting entities of a methodology to monitor and detect suspicious transactions and examine information related to money laundering and terrorism financing;
 - 17.1.5. disseminate information and raise public awareness to combat and prevent money laundering and terrorism financing;
- 17.2. Inspectors of the Financial Information Service have the power to examine the implementation of the laws to combat money laundering and terrorism financing and to require rectification of any breaches of the Law by reporting entities, or to make recommendations to the competent authorities for further action including the cancellation of special licenses.
- 17.3. Financial Information Service shall monitor how reporting entities and their officers fulfil their obligations imposed by this Law.

Article 18. Database

- 18.1. Financial Information Service shall have a unified database of information compiled in accordance with the provisions of this Law.
- 18.2. Rules on storage and use of information in the database shall be approved by the Governor of the Bank of Mongolia.

Article 19. Cooperation with similar foreign institutions

- 19.1. Financial Information Service shall cooperate with foreign and international institutions which conduct similar activities and have similar confidentiality requirements imposed by law.
- 19.2. Financial Information Service may provide the required information at the request of the institutions provided for in Article 19.1 and in accordance with the respective Laws.

CHAPTER FOUR

Miscellaneous

Article 20. Cooperation Council

- 20.1. The Council, whose functions shall be to ensure the implementation of laws to combat money laundering and terrorism financing, to exchange information, to prepare recommendations on preventative measures, shall be established at the Financial Information Service. The composition and rules of this Council shall be approved by the Governor of the Bank of Mongolia.

Article 21. Liabilities to be imposed on those who breach the Law

- 21.1. If the violation of the Law to combat money laundering and terrorism financing does not constitute a criminal offence, then the Inspector of the Financial Information Service shall impose the following administrative sanctions against the guilty person:
- 21.2. Official who violates the provisions of Articles 4.3 and 5.3 of this Law shall be imposed a fine up to 250.000 togrogs , a legal entity – a fine of up to 1.000.000 togrogs;
- 21.3. Official who violates the provisions of Article 13 of this Law shall be fined for up 500.000 togrogs, legal entity for up to 1.000.000 togrogs.

**SPEAKER OF
NYAMDORJ
THE GREAT KHURAL
of Mongolia**

TS.