

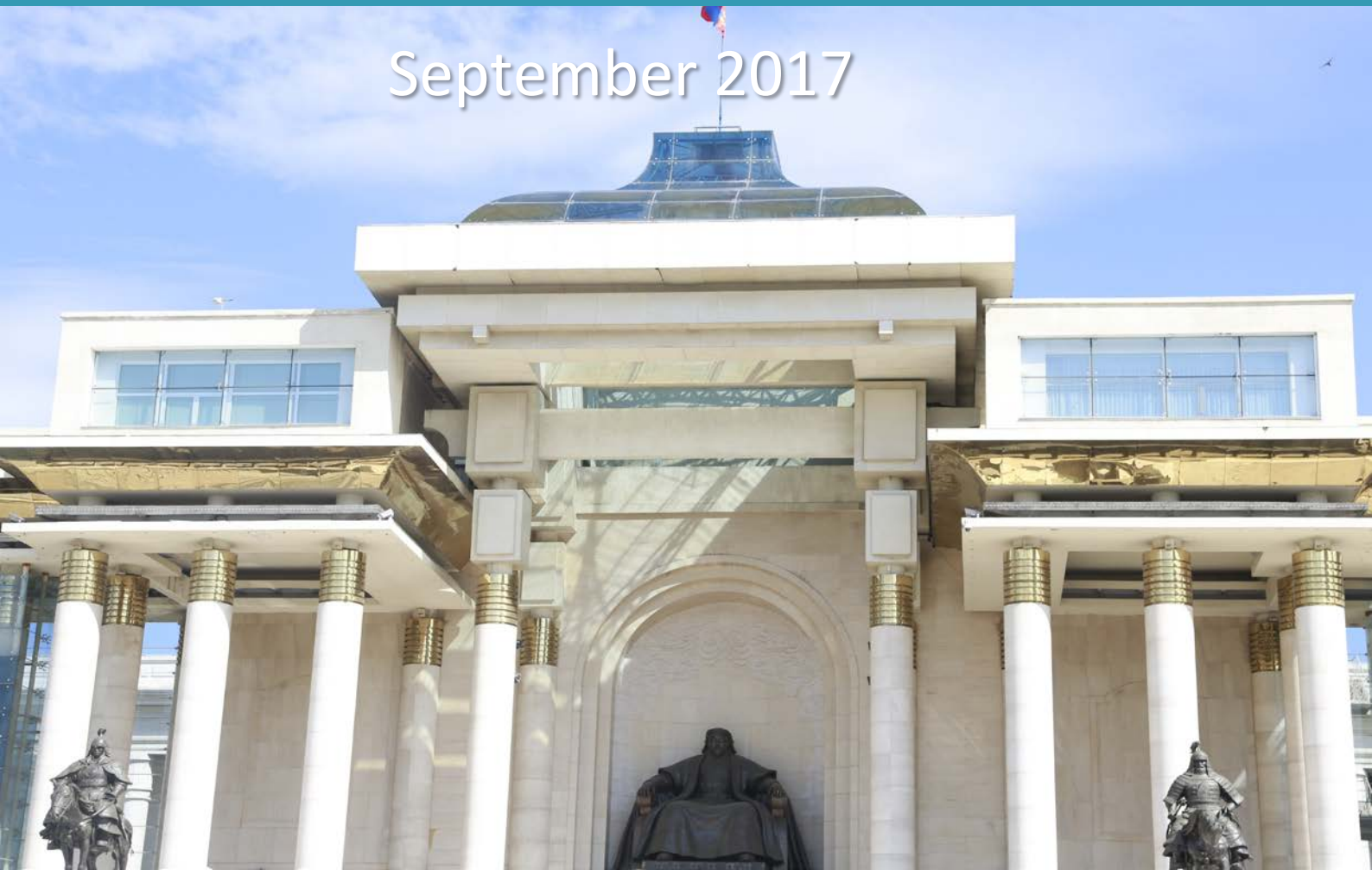


Anti-money laundering and counter-terrorist financing measures

Mongolia

Mutual Evaluation Report

September 2017





The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering/counter terrorism financing (AML/CFT) measures in place in Mongolia as at the date of the mutual evaluation (ME) on-site visit on 4 November 2016. It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Mongolia's AML/CFT system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- Mongolia is exposed to a range of money laundering (ML) threats and vulnerabilities. Higher-risk predicate offences are fraud, environmental crimes, tax evasion, and corruption. Moderate-risk threats include drug offences; smuggling; organised crime; crime against banking regulations; theft and burglary; and risk from foreign proceeds. The proceeds generated from these predicate crimes are mostly laundered in Mongolia with some proceeds, particularly from corruption, being laundered offshore.
- Mongolia's exposure to terrorism financing (TF) threats seems to be limited. Based on available open source information, Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities, and Mongolia has not been identified as a major source or route jurisdiction for foreign terrorist fighter (FTFs). Furthermore, there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.
- Mongolia has achieved a low level of effectiveness for Immediate Outcome 1, 3, 4, 5, 6, 7, 9, 10 and 11. Mongolia has achieved a moderate level of effectiveness for Immediate Outcome 2 and 8.
- Mongolia completed its first ML/TF National Risk Assessment (NRA) in 2016 with final sign-off and publication occurring during the ME on-site visit. The NRA focuses on ML, with threats, consequences and vulnerabilities not incorporated into a comprehensive assessment of Mongolia's ML risk. Except for key agencies involved in the NRA process, across government agencies and the private sector understanding of Mongolia's ML risk needs major improvements.
- For TF, the NRA includes negligible identification and analysis of Mongolia's TF threats and vulnerabilities. Across government agencies and the private sector understanding of Mongolia's TF risk needs fundamental improvements.
- While Mongolia has coordination mechanisms for ML and TF, at the time of the ME on-site visit

Mongolia's draft national AML/CFT strategy was not in force or informed by the NRA. In addition, the degree to which these mechanisms coordinate operational matters is limited.

- Financial intelligence including the Financial Information Unit's (FIU) operational analysis has been used to initiate ML and predicate crime investigations to a limited extent. The FIU is primarily supporting the operational needs of law enforcement agencies (LEAs) through the provision of information upon request and has not conducted or disseminated strategic analysis.
- Mongolia lacks a national AML/CFT policy and LEAs lack internal directives and comprehensive guidance to prioritise the use of the ML offence. LEAs are conducting ML inquiries; however, only 46 ML investigations have resulted from these inquiries with only two ML cases prosecuted. In both ML prosecutions, convictions obtained by lower courts were overturned by the Supreme Court. Generally, LEAs are pursuing predicate crimes.
- Mongolia's legal framework for confiscation is in keeping with the FATF Standards. While Mongolia has technically not confiscated assets related to ML due its ML convictions being overturned, the value of confiscations imposed by lower courts were not changed by the Supreme Court in both cases. LEAs are seizing property related to predicate crimes with courts confiscating property including for Mongolia's higher-risk predicate offences.
- While Mongolia's TF offence is in keeping with the FATF Standards, the General Intelligence Agency (GIA) has only conducted inquiries into three TF disseminations from the FIU involving five individuals. Based on evidence provided to the assessment team, these are Mongolia's only potential TF cases with no TF investigations or prosecutions in the period under review; however, this is not inconsistent with Mongolia's perceived TF risk.
- Obligations to freeze; prohibit from making funds available; and requirement for financial institutions (FI) and designated non-financial businesses and professions (DNFBPs) to report assets frozen or actions taken, under Mongolia's framework for targeted financial sanctions (TFS) pursuant to United Nations Security Council Resolution (UNSCR) 1267 and UNSCR 1373, are not enforceable. Larger Banks are conducting automated screening against the UNSCR Consolidated List. Some FIs in the non-bank sector are conducting manual screening while DNFBPs are conducting no screening. There have been no positive matches nor any accounts or transactions frozen. Mongolia has not designated any individual or legal entity pursuant to UNSCR 1267 or UNSCR 1373 although not having any designations is not inconsistent with Mongolia's perceived TF risk.
- Mongolia has no legal framework to implement TFS related to proliferation financing (PF). Cooperation and coordination on PF is absent, and Mongolia seems to have exposure to PF related sanctions evasion.
- There are scope deficiencies in the coverage of DNFBPs with Mongolia's AML/CFT legislation only including real estate agents and notaries with obligations only enforceable on notaries. There has been no AML/CFT supervision of DNFBPs.
- Bank of Mongolia (BoM), as banking supervisor, has some understanding of ML risk. BoM has implemented risk-based AML/CFT supervision with four on-site inspections, based on risks identified during off-site supervision, conducted by the end of the ME on-site visit; however, inspection reports were not finalised. Before this BoM was conducting rules-based supervision with non-dissuasive sanctions applied for AML/CFT breaches. The recent implementation of

risk-based supervision is the primary factor leading to the limited awareness and compliance with AML/CFT obligations by banks.

- The Financial Regulatory Commission's (FRC), supervisor of FIs in the non-bank sector, understanding of ML risk is at the developmental stage. The FRC is in the process of implementing a risk-based approach (RBA) to AML/CFT supervision. To date, the FRC's AML/CFT supervisory actions have been rules-based and are limited in number and scope with no sanctions imposed for AML/CFT breaches. The lack of risk-based AML/CFT supervision is the primary factor leading to the negligible awareness and compliance with AML/CFT obligations by FIs in the non-bank sector.
- Mongolia has not assessed the risk of ML and TF associated with legal persons. Information on the creation and types of legal persons is publicly available. LEAs have timely and adequate access to this basic information on legal persons via direct access to the General Authority for Intellectual Property and State Registration's (GAIPSR) database. The accuracy of this information may not be complete; however, Mongolia has undertaken recent steps to improve compliance with GAIPSR registration. In addition, LEAs and the FIU can access beneficial ownership (BO) information obtained by reporting entities (REs) via customer due diligence (CDD).
- Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law. Based on discussions during the on-site, it seems foreign trusts are not a significant feature in the Mongolian economy with no evidence to suggest that DNFBPs are involved in the formation or management of foreign trusts in Mongolia. However, Mongolia has not assessed the ML/TF risks associated with legal arrangements.
- Mongolia's legal framework for international cooperation is in keeping with the FATF Standards. To some extent Mongolia is seeking and providing mutual legal assistance (MLA), extradition and other forms of international cooperation on a range of predicate crimes and ML. Since 2014, Mongolia has fulfilled 25 MLA requests; however, it is unclear if this assistance was always provided on a timely basis. Since 2014, Mongolia has made 27 requests including four requests related to ML and a number related to Mongolia's higher-risk predicate offences. In addition, LEAs and the FIU are using their memorandum of understandings (MOUs) with foreign counterparts, Egmont and Interpol to exchange information.
- Mongolia has not sought or provided MLA or extradition in relation to TF. However, this is not inconsistent with Mongolia's perceived TF risk.

B. Risks and General Situation

2. The following summary of the assessment team's understanding of Mongolia's ML/TF risk is based on material provided by Mongolia including its NRA and information gathered from discussions with competent authorities, the private sector as well as open source materials.

ML

3. Mongolia is exposed to a range of ML threats and vulnerabilities. Higher-risk predicate offences are fraud, environmental crimes, tax evasion, and corruption. Moderate-risk threats include drug offences; smuggling; organised crime; crime against banking regulations; theft and burglary; and risk from foreign proceeds.

4. The proceeds generated from these predicate crimes are laundered in Mongolia and abroad. Within Mongolia, proceeds are mainly used to purchase real estate, vehicles/machinery, and other consumer items, and also laundered using legal persons including in the construction industry. In relation to corruption, bank accounts of family members are mainly used for the receipt of monies, which are then transferred to foreign bank accounts and offshore accounts/financial institutions. In some cases, these funds have been returned to Mongolia using the banking system.

5. Key vulnerabilities in Mongolia include the banking sector and DNFBPs. The banking sector holds 95.7% of the total financial sector assets, and apart from a small number of non-bank remitters, the sector is exposed to Mongolia's cross-border risks. AML/CFT risk-based supervision of banks has only recently been implemented with no risk-based on-site inspections finalised at the time of the ME on-site visit. The banking sector is also the gate-keeper for the non-bank sector, which includes a large variety of institutions and financial services under negligible rules-based AML/CFT supervision with negligible implementation of preventative measures.

6. With the exception of lawyers and to a lesser extent notaries and accountants, the DNFBP sector in Mongolia is still developing – there are scope deficiencies in the coverage of DNFBPs with Mongolia's AML/CFT legislation only including real estate agents and notaries with obligations only enforceable on notaries. The real estate sector is unregulated with a significant number of businesses involved in the sale of real estate with evidence to suggest some businesses offer discounts on property purchased using cash. Furthermore, research suggests Mongolia has significant artisanal small-scale miners and an illegal mining sector, which may sell their raw gold to informal dealers/intermediaries.

TF

7. Mongolia's exposure to TF threats seems to be limited. Based on available open source information, Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities, and Mongolia has not been identified as a major source or route jurisdiction for FTF¹. Furthermore, there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.

8. Notwithstanding, Mongolia's TF vulnerabilities include limited expertise among relevant agencies, significant gaps in Mongolia's legal framework related to TFS, lack of oversight of the NPO sector, negligible implementation of TFS in the non-bank sector and no implementation in DNFBPs.

Exposure to PF related sanctions evasion

9. Mongolia seems to have exposure to PF related sanctions evasion. There are approximately 1,500 Democratic Republic of North Korea (DPRK) citizens working in Mongolia in a range of industries, who are paid via formal arrangements between Mongolia and DPRK. There are a number of known legal entities operating in Mongolia with direct links to the DPRK, and Mongolian companies own/owned shares in DPRK state-owned enterprises. Mongolia has very limited trade with DPRK and Iran.

C. Overall Level of Effectiveness and Technical Compliance

C.1. Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

¹ http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf

10. Mongolia completed its first ML/TF NRA in 2016 with final sign-off and publication occurring during the ME on-site visit. The NRA is primarily focused on ML.

11. Some agencies informed the assessment team that they have conducted their own risk assessments. However, besides information used by bank supervisors to rank banks' ML/TF risk and the GIA's annual terrorism threat assessment, no details of any other sectoral risk assessments were provided to the assessment team.

12. On ML, the NRA is focused on ML threats (as listed above) with threats, consequences and vulnerabilities not incorporated into a comprehensive assessment of Mongolia's ML risk. With the exception of key agencies involved in the NRA process, across government agencies understanding of Mongolia's ML risk needs major improvements.

13. For TF, the NRA includes negligible identification and analysis of Mongolia's TF threats and vulnerabilities. It is not clear from the information included in the NRA how Mongolia reached some of its conclusions on TF. Across government agencies and the private sector, understanding of Mongolia's TF risk needs fundamental improvements.

14. Private sector involvement in the NRA was limited to the provision of data and involvement in a limited number of workshops. With the exception of larger banks, private sector understanding of Mongolia's ML/TF risk is negligible.

15. Mongolia has two national cooperation and coordination mechanisms for its AML/CFT regime. The National Cooperation Council (NCC) is responsible for ensuring the implementation of the Law on Combating Money Laundering and Terrorism Financing 2013 (AML/CFT Law), while the National Counter Terrorism Coordinative Council (NCTCC) is mandated to coordinate the implementation and monitoring of the Anti-Terrorism Law 2004 (ATL) (amended in 2013). The NCC has developed a draft national AML/CFT strategy – at the time of the ME on-site visit it was not in force or informed by the NRA. The degree to which these mechanisms coordinate operational activities related to ML or TF is limited.

16. Cooperation and coordination on PF in Mongolia is absent.

C.2. Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

17. Financial intelligence including FIU operational analysis is being used to a limited extent to initiate ML and predicate crime investigations. In part, the FIU's ability to produce good quality intelligence is effected by suspicious transaction report (STR) filing that is not consistent with Mongolia's ML risk including limited STRs on suspicion of proceeds of crime, particularly Mongolia's higher-risk predicate crimes; very limited STRs from the non-bank sector; and no reporting from DNFBPs.

18. In the period under review, the majority of the FIU's disseminations have been to the GIA and primarily related to transactions with higher-risk jurisdictions mainly DPRK. Mongolia provided no information on the outcome of these disseminations. However, the General Police Agency (GPA) is making some use of FIU disseminations including the initiations of ML investigations, and the FIU is actively supporting the operational needs of LEAs through the provision of information upon request.

19. In the period under review, the GIA has conducted inquiries into three TF disseminations from the FIU involving five individuals. Two inquiries were dropped due to lack of characteristics of TF and the third STR is still under investigation.

20. The FIU has not conducted or disseminated strategic analysis.

21. Overall Mongolia's legal framework for ML including powers of LEAs is in keeping with the FATF Standards. However, Mongolia lacks a national AML/CFT policy and LEAs lack internal directives and comprehensive guidance to prioritise the use of the ML offence. LEAs have conducted ML inquiries into 4,345 persons, which resulted in 46 ML investigations with 20 investigations transferred to the General Prosecutor's Office (GPO) for prosecution, and two cases prosecuted. In both ML prosecutions, convictions obtained by lower courts were overturned by the Supreme Court. Generally, Mongolian LEAs are pursuing predicate crimes; however, in the period under review, Mongolia implemented a wide-ranging criminal amnesty.

22. Mongolia's legal framework for confiscation is in keeping with the FATF Standards. Notwithstanding a lack of national objectives for LEAs and prosecutors to pursue confiscations, LEAs are seizing property related to predicate crimes with courts confiscating assets including for Mongolia's higher-risk predicate crimes. However, detailed statistics were not provided on the individual value of funds receipted by the state in relation to these higher-risk predicate crimes. Mongolia has not confiscated proceeds located abroad but has repatriated funds to Korea and the Czech Republic.

23. While Mongolia has technically not confiscated assets related to ML due its ML convictions being overturned, the value of confiscations imposed by the lower courts were not changed by the Supreme Court in both ML cases (discussed above).

C.3. Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9- 11; R.5-8)

24. Mongolia's TF offence is in keeping with the FATF Standards.

25. Mongolian authorities have negligible understanding of TF risk and have not adopted a strategic approach to counter TF within its established counter-terrorism strategy. In the period under review, the GIA has conducted inquiries into FIU TF related disseminations. Mongolia provided no other information of TF related inquiries or investigations or the GIA's capabilities to detect TF.

26. There have been no prosecutions for TF in Mongolia; however, this is not inconsistent Mongolia's perceived TF risk.

27. While Mongolia has established a framework to implement TFS pursuant to UNSCR 1267 and UNSCR 1373, the obligation to freeze, prohibit from making funds available, and the requirement for FIs and DNFBPs to report assets frozen or actions taken are not enforceable. The implementation of TFS varies across the financial sector, and there is no implementation by DNFBPs. Larger banks are conducting automated screening of all transactions and new and existing customers against the UNSCR Consolidated List. There have been no positive matches and no accounts or transactions frozen.

28. Mongolia has not designated a natural person or legal entity pursuant to UNSCR 1267 or UNSCR 1373 although this is not inconsistent with Mongolia's perceived TF risk.

29. Mongolia's understanding of its TF risk in relation to the NPO sector is negligible with no formal risk assessment or review of the NPO sector having been undertaken. A basic governance-related regulatory regime for all NPOs is in place.

30. Mongolia has no legal framework to implement TFS relating to the DPRK and Iran. REs displayed some knowledge of Mongolia's perceived exposure to PF related sanctions evasion, and larger banks are submitting STRs on transactions with higher-risk jurisdictions including DPRK.

C.4. Preventive Measures (Chapter 5 - IO4; R.9-23)

31. The degree of understanding of ML/TF risks and AML/CFT obligations and application of risk mitigation measures varies across the financial sector. The recent enforcement of the Preventive Measures Regulation 2016 (PMR) brings Mongolia's preventative measure obligations closer to compliance with the FATF standards. Overall, the recent publication of the NRA and limited AML/CFT supervision and outreach underlie the negligible application of AML/CFT preventive measures commensurate with ML/TF risk. However, larger banks have a higher-level of AML/CFT preventive measure application that is more commensurate with their ML/TF risks.

32. Mongolia was not able to provide comprehensive data and statistics to determine how well CDD, record-keeping measures, and enhanced due diligence (EDD) are applied by all REs. For the period of 2011 to October 2016, only 1,006 STRs were filed by REs - predominantly by banks and on higher-risk jurisdictions with no filing from DNFBPs. This STR filing is not commensurate with the assessment team's understanding of Mongolia's ML/TF risk.

33. There are scope deficiencies in the coverage of DNFBPs with AML/CFT legislation only including real estate agents and notaries and obligations only enforceable on notaries. DNFBPs have negligible understanding of ML/TF risk and are not applying preventive measures commensurate with their ML/TF risk.

C.5. Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

34. Mongolia has licensing, and other controls that to some extent prevent criminals and their associates from entering the banking sector and to a more limited extent the non-bank sector.

35. BoM, as banking supervisor, has some understanding of sector specific ML risk and individual institutional ML risks. BoM completed its first full round of off-site inspections to establish risk-ratings for banks in June 2016. Based on this risk-rating, four AML/CFT on-site inspections of higher-risk banks were conducted before the end of the ME on-site visit. However, inspection reports were not finalised or provided to the assessment team. Before this, Mongolia was conducting rules-based AML/CFT supervision.

36. BoM can impose a range of enforcement measures, which are applied progressively. BoM has only applied rectification orders for AML/CFT breaches. BoM supervisory actions have had limited impact on the level of awareness and compliance with AML/CFT obligations.

37. FRC, as supervisor of the non-bank sector, understanding of ML risk is at the developmental stage including sector specific ML risks and individual institutional ML risks. The FRC is in the process of implementing a RBA to AML/CFT supervision. To date, the FRC's supervisory actions have been rules-based and are limited in number and scope. FRC has limited power to impose sanctions and has only imposed administrative actions, in the form of warnings. FRC supervision of the non-

bank sector has had a negligible impact on the level of awareness and compliance with AML/CFT obligations.

38. There has been no supervision of DNFBPs.

C.6. Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

39. Mongolia has not assessed ML/TF risks associated with legal entities, including in the NRA, nor does Mongolia understand the risks arising from all forms of legal entities including public, foreign companies and partnerships registered in Mongolia.

40. Information on the creation and types of legal persons is publicly available through the GAIPSR. LEAs have timely and adequate access to basic information on legal persons via direct access to the GAIPSR's database. However, the accuracy of that information may not be complete because the GAIPSR has no mechanism to check or verify the authenticity of the information provided and has not imposed sanctions. In addition, LEAs and the FIU can access BO information obtained by REs via CDD; however, detailed CDD requirements including BO information for legal persons and legal arrangements was only recently introduced with the PMR.

41. Besides the inclusion of the BO information in CDD, Mongolia has implemented other measures to prevent the misuse of legal persons for ML/TF purposes, including; (i) Mongolia requires registration of bearer shares, (ii) Mongolia does not allow for companies to issue nominee shares or appoint nominee directors, and (iii) recently Mongolia implemented a scheme to promote the accuracy and updating of legal persons information registered with the GAIPSR.

42. Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law². Based on discussions during the on-site, it seems foreign trusts are not a significant feature in the Mongolian economy with no evidence to suggest that DNFBPs are involved in the formation or management of foreign trusts in Mongolia. However, Mongolia has not assessed the ML/TF risks associated with legal arrangements including foreign legal arrangements.

C.7. International Cooperation (Chapter 8 - IO2; R. 36-40)

43. Mongolia's legal framework for international cooperation is in keeping with the FATF Standards. Mongolia is able to provide a wide range of MLA and extradition in accordance with the Criminal Procedures Code 2001 (CPC); its bilateral agreements and international mechanisms; and the principle of reciprocity.

44. To some extent, Mongolia is seeking and providing MLA, extradition and other forms of international cooperation on a range of predicate crimes and ML. Since 2014, Mongolia has received a total of 36 MLA and extradition requests and has fulfilled 25 requests with 4 requests still in progress. However, this assistance has not always been provided on a timely basis. Since 2014 Mongolia has made 27 requests to a range of foreign and regional jurisdictions including 4 requests related to ML and a number of other requests related to Mongolia's higher-risk predicate crimes.

² Under Article 406 CvC Mongolian has a legal framework for statutory trusts under the form of a "trust contracts". The adoption in 2008 of the Regulation on Non-Bank Financial Trust Services clarified the structures or functions of the "trust contract". Based on this, the assessment team has concluded this arrangement is not a express trusts or other legal arrangement with similar structures or functions.

45. In addition, LEAs and the FIU are using MOUs with foreign counterparts, the Egmont Group Secure Web and Interpol I-24/7 connections to exchange information.

46. International cooperation by supervisors is limited to two cases where the FRC has replied to two information requests. There has been no international exchange on supervisory or BO information.

47. Mongolia has not sought or provided MLA or extradition in relation to TF. However, this is not inconsistent with Mongolia's perceived TF risk.

D. Priority Actions

48. The following are priority actions for Mongolia:

- i. Properly identify, assess and understand Mongolia's TF risk including in the NPO sector; continue to develop ML risk understanding among competent authorities and the private sector; and based on a comprehensive understanding of ML/TF risk bring into force the draft AML/CFT National Strategy. The AML/CFT National Strategy should be used to establish operational priorities and internal policies and procedures for relevant competent authorities.
- ii. Address gaps in Mongolia's legal framework with regard to R.6³; and continue to improve implementation of TFS related to UNSCR 1267 and UNSCR 1373 including meeting action items on Mongolia's Action Plan for Implementation of UNSCR 1373.
- iii. Bank supervisors should continue to improve their understanding of Mongolia's ML/TF risk and continue to improve their risk-based supervision of banks including through the application of proportionate and dissuasive sanctions in order to improve banks' compliance with AML/CFT requirements particularly STR reporting.
- iv. Based on a comprehensive understanding of the ML/TF risks associated with the non-bank sector and DNFBPs, entities should be included in Mongolia's AML/CFT regime and risk-based supervisory actions, including the application of proportionate and dissuasive sanctions, should be undertaken to ensure compliance with AML/CFT preventive measures, particularly STR reporting.
- v. Improve support to the LEAs through enhanced and proactive financial intelligence products including the provision of strategic analysis.
- vi. Provide clear policy and guidance for LEAs to continue to develop and use financial intelligence to pursue ML/TF, and provide targeted ML/TF training to LEAs, prosecutors and the judiciary to enhance success of ML/TF inquiries, investigations and/or prosecutions.
- vii. Bring into force and effect a legal framework to give effect to R.7, and implement comprehensive institutional frameworks, procedures, and measures to give effect to TFS for PF including the development of a coordination and cooperation mechanism.

³ Post the ME on-site visit, Mongolia enacted legislation aimed at rectifying these deficiencies.

E. Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Low	Moderate	Low	Low	Low	Low
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Low	Moderate	Low	Low	Low	

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - Assessing risk & applying risk-based approach	R.2 - National cooperation and coordination	R.3 - Money laundering offence	R.4 - Confiscation & provisional measures	R.5 - Terrorist financing offence	R.6 - Targeted financial sanctions – terrorism & terrorist financing
PC	PC	LC	LC	LC	PC
R.7 - Targeted financial sanctions – proliferation	R.8 - Non-profit organisations	R.9 - Financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
NC	PC	LC	LC	C	LC
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
LC	PC	LC	LC	NC	LC
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
PC	LC	PC	NC	NC	PC
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
PC	PC	LC	NC	PC	C
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
C	PC	PC	PC	PC	C
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international cooperation		
C	LC	LC	LC		

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This assessment was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The assessment was based on information provided by the jurisdiction, and information obtained by the assessment team during its on-site visit to the jurisdiction from 24 October – 4 November 2016.

The assessment was conducted by an assessment team consisting of:

- Ms Daria Kudryashova, Rosfinmonitoring, Russian Federation (financial expert);
- Ms Vanitha Mahadevan, Securities Commission Malaysia (financial expert);
- Ms Zhongyuan Zhang, AML Bureau of the People's Bank of China (financial expert);
- Mr José Carapinha, Financial Intelligence Office, Macao China (legal expert);
- Mr Sisira Jayasekara, FIU-Sri Lanka (FIU/law enforcement expert);
- Mr Said Imran, Pusat Pelaporan dan Analisis Transaksi Keuangan/Indonesian Financial Transaction Reports and Analysis Centre (FIU/law enforcement expert); and
- Mr Aibek Turdukulov, EAG Secretariat.

The assessment process was led and supported by Mr David Becker, Director Typologies and Mr Shannon Rutherford, Deputy Director Typologies both of the APG Secretariat.

The report was reviewed by FATF Secretariat, Ms Erin Lubowicz (New Zealand), Ms Sue Wong (Australia) and Ms Cathy Williamson (Australia).

Mongolia previously underwent a FATF Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 assessment has been published and is available at www.apgml.org.

Mongolia's Mutual Evaluation adopted in July 2007 concluded that the country was compliant with two Recommendations; largely compliant with seven; partially compliant with 22; non-compliant with 17; and one Recommendation was non-applicable. Mongolia was rated partially compliant or non-compliant with 13 of the 16 Core and Key Recommendations.

CHAPTER 1. ML/TF RISKS AND CONTEXT

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1. Mongolia is a landlocked country with a total area of 1,564,100 km². Mongolia borders the Russian Federation (Russia) and the People's Republic of China (China). Mongolia has a population of 3,057,778 (2015), which in combination with its total area makes Mongolia one of the most sparsely populated states in the world. Ulaanbaatar is the capital and largest city in Mongolia housing ~45% of the population, and ~30% of the population is nomadic or semi-nomadic.

2. In the early 1990s, Mongolia transitioned to a multi-party system and a market economy. The 1992 Constitution of Mongolia establishes Mongolia as a semi-presidential representative democratic republic with state power allocated into the executive, legislative and judiciary. Executive power is exercised by the President as Head of State and Commander-in-Chief of the Armed Forces, and the Prime Minister as head of the Government and chairperson of the 13 Minister Cabinet. Legislative power is exercised by a 76 seat unicameral parliament referred to as the State Great Khural.

3. Mongolia is a civil law jurisdiction with Romano-Germanic legal traditions. The judiciary consists of a three-tier court system (first instance Courts, Appellate Court and Supreme Court) divided into the civil, criminal and administrative branches. The highest court in Mongolia is the Constitutional Court of Mongolia, which is responsible for the interpretation of the Constitution.

4. Mongolia's economy has undergone a rapid and dramatic transformation and has been one of the world's fastest growing economies. Economic activities have traditionally been based on livestock and agriculture with agriculture now contributing around 16% of gross domestic product (GDP). Over the last 10 years, mining has become an integral sector for the Mongolian economy with economic growth primarily attributed to foreign direct investment (FDI) in this sector. In recent years, due to declining exports and a weakening commodity market, economic growth has slowed with real GDP growth of 2.3 percent in 2015, and GDP of ~28.78 trillion Mongolian Togrog (MNT) (USD11.8 billion)^{4,5}; however, the mining sector still contributed ~20% of GDP⁶ and is the largest contributor to GDP growth⁷. Other key sectors include the service sector, construction and processing industries.

5. Mongolia is a unitary state. The territory of Mongolia is divided into administrative units: 21 Aimags (provinces) and the capital city of Ulaanbaatar. Aimags are subdivided into Soums (sub-provinces) and Ulaanbaatar is subdivided into districts. The Governor and elected officials (Khurals) provide for administrative functions of Aimags and Ulaanbaatar.

ML/TF Risks and Scoping of Higher-Risk Issues

(a) Overview of ML/TF Risks

6. This overview is based on material provided by Mongolia, including its NRA, which was published during the ME on-site visit (24 October to 4 November 2016), information gathered from discussions with competent authorities, the private sector as well as open source materials.

⁴ Bank of Mongolia Annual Report 2015

⁵ For the purpose of this report 1 MNT equals 0.00041 USD

⁶ <http://www.worldbank.org/en/country/mongolia/overview>

⁷ Bank of Mongolia Annual Report 2015

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ML

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7. Mongolia is exposed to a range of ML threats and vulnerabilities. The NRA identifies fraud, environmental crimes, tax evasion, and corruption as high-risk predicate offences. Moderate ML threats include drug offences; smuggling; organised crimes; crime against banking regulations; theft and burglary; and risk from foreign proceeds.

8. The proceeds generated from these predicate crimes are laundered in Mongolia and abroad. Within Mongolia, proceeds are mainly used to purchase real estate, vehicles/machinery, and other consumer items, and are also laundered using legal persons including in the construction industry. In relation to corruption, bank accounts of family members are mainly used for the receipt of monies, which are then transferred to foreign bank accounts and offshore accounts/financial institutions and funds are used to establish companies abroad. In some ML cases these funds have been returned to Mongolia using the banking system.

9. Key vulnerabilities in Mongolia include the banking sector and DNFBPs. The banking sector holds 95.7% of the total financial sector assets, and apart from a small number of non-bank remitters, the sector is exposed to Mongolia's cross-border risks. AML/CFT risk-based supervision of banks has only recently been implemented with no risk-based on-site inspections finalised at the time of the ME on-site visit. The banking sector is also the gate-keeper for the non-bank sector, which includes a large variety of institutions and financial services under very limited rule-based AML/CFT supervision with negligible implementation of preventative measures.

10. With the exception of lawyers and to a lesser extent notaries and accountants, the DNFBP sector in Mongolia is still developing. While real estate agents and notaries are the only DNFBPs included in Mongolia's AML/CFT regime, only notaries are required to comply with the AML/CFT requirements. The AML/CFT Law is not enforceable on real estate agents. The NRA highlights that a number of business types are involved in the sale of real estate including construction companies with evidence to suggest some businesses offer discounts on property purchased using cash. Where purchases are made via mortgages, the NRA highlights that banks may not be adequately identifying the source of down payments.

11. Dealers in precious metals and stones are not included in Mongolia's AML/CFT framework. As above, environmental crimes including violations of the rules for exploration and extraction of minerals (Article 214 of the Criminal Code of Mongolia) are identified in the NRA as higher-risk predicate offences. Mongolia has artisanal small-scale miners (ASM) and an illegal miners sector (see below discussion regarding mining in Mongolia), which may sell their raw gold to informal dealers/intermediaries fuelling the shadow economy and smuggling.

12. Mongolia's exposure to cross-border illicit flows does not include use as a transit route for funds. In addition, to the discussion above regarding proceeds of corruption, recently Mongolia's exposure to foreign proceeds of crime particularly from neighbouring jurisdictions has decreased due to the slowing of its economy and reduction of foreign investment.

TF

13. Mongolia's exposure to TF threats seems to be limited. Based on available open source information, Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities and Mongolia has not been identified as a major source or route jurisdiction for FTFs⁸.

⁸ http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf
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Furthermore, there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.

14. Notwithstanding, Mongolia's TF vulnerabilities include limited expertise among relevant agencies; gaps in Mongolia's legal framework - obligations to freeze, prohibit from making funds available and requirement for FIs and DNFBPs to report assets frozen or actions taken, pursuant to UNSCR 1267 and UNSCR 1373 are not enforceable; lack of understanding and oversight of the NPO sector; very limited implementation of UNSCR 1267 and 1373 in the non-bank sector and no implementation in DNFBPs.

Exposure to PF related sanctions evasion

15. Mongolia seems to have exposure to PF related sanctions evasion. There are approximately 1,500 DPRK citizens working in Mongolia in a range of industries, who are paid via formal arrangements between Mongolia and the DPRK. NGO research suggests that in some jurisdictions a proportion of DPRK foreign worker wages are withheld by the DPRK Government⁹. There are a number of known legal entities operating in Mongolia with direct links to the DPRK, and Mongolian companies own/owned shares in DPRK state-owned enterprises¹⁰. This level of exposure is reflected in: (i) submission of 177 STRs between 2010 and 2015 on individuals from the DPRK, and (ii) a February 2012 letter from the FIU to all banks, which suggests that Mongolia faces challenges in preventing real estate, mining and banking sectors from the risk of being exploited by jurisdictions that are currently highlighted by the international community including the DPRK. In addition, Mongolia has recently deregistered all DPRK vessels sailing under the Mongolia Flag.

(b) Country's Risk Assessment and Scoping of Higher Risk Issues

16. Mongolia completed its first ML/TF NRA in 2016 with final sign-off and publication on the BoM's website occurring during the ME on-site visit (24 October to 4 November 2016). While some agencies informed the assessment team that they conducted their own risk assessments, besides information used by bank supervisors to rank banks' ML/TF risk and the GIA's annual terrorism threat assessment, no details were not provided to the assessment team.

17. The FIU led the development of the NRA with the support of an NRA working group (NRA WG) comprising of key agencies from the NCC. The NRA was completed in three stages, as follows:

- *Stage 1, commenced in October 2015* - the NRA WG disseminated data and information collection forms, based on the data collection forms developed by the Organisation for Security and Cooperation in Europe (OSCE), and conducted workshops for all relevant agencies and the private sector on the NRA process. BoM supervisors, via their risk-based supervision tools developed with support of the International Monetary Fund (IMF), provided information on the banking sector.
- *Stage 2, commenced in April 2016* - collected data was analysed and identified gaps were complemented with perception data. Perception data included interviews with, and surveys completed by, competent authorities in charge of investigating, enforcing and preventing ML/TF and predicate crimes. In addition, perception data using questionnaires was obtained

⁹ <http://www.wsj.com/articles/north-koreas-lucrative-labor-exports-come-under-pressure-1467916815>;
<https://www.nknews.org/pro/mongolia-enforces-latest-sanctions-on-north-korean-ships/>

¹⁰ <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3016554>

from 30 bank employees, 30 non-bank financial institution (NBFI) employees, five real estate agents, five stockbrokers, 60 accountants and 22 notaries. In this stage, interviews were also conducted with investigators of law enforcement agencies to gauge the level of unregistered crimes and proceeds.

- *Stage 3, commenced in August 2016* - the likelihood of threats and vulnerabilities were estimated and a risk assessment form was used to rate the ML/TF risk associated with individual crimes and respective sectors. During this stage, a draft of the NRA was shared with NCC members for their comment.

18. The NRA is focused on the identification of ML threats with a lesser focus on the identification of vulnerabilities and consequences. The NRA identifies the following higher-risk predicate offences (in order of priority): (i) fraud, (ii) environmental crime, (iii) tax evasion, and (iv) corruption. While the assessment team broadly agrees with the identification of the above higher-risk predicate offences, the assessment team considers corruption may be a higher ML threat than estimated in the NRA. This view is primarily based on the open source reports suggesting Mongolia faces corruption challenges particularly in relation to the mineral resource sector (Mongolia's largest sector in term of percentage of GDP) and anti-corruption measures are far from producing sustainable results (see below detailed discussion of reports evaluating corruption in Mongolia).

19. Moderate ML threats include (in order of priority): drug offences; smuggling (including human smuggling); organised crime; terrorism and TF; crime against banking regulations; theft and burglary; and risk from foreign proceeds. These risk ratings, including the above higher-risk predicate offenses, are based on national statistics including the number of predicate crimes; damage caused by predicate crimes; associated property seized, frozen and confiscated; and expert opinion in order to quantify the level of inherent risk. While the assessment team broadly agrees with the identification of the above moderate ML threats, it is not clear that terrorism and TF are moderate ML threats (see below discussion on TF).

20. The NRA identifies some vulnerabilities including the banking sector, real estate sector and accountants as high risk. The NRA also identifies as medium risk notaries. The securities and insurance sectors are identified as low risk. Due to the large number and wide geographical coverage, NBFIs have higher ML/TF risk than other FIs in the non-bank sector. While these vulnerabilities, (with the exception of the banking sector to some degree), have only been assessed using limited statistical data with expert opinion forming the primary basis of conclusions, the assessment team broadly agrees with the identification of these ML vulnerabilities.

21. With regard to TF, the NRA includes very limited identification and analysis of Mongolia's TF threats and vulnerabilities, and it is not clear from the information included in the NRA how Mongolia reached some of its TF conclusions. For example, how Mongolia's TF risk from use as a transit country is high and how terrorism/TF is a moderate ML threat for ML. As discussed above, Mongolia's exposure to TF threats seems to be limited. Based on available open source information, Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities, and Mongolia has not been identified as a major source or route jurisdiction for FTF¹¹. Furthermore, there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.

(c) Scoping of Higher/Lower Risk Issues

¹¹ http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf
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22. During the ME on-site visit the assessment team focussed on the below higher-risk issues. When developing the Scoping Note the assessment team used open source information and preliminary findings of the NRA as it was not finalised before the ME on-site visit.

23. *Predicate Crimes* – Open source information suggest that in recent years Mongolia has seen a sharp increase in economic crimes¹² with the assessment team focusing on the following five predicate offences:

- *Tax evasion* – The NRA and Mongolia's 2007 MER identified tax evasion as a significant proceeds of crime generator, and recent media reports support this conclusion, particularly in reference to recent mining cases¹³.
- *Environmental crimes* – The NRA identifies environmental crimes as a significant proceeds of crime generator. Mongolia has an illegal mining sector, which in combination with the ASM sector may rely on informal gold trade channels¹⁴ (see discussion below).
- *Corruption and bribery* – The NRA identified corruption as a significant proceeds of crime generator. Mongolia's Transparency International corruption perception index has improved in recent years; in 2015 Mongolia was ranked 72nd out of 168 countries. In addition, a number of Mongolian politically exposed persons (PEPs) were named in the International Consortium of Investigative Journalists investigation into offshore companies (including Mossack Fonseca among others), and there are reports suggesting linkages between corruption and the mining sector due to insufficient regulation¹⁵.
- *Fraud* – The NRA identifies fraud as a significant proceeds of crime generator.
- *Smuggling* – Mongolia's 2007 MER identifies smuggling as a significant proceeds of crime generator and recent reports support the significance of smuggling, particularly in reference to gold¹⁶.

24. *Banking Sector* – Mongolia's 14 local banks compose of 95.7% of the total financial sector assets and produce ~80% of the profits. In addition, banks are gatekeepers for the non-bank sector and DNFBPs. A key vulnerability is that Mongolia has only recently implemented a risk based approach to supervision in the banking sector.

25. *DNFBPs* – The NRA suggests that the real estate sector is high risk for ML and there are a number of open source reports suggesting that the informal mining sector and gold smuggling pose a risk of ML. Furthermore, there are scope deficiencies in the coverage of DNFBPs and there has been no AML/CFT supervision of DNFBPs.

26. *Informal and cash economy* – Mongolia's shadow and cash economy is a vulnerability to ML. For example, the NRA highlights that in the purchase of real estate the buyer may be offered a discount for cash purchases. The NRA also includes reference to a number of published reports, which estimate the size of the Mongolian informal economy. These reports use different methodologies¹⁷ and therefore, the estimates of the informal economy vary widely from 8-13% of

¹² <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17237>

¹³ <http://www.bloomberg.com/news/articles/2015-01-30/mongolia-finds-southgobi-employees-guilty-of-tax-evasion>

¹⁴ http://www.bgr.bund.de/EN/Themen/Zusammenarbeit/TechnZusammenarb/Downloads/mongolei_MRAM_GoldMongolia.pdf?__blob=publicationFile&v=4

¹⁵ Corruption risk assessment in mining sector of Mongolia report 2016 – Independent Research Institute of Mongolia

¹⁶ <http://mram.gov.mn/wp-content/uploads/2015/04/11.pdf>

¹⁷ These reports also use datasets from different years

GDP to 50% of GDP¹⁸. Recently, Mongolia has implemented legislative changes designed to reduce its informal economy.

27. *PF* – Mongolia seems to have exposure to PF related sanctions evasion (discussed in detail in overview of ML/TF risks section) including DPRK workers, legal entities operating in Mongolia with links to the DPRK, and Mongolian companies owning/owned stakes in DPRK state-owned enterprises.

28. *National Cooperation for AML/CFT* – While there is a NCC for AML/CFT and a NCTCC for national security including the implementation of TFS, Mongolia does not have a national AML/CFT strategy informed by risk. For this reason, the assessment team sought to understand Mongolia's level of coordination and cooperation on AML/CFT policy and operations.

Materiality

29. In 2015 Mongolia's GDP was 23 trillion MNT (~USD11.8 billion); gross national income (GNI) per capita was 9.6 million MNT (~USD3,870); and Real GDP growth was 2.3%.

30. Recently Mongolia's economy has undergone a rapid and dramatic transformation and has been one of the world's fastest growing economies primarily due to FDI in the exploitation of its mineral resources. Between 2010 and 2014 Mongolia's average Real GDP growth was 11.1%. Since 2014, Mongolia's economy has slowed primarily due to the changing economic environment in China and a drop in the commodity prices¹⁹. In February 2017, the IMF and Mongolia reached a staff-level agreement on a USD5.5 billion Economic Stabilization Program²⁰.

31. Mongolia's economy is heavily reliant on mineral exports to China. In 2015, the mining sector contributed ~20% of GDP²¹ and contributed ~88% of total exports. Although exports have slowed in recent years, in 2015 Mongolia maintained a foreign goods trade surplus of USD 872 million²². In 2015 Mongolia's exports equated to 4.67 billion USD and after mining exports, animal products (~6% of total exports), manufacturing goods (~5% of total exports) and horticultural products (~1% of total exports) were Mongolia's primary exports. These products were mainly exported to China (~83% of total exports), the United Kingdom (~7% of total exports), Switzerland (~2% of total exports) and Russia (~1.5% of total exports). Mongolia's imports totalled 3.79 billion USD in 2015 and imported products were mainly consumer goods (29% of total imports), capital goods (38% of total imports), manufacturing goods (14% of total imports) and fuel (19% of total imports) from China, Russia, Japan and the Republic of Korea (Korea).

32. Mongolia has limited trade relations with the DPRK and Iran. Although Mongolia's level of trade with the DPRK has been increasing since the early 2000s, in 2015 both import and export values were less than 1 million USD – exported goods are tobacco, imports are foodstuffs and medications. Mongolia's trade with Iran is in food stuffs and has been decreasing since 2013.

Financial sector

¹⁸ Bayambatseren.S, 2000, Inter-Sectoral Balance - 17% of the GDP; National Statistical Bureau of Mongolia, 2005-2011 - 8-13% of the GDP; Researcher Battur, 2012 – 50% of the GDP; Central Bank of Mongolia/Bank of Mongolia (Researcher Enkhzaya.D), 2013 – 35% of the GDP

¹⁹ Bank of Mongolia Annual Report 2015

²⁰<http://www.imf.org/en/News/Articles/2017/02/19/PR1754-Mongolia-IMF-Reaches-Staff-Level-Agreement-on-3Yr-EFF>

²¹ <http://www.worldbank.org/en/country/mongolia/overview>

²² Bank of Mongolia Annual Report 2015

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33. At December 2015, the size (gross assets) of Mongolia's financial sector was 21.83 trillion MNT (~9.06 billion USD) representing 76.7% of GDP. Since 2010, financial sector assets have registered an annual growth of 40% with growth of the sector in 2015 at 2.9%. The recent sharp decline in financial sector growth is attributed to declining FDI and uncertainty regarding large mineral resource projects and coal exports²³.

34. As previously noted, the role of banks in Mongolia's financial sector is significant with 14 local banks having a total 1482 branches and holding 20.8 trillion MNT (~8.6 billion USD) or 95.7% of total financial sector assets. Within the banking sector the three largest banks make up 70% or 14.56 trillion MNT (~6.04 billion USD) of total banking sector assets. There are no foreign banks conducting banking activities in Mongolia. Since 2010 banking assets has registered an annual growth of ~30% with negative growth of 3.2% in 2015.

35. Mongolia's non-bank sector includes 450 NBFIs making up 2.77% (~258.2 million USD) of total financial assets; 17 insurance companies making up .77% of total financial assets (~71.1 million USD); 61 securities market entities making up .30% of total financial assets (~28 million USD); 17 investment funds making up .25% of total financial assets (~24 million USD); and 253 savings and credit cooperatives (SCCs) making .43% of total financial assets (~40 million USD).

36. Mongolia's single stock exchange has a total of 226 listed companies with a total market capitalization of 1.2 billion MNT (~\$608 million USD) at December 2015.

37. Mongolia has a significant shadow economy. In recent years Mongolia has implemented legislative changes designed to reduce its shadow economy; however, the NRA includes reference to a number of published reports, which estimate the size of the Mongolia informal economy. These reports use different methodologies and therefore, the estimates of the informal economy vary widely from 8-13% of GDP to 50% of GDP. Financial inclusion data shows that ~92% of Mongolians have an account in a financial institution; however, only ~25% of account holders used the account to receive wages or government transfers in the last year and only ~6% used their account to pay utility bills²⁴.

DNFBPs

38. With the exception of lawyers and to a lesser extent notaries and accountants, the DNFBP sector in Mongolia is still developing with limited research and data available to establish the materiality of the sector. The sector consists of real estate agents, dealers of precious metals and stones, accountants, lawyers and notaries (see Table 3).

39. Between 2005 and 2012 the real estate sector in Mongolia underwent significant growth with annual residential price growth above 10%²⁵. However, in line with Mongolia's economic slowdown, in recent years the sector's growth has slowed. In 2015, the real estate sector was estimated at 6.9% of GDP (~814.2 million USD).

40. The precious metals and stones sector is not developed. Dealers are required to be licenced; however, it is unclear how many dealers operate in Mongolia and the types of services they provide (see discussion below regarding gold mining in Mongolia).

41. Casinos are prohibited in Mongolia.

²³ IMF Country Report No. 15/109

²⁴ <http://datatopics.worldbank.org/financialinclusion/country/mongolia>

²⁵ <http://www.globalpropertyguide.com/Asia/Mongolia>

42. Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law²⁶. While there is no explicit provision within Mongolian law that prevents foreign trusts from being created in Mongolia, under another jurisdiction's law, or trusts established abroad from operating in Mongolia, Mongolian authorities and the private sector suggested foreign trusts are not a feature in the Mongolian economy and DNFBPs are not involved in the formation or management of foreign trusts in Mongolia. However, Mongolia has not conducted any form of review of foreign legal arrangements operating in Mongolia.

Structural Elements

43. While the structural elements required for an effective AML/CFT system are largely in place in Mongolia, Mongolia lacks high-level strategic commitment to combating ML/TF, and in the assessment team's view, the enactment of the 25th Anniversary of the First Democratic Election and Constitution of Parliament Law (Criminal Amnesty Law) negatively impacts the assessment team's perception of Mongolia's commitment to combating proceeds generating crimes, as discussed below.

44. Mongolia lacks high-level strategic commitment to combating ML/TF in the form of a national AML/CFT strategy as well as lacking a national anti-corruption strategy. At the time of the ME on-site visit, the Independent Agency Against Corruption (IAAC), had developed a new draft strategy, which was submitted to parliament in the spring of 2015 but was not passed, reportedly, for fear of any additional reinforcement of the IAAC²⁷. In the assessment team's view this lack of high-level commitment negatively impacts on the perception of Mongolia's commitment to AML/CFT and on the IAAC's ability to combat corruption and ML, noting that corruption is one of Mongolia's higher-risk predicate crimes.

45. In August 2015, Mongolia passed the Criminal Amnesty Law with amendments in October 2015. Under Article 4 of the law, persons sentenced to imprisonment, before 2 July 2015, for crimes other than those not included in the amnesty (generally crimes not included in the amnesty were crimes related to national security including terrorism and TF, drug use and trafficking and corruption²⁸), were exempt from the remaining time of their sentence and any additional sentence despite time served. In addition, under Article 7 of the law, criminal cases that were under inquiry,

²⁶ Under Article 406 CvC Mongolian has a legal framework for statutory trusts under the form of a "trust contracts". The adoption in 2008 of the Regulation on Non-Bank Financial Trust Services clarified the structures or functions of the "trust contract". Based on this, the assessment team has concluded this arrangement is not an express trusts or other legal arrangement with similar structures or functions.

²⁷ OECD Anti-Corruption Reforms in Mongolia Report, 2015

²⁸ The following offences under the CCM are not included in the amnesty, Article 79, High treason; Article 80, Espionage; Article 81, Assassination of public persons; Article 83, Organization of an armed riot; Article 84, Sabotage; Article 85, Harmful interruption; Article 91, Murder; Article 101.2, Illegal taking of human blood, organs or tissues; Article 108.3, Kidnapping; Article 112.2, Taking a hostage; Article 113.2 and 113.3, Human trafficking; Article 125.2, Satisfaction of sexual desire in unnatural manner; Article 126.2 and 126.3, Rape; Article 133, Violation of the legislation on intelligence activities; Article 145.4, Theft; Article 147.3, Robbery; Article 148.4, Appropriation of property by fraud; Article 177.2, Banditry; Article 178¹, Terrorism; Article 178² Financing of terrorism; Article 184, Illegal carriage by air of explosives and inflammables; Article 188.4, Illegal movement of narcotic drugs, poisonous substances, firearms and explosives through the state frontier of Mongolia; Article 192.3, Illegal preparation, acquisition, transportation, delivery and distribution of narcotic and psychotropic drugs, products or substances; Article 196, Creation of dens for consumption of narcotic or psychotropic substances; Article 225, Hijacking of an aircraft; Article 248.2, Recognizing as a suspect, charging and sentencing of a knowingly innocent person; Article 251.3, Forcing of testimony; Article 261.2, Flight from the court or escape from the place of imprisonment; Article 263, Abuse of power or of office by a state official; Article 264, Excess of authority by a state official; Article 268, Receiving of a bribe; Article 270¹, Improving the financial situation by illegal means; Article 273, Spending of the budget funds contrary to their designation.

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investigation and judicial proceedings as at 2 July 2015, relating to criminal offences covered in the amnesty including ML, were dismissed. While the law includes some safeguards against serious criminals and repeat offenders (see Article 10) and no ML cases were dismissed, in the assessment team's view the law undermines Mongolia's AML/CFT system including Mongolia's commitment to prosecution and sanctioning offenders for ML and proceeds generating crimes. Table 1 shows the number of convicted persons who had their sentence reduced or dropped and number of cases dismissed.

Table 1: Number of Sentences Reduced/Dismissed and Number of Cases Dismissed Under the Criminal Amnesty Law

Crime Type Categories	Number
<i>Convicts with sentence term reduced</i>	
Non-economic crimes	1,103
Economic crimes	657
Sub-total	1,760
<i>Convicts with dismissal of sentence</i>	
Non-economic crimes	435
Economic crimes	243
Sub-total	678
<i>Dismissed cases (inquiry, investigation or judicial proceeding)</i>	
Non-economic crimes	1,665
Economic crimes	80
Sub-total	1,745
Total	4,183

46. The following open source reports provide an indication of the functioning of the structural elements of Mongolia's AML/CFT system.

47. The World Justice Project's 2016 Rule of Law Index scored Mongolia 0.54 on a scale of 0 to 1 where 1 indicates strongest adherence to the rule of law. Mongolia was rated 55 out of the 113 jurisdictions assessed by the project. The report highlights that the ranking of individual indicators remains constant with only Criminal Justice indicators tending upwards since the last report.

48. The table below summarises the governance indices from the 2010 and 2015 World Bank World Wide Governance Indicators Country Snapshots. Mongolia's ranking for Voice and Accountability, Political Stability & Absence of Violence/Terrorism, Government Effectiveness and Control of Corruption have improved since 2010. The 2015 rankings show a small decline in Regulatory Quality and Rule of Law.

Table 2: World Bank World Wide Governance Indicators Country Snapshots - Mongolia

Indicator	Governance Score 2010 (-2.5 to +2.5) ²⁹	Percentile Rank 2010 (0-100) ³⁰	Governance Score 2015 (-2.5 to +2.5) ¹⁸	Percentile Rank 2015 (0-100) ¹⁹
Voice and Accountability	0.04	50.24	0.24	56.65
Political Stability & Absence of Violence/Terrorism	0.59	67.30	0.65	67.14
Government Effectiveness	-0.57	34.93	0.40	40.38

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49. Corruption within the public service is a perceived issue. According to the most recent Transparency International Global Corruption Barometer Report (2013), 65% of respondents in Mongolia felt political parties were “corrupt/extremely corrupt”, 63% of respondents felt that parliament/legislature were “corrupt/extremely corrupt”, 66% of the respondents felt the police were “corrupt/extremely corrupt”, and 77% of respondent felt that public officials and civil servants were “corrupt/extremely corrupt”³¹. In addition, 45% of respondents reported paying a bribe.

50. Mongolia’s Transparency International corruption perception index has improved in recent years, with Mongolia ranked 72nd out of 168 countries in 2015.

Background and other Contextual Factors

51. In August 2015, Mongolia passed the Law on Promotion of Economic Transparency (PET Law). The assessment team considers this law to be a voluntary tax compliance (VTC) scheme³² as the purpose of the law is a one-time full reprieve, upon voluntary disclosure, for legal and natural persons from tax, interest, fines, late fees and penalties under the Value Added Tax Law, General Taxation Law, Social Security Law, Law on Registering Legal Entity, Accounting Law, Customs Law and Administrative Law.

52. Mongolia has significant gold reserves. The gold mining sector in Mongolia consists of large scale miners, ASM and illegal miners. ASM are regulated by district governors under Regulation No. 308, Extraction Operations of Minerals from Small Scale Mines. The extraction of gold by ASM is estimated at between 4 and 7 tons with around 100,000 persons involved³³. According to rough estimates as much as 5 tons and 60,000 persons are involved in illegal gold mining³⁴. While there is a formal gold trade via the State Assaying Agency and BoM, illegal miners and ASMs located a long distance from Ulaanbaatar may sell their raw gold to informal dealers/intermediaries fuelling the cash economy and increasing anonymous transactions and smuggling.

²⁹ Estimate of governance measured on a scale from approximately -2.5 to +2.5. Higher values correspond to better governance.

³⁰ Indicates rank of country compared with all countries around the world. A percentile rank of 0 corresponds to the lowest ranking and 100 corresponds to the highest ranking.

³¹ <http://www.transparency.org/gcb2013/country/?country=mongolia>

³² In July 2017 the APG found the PET Law to be compliant with the APG’s VTC policy.

³³ http://www.bgr.bund.de/EN/Themen/Zusammenarbeit/TechnZusammenarb/Downloads/mongolei_MRAM_GoldMongolia.pdf?__blob=publicationFile&v=4

³⁴ https://www.khanbank.com/uploads/users/28-khanbank/IBD_Daily_Report_2014_03_07.pdf
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53. Mongolia has three free-trade zones, established under the Law of Mongolia on Free Trade Zone (FTZs), and located in the north at the Russian–Mongolian border town of Altanbulag, the south at the Chinese–Mongolian border town of Zamyn-Uud and the port of entry of Tsagaan Nuur in Bayan-Olgii province. FTZs are special regimes in terms of tax, customs, transit, state registration, foreign currency (foreign currency can be used in FTZs), specialised inspection, visa and labour regulations³⁵. However, Mongolia informed the assessment team that these FTZs are not developed – Mongolia estimates the total annual economic value of these zones at ~10,000 USD. There are no FIs operating within these zones and only one notary service provider in Zamyn-Uud.

54. Casinos are prohibited in Mongolia. However, a draft law, which will allow casinos to be established in Mongolia, is listed in the 2017 agenda of the State Great Khural.

55. The official language of Mongolia is Mongolian. Mongolia does not publish its legislation or official documents in English, or have the capacity to make official English translations. Therefore, all documents used in this ME are unofficial translations produced by the FIU or authorities that primarily use the legislation.

56. Mongolia's capacity to generate consistent statistics and meaningful supporting documentation for the ME was a challenge.

(a) Overview of AML/CFT strategy

57. Mongolia is yet to approve its draft National Strategy and Action Plan. At the time of the ME on-site visit, the NCC had oversight of Mongolia's AML/CFT activities, particularly in relation to policy development and implementation, which the assessment team considers to be Mongolia's primary focus. The NCTCC is mandated to coordinate the implementation and monitoring of the ATL, which incorporates Mongolia's TFS provisions. However, the NCTCC is primarily coordinating terrorism related activities.

58. With the exception of BoM, agency level priorities or internal guidance related to AML/CFT were not provided to the assessment team. It is unclear if competent authorities have such documents and the level of AML/CFT coverage included.

(b) Overview of the legal & institutional framework

59. Mongolia is a civil law jurisdiction with Romano-Germanic legal traditions. The 1992 Constitution of Mongolia is the supreme law with subordinate laws mainly in the form of statutes enacted by the State Great Khural. In accordance with the Constitution, international treaties to which Mongolia is a party shall become effective as domestic legislation upon the entry into force of the laws or on their ratification or accession.

60. Mongolia's AML/CFT framework is prescribed in the following legislation:

- ML and TF are criminalised in the Criminal Code of Mongolia 2002 (CCM) with the CPC governing relations arising out of executing criminal proceedings.
- TFS pursuant to UNSCR 1267 and 1373 are prescribed in the ATL and Regulation on Designation of Terrorists, Freezing of Assets of Designated Persons and Review of Frozen Assets 2013 (ATL Regulation). However, in the assessment team's view Mongolia's freezing

³⁵ Doing Business Guide in Mongolia, PWC, 2015

mechanism (Criterion 6.5) is not enforceable, for the following reasons: (i) the ATL and ATL Regulation do not contain sanctions for non-compliance with the obligation to freeze, the prohibition to make funds available, and requirement for FIs and DNFBPs to report assets frozen or actions taken, (ii) the ATL and ATL Regulation contain no cross-reference to indirect/broader sanctions for non-compliance with Mongolia providing no evidence that indirect/broader sanctions can be applied to legal or natural persons.

- Mongolia has no legal framework to implement TFS relating to the DPRK and Iran under UNSCRs 1718, 1737, 1803, 1874 and 1929.
- AML/CFT preventive measures obligations for REs are prescribed in the AML/CFT Law; PMR; Regulation on Reporting Information to FIU on STR Information, which has limited application to banks only; and individual laws legislating to the different institutions in Mongolia's financial sector (sanctions applicable to breaches of the AML/CFT Law and PMR are enforceable via these individual laws legislating different institutions). There are scope deficiencies in the coverage of DNFBPs with the AML/CFT legislation only enforceable on notaries.
- Transparency and beneficial ownership of legal persons and arrangements is prescribed in the Civil Code of Mongolia 2002 (CvC), Company Law Revised 2012 (Company Law), State Registration Law and State Registration of Legal Persons Law.
- Powers and responsibilities of supervisors are prescribed in the Law on Central Bank /Mongol bank 1996 (BoM Law) and Law of Mongolia on the Legal Status of the Committee on Financial Regulations 2005 (FRC Law).
- Powers and responsibilities LEAs are primarily prescribed in the CPC and also in specific laws of LEAs.
- International cooperation is prescribed in the CPC and individual treaties Mongolia has signed with foreign jurisdictions.

61. The following ministries, agencies and authorities are responsible for formulating and implementing Mongolia's AML/CFT system:

- *BoM* - is the legal entity responsible for central banking functions in accordance with the BoM Law, which includes licensing/registration and supervision of banks, and hosting of the FIU. The Supervision Department, under Article 19 of the BoM, is the prudential regulator and supervisor, and under Article 19 of the AML/CFT Law, is the AML/CFT supervisor for banks.
- *FIU* - under Article 16 of the AML/CFT Law, is an autonomous and independent agency, which is empowered to receive, analyse and disseminate STRs, cash transaction reports (CTRs) and other reports or information. Under Article 19 of the AML/CFT Law the FIU is jointly responsible with the FRC for the AML/CFT supervision of all non-bank sector and real estate agents.
- *FRC* - is the government organization responsible for ensuring the stability of the non-bank sector including licensing/registration and supervision. The FRC is responsible for prudential supervision and under Article 19 of the AML/CFT Law, the FRC jointly with FIU are the AML/CFT supervisor for NFBIs, SCCs, investment funds, securities market entities, insurance companies and real estate agents.

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- *GPA* - under the Ministry of Justice and Internal Affairs, is primarily responsible for maintaining law and order and prevention of crime in Mongolia. Under the CPC, the GPA has the power to investigate any crime in the CCM that does not fall under the jurisdiction of the GIA and IAAC including ML.
- *GIA* - under the control of the Prime Minister of Mongolia, is responsible for ensuring national security. Under the CPC, the GIA has the power to investigate TF and ML associated with its predicate crimes jurisdiction, which mainly included border and national security related offences. The GIA as the lead agency of the NCTCC is responsible for the implementation of Mongolia's TFS regime.
- *IAAC* - under the Anti-Corruption Law 2006 amended 2012 (AC Law), is a special, independent government body responsible for anti-corruption related activities with the power to investigate ML associated with public officials under the CPC.
- *General Customs Agency (GCA)* - under the Customs Law of Mongolia 2008 (Customs Law) is responsible for goods and means of transport crossing Mongolia's borders. For AML/CFT, GCA is responsible for implementation of Mongolia's mixed cross-border declaration and disclosure system. The GCA do not have investigative powers.
- *GPO* - is the authority that acts on behalf of the State to ensure the implementation of criminal legislation and participates in the administration of justice. The GPO has two divisions: one is responsible for the supervision of criminal investigation including ML and TF, and the other is responsible for representation of the State in criminal proceedings including the prosecution of ML and TF. The GPO is also responsible for MLA in relation to ML and TF.
- *Ministry of Foreign Affairs (MFA)* - oversees Mongolia's foreign policy, foreign missions and consular services. For AML/CFT, MFA is the primary agency responsible for Mongolia's engagement with international bodies (e.g., United Nations).
- *GAIPSR* - under the Legal Entity's State Registration Law (LESRL) is responsible for the registration of legal persons in Mongolia including non-profit organisations.

(c) Overview of the financial sector and DNFBPs

62. Mongolia's formal financial sector at the time of the ME onsite visit comprises the following licensees or registrants as detailed in Table 3 below: 14 commercial banks, 450 NBFIs, 253 SCCs, 17 investment companies, 61 securities market entities and 17 insurance companies.

Table 3: FIs, DNFBPs, Regulators & AML/CFT Supervisors

Sector	No.	Regulator/SRB	Subject of AML/CFT preventive measures	AML/CFT Supervisor	Total Assets	Percentage of total Financial Sector Assets
Financial Institutions						
Banks (commercial)	14	BoM	Yes	BoM	20.8 trillion MNT (~8.6 billion USD)	95.7%
Non-bank sector						
NBFIs ³⁶	450	FRC	Yes	FRC/FIU	623.2 billion MNT (~258.2 million USD)	2.77%
SCCs	253	FRC	Yes	FRC/FIU	97.6 billion MNT (~40 million USD)	0.43%
Investment Funds	17	FRC	Yes	FRC/FIU	58.0 billion MNT (~24 million USD)	0.25%
Securities Market Entities	61	FRC	Yes	FRC/FIU	67.9 billion MNT (~28.1 million USD)	0.30%
Insurance Companies	17	FRC	Yes	FRC/FIU	173.2 billion MNT (~71.7 million USD)	0.77%
State Pension and insurance Funds	2(each)	-	No	Nil	-	-
DNFBPs						
Casinos	N/A	N/A	N/A	N/A	N/A	N/A
Real Estate Agents	8	GAIPSR ³⁷	Yes ³⁸	FIU/FRC	-	N/A
Real Estate Entities	3,475	GAIPSR ³⁷	No	Nil	-	N/A
Dealers in precious Metals and stones	-	Ministry of Mining	No	Nil	-	N/A
Lawyers	5,507	The Bar Association	No	Nil	-	N/A
Accountants	3,941	Institute of Certified Accountants of Mongolia	No	Nil	-	N/A
Notaries	304 ³⁹	Chamber of Notaries	Yes	Nil	-	N/A
Company Service providers/Trust Service providers	N/A	N/A	N/A	N/A	N/A	N/A

Note: - = no information was provided by Mongolia or information was not clear

³⁶ Including hotels & businesses providing money changing service

³⁷ the GAIPSR is the registrar of real estate entities as legal persons

³⁸ in the assessment teams view the AML/CFT Law and PMR is not enforceable on the Real Estate Agents

³⁹ Number of legal entities, not individual notaries.

Financial sector

63. As displayed in Table 3, banks are licenced/regulated and supervised for both prudential and AML/CFT by the BoM. As previously noted, the role of banks in Mongolia's financial sector is significant with 14 local banks having a total 1482 branches and holding ~95.7% of financial sector assets. At the time of the ME on-site visit, four banks, representing 4% of the total assets, were conducting limited banking activities and one bank has ceased operations. There are no foreign banks conducting banking activities in Mongolia or Mongolian banks operating abroad.

64. As displayed in Table 3, the non-bank sector is licenced/regulated and supervised (prudential) by the FRC with both the FRC and FIU responsible for AML/CFT supervision. As at December 2015, the non-bank sector comprised of 450 NBFI, 253 SCCs, 17 investment fund, 61 securities market entities and 17 insurance companies. Together these entities account for less than 3% of total financial sector assets.

65. NBFIs, licenced and regulated under the Law of Mongolia on Non-Bank Financial Activities 2002 (NBFI Activities Law), conduct a range of activities including lending, financial lease, issuing payment instrument, electronic payment, remittance service, foreign currency exchange and investment into short-term financial instruments. Table 4 provides a breakdown of the number of NBFIs in Mongolia based on the activities undertaken.

Table 4: Number of NBFIs Undertaking Financial Services Activities

Activities	Number of entities as at October 2016
Credit and loan activities	45
Factoring services	22
Issue payment guarantee	16
Issue of settlement instruments	1
Electronic payment and remittance services	12
Foreign currency exchange	142
Trust service	28
Short-term investments of financial instruments	2
Provide investment and financial related information and guidance	33
Total	301⁴⁰

66. SCCs are non-profit organisations licenced/regulated by the FRC under the Law on Savings and Loan Cooperative 2011 (SCC Law). The primary activity of these entities is savings and credit. Other activities permissible under TRC Decree No.405 are: (i) financial leasing services, (ii) project funding, (iii) work as an agent of the e-settlement activities, (iv) insurance intermediary activities, (v) money transfer services, and (vi) create and manage an accumulation fund. The NRA does not include a risk rating for SCCs.

⁴⁰ The number of entities undertaking individual activities does not equal the total number of NBFIs as some institutions are undertaking more than just financial services activity.

67. As displayed in Table 3, investment funds are regulated under the Law of Mongolia on Investment Fund 2013 (Investment Fund Law) and Law of Mongolia on Securities Market 2014 (Securities Law), and undertake professional investment activities including management of funds within the scope of insurance, dealing and to conduct investment or pension fund operations as well as other activities prescribed by the FRC. The NRA does not include a risk rating for investment funds.

68. As displayed in Table 3, securities market entities are licenced/regulated under the Securities Law and the Licensing and Registration Regulation on Regulated Securities Market Activities (Securities Regulation), and undertake the following activities: brokerage, dealing, investment fund operations, securities investment advisory operations, securities trust operations, underwriting, securities ownership rights registration operations, securities trade clearing operations, securities trade settlement operations, securities' central depository operations, securities' custody operations, and securities trading operations. The NRA rates the ML/TF risks associated with the securities market entities as low.

69. As displayed in Table 3, insurance companies are regulated under the Law of Mongolia on Insurance 2004 (Insurance Law), and provide insurance products classified as long-term insurance⁴¹ and general insurance⁴² including life insurance. Insurance intermediaries are regulated under the Law of Mongolia on the Insurance Intermediaries and can undertake insurance agent and broker loss adjustment services. The NRA rates ML/TF risks associated with the insurance sector as low.

DNFBPs

70. As displayed in Table 3 the DNFBPs sector consists of real estate agents/entities, dealers of precious metals and stones, accountants, lawyers and notaries. Casinos are prohibited in Mongolia, and there seem to be no company service providers/trust service providers, although notaries may provide limited company formation services. There are scope deficiencies in the coverage of DNFBPs with the AML/CFT legislation only including real estate agents and notaries and obligations only enforceable on notaries.

71. As displayed in Table 3, there are 3,475 entities registered with the GAIPSR that conduct real estate based activities (details of activities were not provided to the assessment team) and eight real estate agents in Mongolia covered under the AML/CFT Law. However, the AML/CFT law is not enforceable on real estate agents.

72. The eight real estate agents purport to not conduct transactions on behalf of their clients; rather they match buyers and sellers. However, the real estate sector is unregulated with these real estate agents not required to hold any specific licence to operate and no legislation covering the types of activities and services they can provide. The NRA highlights that there is a number of different entities providing a variety of real estate services in Mongolia including construction companies. The real estate sector is rated as a high risk for ML/TF in the NRA.

73. Real estate agents have formed the Association of Real Estate Intermediaries; however, with no enabling legislation, the association has no legal rights and is not a self-regulatory body and does not conduct AML/CFT related activities.

⁴¹ Products include: Life insurance with specified duration, Lifetime Insurance, Savings Insurance, Pension insurance, Health Insurance and Annuity insurance

⁴² Products include: accident and medical, property, vehicles, cargo, construction, agricultural (crop and livestock), aircraft, driver's liability, liability, financial, credit, trust, and rail or water transport

1

74. As displayed in Table 3, there are 304 legal entities providing notary services with an unknown number of individual notaries. Notaries are regulated under the Notaries Law and provide a range of notarizing services including notarizing identification documents for clients and registration of ownership rights. Activities of notaries are prescribed in the Notaries Law, which does not include conducting transactions on behalf of their clients. Notaries are rated as a medium ML/TF risk in the NRA.

75. The Chamber of Notaries, as a self-regulatory body, monitors compliance with the Notaries Law; however, it is not involved in AML/CFT supervisory related activities.

76. The below DNFBPs in Mongolia are exempted from Mongolia's AML/CFT regime but not on the basis of proven low risks:

- As displayed in Table 3, there are 3,941 accountants licensed by the Institute of Certified Accountants of Mongolia in accordance with the Law of Mongolia on Accounting 2015 (Accounting Law). Accountants are rated as a high ML/TF risk in the NRA.
- As displayed in Table 3, there are 5,507 lawyers licensed to practice by the Bar Association in accordance with the Law on Legal Status of Lawyers 2012 (Lawyers Law). The NRA does not include coverage of the ML/TF risks associated with lawyers.
- The number of entities licensed to undertake activities of dealers in precious metals and stones, under the Ministry of Mining and in accordance with the Law of Mongolia on Licensing, is unclear. It is also unclear whether there is specific legislation regulating the activities of these entities. The NRA includes some discussion of ML/TF risks associated with the mining sector including environmental crimes (which include violation of rules for exploration and extraction of minerals) as one of Mongolia's higher-risk predicate crimes and smuggling as one of Mongolia's secondary ML threats. However, it does not include a ML/TF risk rating for dealers in precious metals and stones. See also above discussion on artisanal small-scale miners and illegal miners.
- No information was provided by Mongolia on auction houses, automobile dealers, art or antique dealers. These entities are not included in the NRA.

(d) Overview of preventive measures

77. The AML/CFT Law is the principal legal instruments for combating ML/TF in Mongolia. FIs and DNFBPs are captured as REs through listing/designation and not via provision of services. The AML/CFT Law designates banks, NBFIs, insurance companies, investment funds, securities market entities, SCCs, real estate agents and notaries as REs. AML/CFT preventive measures applicable to Mongolia's REs are contained in the AML/CFT Law, ATL, PMR, ATL Regulation, the Regulation on Reporting Information to FIU which is limited to banking, and various enforceable and non-enforceable AML/CFT guidance.

78. There are scope deficiencies with regard to AML/CFT obligations with State pension and insurance funds, dealers in precious metals and stones, lawyers and accountants not included in Mongolia's AML/CFT regime. These entities are not exempted on the basis of risk.

79. The key element of the Mongolia's AML/CFT preventive measures obligations are under the AML/CFT Law, which establishes the core requirement for CDD and suspicious transaction reporting. The AML/CFT Law is supplemented by the PMR introduced in 30 June 2016. The PMR sets

out further obligations and addresses some key elements of the FATF Standards including risk assessment, wire transfers, new technologies and reliance on third parties. The ATL sets out obligations with regard to TFS. In addition, Mongolia has issued some guidance to support implementation of preventive measures.

80. Sanctions applicable to the AML/CFT breaches are within the primary legislation for each RE. For banks, under BoM Law, supervisors have the power to impose a range of sanctions. For entities regulated by the FRC, under the respective laws, supervisors can impose some sanctions, although administrative sanctions are not available for all REs.

81. With regard to DNFBPs, the FIU and FRC as AML/CFT supervisors are not able to apply sanctions on real estate agents for breaches of the AML/CFT Law or PMR. However, sanctions may be imposed on the notaries under the Notaries law.

(e) Overview of legal persons and arrangements

82. At the time of the ME-onsite visit the following types of legal persons (see Table 5) were incorporated and registered in Mongolia.

Table 5: Number of Registered Legal Persons

Type of Legal Person	Number of entities at Oct 2016
<i>For-profit Legal Persons</i>	
Partnerships ⁴³	3,957
Company – Shareholding	298
Company – Limited Liability	112,480
Company – Foreign Investment Limited Liability	9,417
Company – State and local owned self-financing industrial organization	465
Sub-total	126,617
<i>Non-profit Legal Persons</i>	
Cooperatives	4,093
SCCs	475 ⁴⁴
Non-government organizations	23,027
Religious organizations	746
Foundations	1,119
Labour union organisations	2,676
Media	3,561
Public legal persons ⁴⁵	1
Culture, education training, research and health organisations	331
Sub-total	36,029
<i>For-profit and Non-profit Legal Persons</i>	
Culture, education, training, research and health organizations	331

⁴³ breakdown partnerships in Mongolia was not provided

⁴⁴ Some SCCs registered with the GAIPSR, which may not be conducting activities and licensed by FRC

⁴⁵ Mongolia Bar Association

83. The CvC describes the types of legal persons that can be established in Mongolia. Under Article 33, for-profit and non-profit legal persons can be established. For-profit legal persons are in the form of partnerships and companies. The basic features of partnerships are described in Article 35, which are legal persons with unlimited liability. Companies are legal persons with shareholders' capital divided into certain number of shares, with separate own assets (Article 34 of the CvC).

84. Companies are regulated by the Company Law, which describes their types and basic features in Articles 3 to 5. Public companies (Article 4), and limited liability companies (Article 5) are the types of companies that can be incorporated in Mongolia.

85. Partnerships are regulated by the Law of Partnerships, which describes their types and basic features. Partnerships can be an unlimited partnership (partners are jointly responsible for liability), limited partnership (at least one of the partners is entirely liable for partnership obligations to the extent of his contribution and personal property, while the liability of other partners is limited to the amount of their contributions), and limited liability partnerships (members liability is limited to their investment share in the partnership and the defaulted member shall be fully liable for liability with its investment to the partnership and its private capital).

86. Non-profit legal persons can be established in the form of associations, foundations and cooperatives. Under Article 36 of the CvC; (i) associations are established based on voluntary amalgamation of several persons with common specific goals and membership, (ii) foundations shall be a legal person without membership, established by one or more founders by raising funds to attain publicly beneficial common goals, and (iii) cooperatives are established jointly on voluntary basis by several persons to carry out activities aimed at satisfying common economic, social and cultural needs of its members, based on assets with corporate governance and control over joint assets. These entities are required to be registered with GAIPSR and are regulated under specific legislation based on activities undertaken.

87. Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law⁴⁶. Based on discussion during the on-site, it seems that foreign trusts are not a significant feature in the Mongolian economy with no evidence to suggest that DNFBPs are involved in the formation or management of foreign trusts in Mongolia. However, Mongolia has not assessed the ML/TF risks associated with legal arrangements.

(f) Overview of supervisory arrangements

88. There are three AML/CFT supervisors in Mongolia designated under the AML/CFT Law:

- The BoM, for banks.
- The FRC and FIU for the non-bank sector including NBFIs, SCCs, investment funds, securities market entities, insurance companies and real estate agents.
- There is no supervisor for notaries.

⁴⁶ Under Article 406 CvC Mongolian has a legal framework for statutory trusts under the form of a "trust contracts". The adoption in 2008 of the Regulation on Non-Bank Financial Trust Services clarified the structures or functions of the "trust contract". Based on this, the assessment team has concluded this arrangement is not an express trusts or other legal arrangement with similar structures or functions.

89. Banks, regulated by the BoM, are licenced under the Banking Law of Mongolia and Regulation on Banking License.
90. NBFIs, SCCs, investment funds, securities market entities and insurance companies, regulated by the FRC, are licenced under the NBFI Activities Law, SCC Law, Investment Fund Law, Securities Law, and Insurance Law, respectively.
91. Real estate agents must be incorporated and registered in accordance with the LESRL and Company Law, but there is no other legislation covering the real estate sector.
92. Notaries are required to be licenced under the Notaries Law with the Chamber of Notaries with no AML/CFT supervisor specified in the AML/CFT Law.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2

Key Findings and Recommended Actions

Key Findings

- Mongolia completed its first ML/TF NRA in 2016 with final sign-off and publication occurring during the ME on-site visit. Besides information used by bank supervisors to rank banks' ML/TF risks and the GIA's annual terrorism threat assessment, no details of any other sectoral risk assessments were provided to the assessment team.
- The NRA is focused on the identification of ML threats. There is limited focus on analysis and understanding with threats, consequences and vulnerabilities not incorporated into a comprehensive assessment of Mongolia's ML/TF risk. Therefore, with the exception of key agencies involved in the NRA process, across government agency understanding of Mongolia's ML risk needs major improvements.
- Private sector involvement in the NRA was limited to the provision of data and workshops on the purpose and process of the NRA. The private sector was not consulted on drafts of the NRA. With the exception of larger banks, private sector understanding of Mongolia's ML/TF risk is limited.
- The NRA identifies the following higher-risk predicate offences to ML (in order of priority): (i) fraud, (ii) environmental crime, (iii) tax evasion, and (iv) corruption.
- The NRA also identifies the following higher-risk sectors: (i) banking, (ii) real estate, (iii) accountants, and (iv) dealers in precious stones and metals followed by notaries as medium risk and securities market and insurance sector as low risks. Amongst the financial sector services and products, remittance was classified as the most-risky service.
- For TF, the NRA includes negligible identification and analysis of Mongolia's TF threats and vulnerabilities. Across government agencies and the private sector understanding of Mongolia's TF risk needs fundamental improvements.
- While Mongolia has a developed a draft national AML/CFT strategy, at the time of the ME on-site visit it was not in force. To a limited extent the activities of competent authorities prioritise the ML/TF risk faced.
- The findings of the NRA have not led to implementation of enhanced or simplified AML/CFT measures or to any exemptions from AML/CFT requirements for lower risk activities.
- Mongolia has two national cooperation and coordination mechanisms for its AML/CFT regime. The NCC is responsible for ensuring the implementation of the AML/CFT Law and has coordinated recent AML policy developments and the NRA. However, the degree to which this mechanism coordinates ML operational activities is limited. The NCTCC is mandated to coordinate the implementation and monitoring of TFS. However, the degree to which this mechanism coordinates policy and operational activities related to TF is limited as its primary objective is to coordinate terrorism related activities.
- Cooperation or coordination on PF is absent.

Recommended Actions

- Competent authorities should continue to develop their understanding of Mongolia's ML risk by

supplementing the NRA with sector specific risk assessments, which incorporate Mongolia's ML threats (as identified in the NRA) with sector specific consequences and vulnerabilities in order to establish a comprehensive understanding of ML risk.

- Mongolia should adequately identify, assess and understand its TF risk.
- Mongolia should approve its draft National Strategy and Action Plan and develop sector-specific policies (based on the identified risks), which need to cascade into the internal policies, priorities and procedures of relevant agencies.
- Mongolia should implement a comprehensive RBA to prioritise capacity building and training, and allocate resources, in order to develop and implement measures to prevent and mitigate ML/TF.
- Mongolia should continue to engage with the REs including DNFBPs to improve their understanding of Mongolia's ML/TF risk.
- Mongolia should implement a coordination mechanism for PF.

93. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R.1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

94. Mongolia completed its first ML/TF NRA in 2016 with final sign-off and publication on the BoM's website occurring during the on-site visit (24 October to 4 November 2016). Prior to the on-site, approximately 30 participants from the private sector, primarily those that had scheduled meetings with the assessment team, received a pre-publication version of the public NRA.

95. Some agencies, for example, the IAAC, informed the assessment team that they conducted their own risk assessments prior to the NRA. However, besides information on BoM's risk assessment of banks as part of banking supervision and the GIA's annual threat assessment of terrorism, no details of any other ML/TF sectoral risk assessments were provided to the assessment team.

Mongolia's NRA

96. The FIU led the development of the NRA as head of the NRA WG comprising of twelve key agencies primarily from the NCC. A detailed discussion of the process of Mongolia's NRA is included in Chapter 1. Briefly, the NRA was completed in three stages between October 2015 and August 2016, as follows:

- *Stage 1* - the NRA WG collected data, based on the data collection forms developed by the OSCE, and conducted workshops with relevant agencies and the private sector on the NRA process. BoM supervisors provided information on the banking sector based on its risk assessment tool developed with support of the IMF.
- *Stage 2* - collected data was analysed and identified gaps were complemented with perception data including interviews with, and surveys completed by, competent authorities.

Perception data using questionnaires was also obtained from 30 bank employees, 30 NBFIs employees, five real estate agents, five stock brokers, 60 accountants and 22 notaries.

2

- *Stage 3* - the likelihood of threats and vulnerabilities were estimated and a risk assessment form was used to rate the ML/TF risks associated with individual crimes and respective sectors. A draft of the NRA was shared with all NCC members for their comment.

97. Overall, through the NRA WG, there was adequate cooperation and input from relevant government agencies. However, private sector engagement was limited with no consultation on the draft NRA before its finalisation and publication (see below discussion of private sector's understanding of ML/TF risks).

98. The NRA WG produced two versions of the NRA: (i) a detailed version to which access was restricted to key competent authorities and the assessment team, and (ii) a public version in Mongolian, which was published on the BoM website and is available to all government agencies and the private sector. It is unclear whether the detailed version of the NRA has been disseminated to government agencies outside of those that are members of the NRA WG, NCC and NCTCC. Besides the publication of the NRA on the BoM's website and a single briefing on the findings of the NRA just prior to the ME on-site visit, no other public sector outreach on the NRA occurred before/during the ME on-site visit.

99. The following discussion is based on the version of the NRA provided to the assessment team and subsequent discussions with competent authorities and the private sector during the ME on-site visit.

100. The NRA is focused on the identification of ML threats with a lesser focus on the identification of vulnerabilities and consequences. As outlined in chapter 1, the assessment team broadly agrees with the identification of the following higher-risk predicate offences to ML (in order of priority in the NRA): (i) fraud, (ii) environmental crime, (iii) tax evasion, and (iv) corruption. However, the assessment team considers corruption may be a higher ML threat than estimated in the NRA. This view is primarily based on open source reports suggesting Mongolia faces corruption challenges particularly in relation to the mineral resource sector (Mongolia's largest sector in term of percentage of GDP) and anti-corruption measures are far from producing sustainable results (see Chapter 1 for detailed discussion of corruption reports on Mongolia).

101. Moderate ML threats identified in the NRA are: drug offences; smuggling (including human smuggling); organised crimes; terrorism and TF; theft and burglary; and risk from foreign proceeds. These risk ratings, including the above higher-risk predicate offenses, are based on national statistics including number of predicate crimes; damage caused by predicate crimes; associated property seized, frozen and confiscated; and expert opinion in order to quantify the level of inherent risk. While the assessment team broadly agrees with the identification of the above moderate risk ML Threats, it is not clear that terrorism and TF are moderate ML threats (see below discussion on TF).

102. While the assessment team broadly agrees with the NRA's ML findings, there is limited focus on analysis and understanding - threats, consequences and vulnerabilities are not incorporated into a comprehensive assessment of Mongolia's ML/TF risk. Range and depth of data available and used is an overarching issue in the NRA, and the NRA does not include adequate use of intelligence and expert research or reports, strategic intelligence analysis and trends and typologies related to ML. Nor does the NRA include sectoral or agency level risk assessments including internal risk assessments conducted by banks.

103. The NRA identifies some key vulnerabilities, including the banking sector, real estate sector and accountants as high risk. The NRA also identifies as medium risk notaries. The securities and insurance sectors are identified as low risk. Given the large number of NBFIs and their geographical coverage, the NRA concluded that NBFIs are exposed to higher ML/TF risks. These vulnerabilities, with the exception of the banking sector to some degree, have been assessed using limited statistical data, expert opinion and the primary assumption that ML/TF risk is positively correlated with sector size. Outside of the NRA and BoM's risk assessment of banks as part of bank supervision, details of any other ML/TF sectoral risk assessments were not provided to the assessment team.

104. In the assessment team's view, major improvements to the ML elements of the NRA are needed including adequate coverage of: (i) legal entities including foreign legal arrangements, (ii) how proceeds of Mongolia's higher-risk ML predicate crimes are laundered (with the exception of corruption to some extent), (iii) illicit inflow and outflow of funds (both through movement of cash and trade-based ML), (iv) the ML risk associated with the non-bank sector, (v) the DNFBP sector particularly ML risk associated with real estate and dealers in precious metals and stones, and (vi) risks associated with the shadow economy cash particularly since Mongolia implemented measures to reduce its size (see Chapter 1).

105. With regard to TF, fundamental improvements are needed to the NRA. The TF section in the NRA is approximately three quarters of a page. The NRA includes very limited identification and analysis of Mongolia's TF threats, vulnerabilities and consequences. It is not clear from the information included in the NRA how Mongolia reached some of the TF conclusions including; (i) that Mongolia's TF risk from use as a transit country is high, and (ii) terrorism/TF is a medium predicate crime risk to ML. Based on available open source material, and acknowledging Mongolia's regional risks, Mongolia's exposure to TF threats seems to be limited. Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities, Mongolia is not a major source or route jurisdiction for FTFs⁴⁷ and there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.

106. The NRA also does not include any identification of the threats posed by terrorist entities to NPOs which are at risk.

Understanding of ML/TF risk by competent authorities

107. During ME on-site visit meetings, competent authorities displayed an incomplete and varied understanding of Mongolia's ML risk. The FIU and GPA exhibited a more satisfactory level of understanding due to their active involvement in the NRA process and investigation of ML. Based on their 27 ML investigations, the GPA has some understanding of how proceeds of crime are laundered in Mongolia including through the real estate sector and legal persons.

108. Other LEAs, mainly GIA and IAAC, displayed a more limited understanding of ML risks, including disagreement with some of the rankings of Mongolia's higher-risk predicate offences. In the assessment team's view, this more limited understanding is primarily due to the recent completion of NRA, lack of agency level policies to pursue ML and limited number of ML investigations (see IO.7).

109. BoM supervisors displayed some understanding of ML risks and vulnerabilities particularly in relation to the banking sector including individual institutional ML risks. FRC supervisors

⁴⁷ http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf
Anti-money laundering and counter-terrorist financing measures in Mongolia – 2017 @ APG 2017

understanding of ML risk is at the developmental stage including vulnerabilities in the sectors they supervise. Understanding of ML risk associated with the DNFBP sector is very low among all competent authorities.

110. The recent completion of the NRA, deficiencies in the NRA (as discussed above), and limited agency/sector level risk assessments covering ML all impact understanding of ML risk by competent authorities. In the assessment team's view major improvements to Mongolia's understanding of ML risks are needed.

111. For TF, overall competent authorities displayed a negligible understanding of Mongolia's TF risks. During the ME on-site visit, GIA displayed a reasonable understanding of Mongolia's terrorism risk based on its terrorism threat assessments; however, this understanding does not extend to TF. In the assessment team's view, Mongolia's understanding of TF risk is negligible due to negligible coverage of TF in the NRA and no TF investigations by the GIA.

112. Overall, the NRA is primarily focused on identification of ML threats and does not reflect a comprehensive assessment of Mongolia's ML/TF risk. Major improvements are also needed across government agencies including LEAs and supervisory authorities to enhance their understanding of ML risk. Fundamental improvements for TF are required.

National policies to address identified ML/TF risks

113. The NRA highlights that based on identified risks, a national strategy for mitigation of ML/TF will be developed. However, Mongolia is yet to approve its draft National Strategy and Action Plan. To date, though the NCC has been critical to the reforms to AML/CFT laws, regulations and policies, such reforms are only aligned with the identified risks, threats and vulnerabilities to a negligible extent.

114. As analysed in IO.3, IO.4, IO.5, IO.6, IO.7, IO.9, IO.10 and IO.11 activities of competent authorities are only aligned with the identified ML/TF risks to a negligible extent.

Exemptions, enhanced and simplified measures

115. The findings of the NRA have not led to implementation of enhanced or simplified AML/CFT measures or to any exemptions from AML/CFT requirements for lower risk activities.

116. Not all DNFBPs are subject to AML/CFT obligations pursuant to the AML/CFT Law. Lawyers, accountants and dealers in precious stones and metals are not subject to AML/CFT obligations, but their exclusion from the framework is not based on the risk assessment findings.

Objectives and activities of competent authorities

117. Overall, Mongolia has not implemented a comprehensive, RBA to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risk. Mongolia lacks a national AML/CFT policy and consistent agency level objectives. However the activities of some competent authorities reflect Mongolia's ML/TF risks, as follows:

- *ML* - the GPA, GIA and IAAC are the designated competent authorities for the investigation of ML and predicate crimes under their jurisdiction. Mongolia has investigated 46 cases of ML in the period under review. These cases mainly relate to fraud and corruption, which are

Mongolia's first and fourth highest risk predicate offences, as identified in the NRA. However; (i) in the assessment team's view, the number of ML investigations is not consistent with Mongolia's ML risk including the individual risk of corruption, (ii) there have been few if any ML investigations of other higher-risk predicate crimes such as environmental offences, and (iii) Mongolia has not recorded a conviction for ML – the Supreme Court has overturned the ML convictions.

- *TF* - GIA is the designated agency to investigate TF. The GIA has conducted TF inquiries into three TF disseminations from the FIU - two cases were dropped due to lack of the characteristics of TF and one inquiry is ongoing. GIA activities primarily focus on terrorism.
- *Supervision* - BoM, FRC and the FIU are responsible for supervision of banks, the non-bank financial sector and DNFBPs, respectively. Mongolia has allocated resources to the supervision of banks including the recent introduction of risk-based supervision: two AML/CFT on-site inspections of higher risk banks occurred before the ME on-site visit and two inspections occurred during the ME on-site visit – no inspection reports were finalised at the time of the ME on-site visit.
- The FRC has conducted limited AML/CFT supervision as part of prudential inspections, some of which were in combination with the FIU. Supervision activities are not AML/CFT risk-based and have been primarily limited to NBFIs; Insurance Companies; Securities Market Entities; and SCC. However, the FRC is in the process of implementing risk-based supervision. There has been no AML/CFT supervision of DNFBPs.

National coordination and cooperation

118. An institutional framework is in place to provide the basis for the development of national policies and co-ordination on AML/CFT issues at a policy and operational level, but effectiveness needs improvement. The NCC established under the AML/CFT Law encompasses key agencies involved in Mongolia's AML/CFT regime, including the FIU as the lead agency, supervisory authorities, LEAs and other relevant competent authorities.

119. The functions of the NCC include; (i) to ensure the implementation of the AML/CFT Law and other relevant legislation, (ii) to exchange information, (iii) to assess and mitigate ML/TF risks in Mongolia, and (iv) to draft policy as well as recommendations to prevent and combat ML/TF. In the period under review, the NCC has played a key role in the development and implementation of AML/CFT legislation, including the PMR and the NRA. However, the degree to which this body coordinates operational activities related to ML is negligible with no specific examples provided to the assessment team.

120. With regard to TF, the NCTCC with the GIA as the lead agency is mandated to coordinate the implementation and monitoring of the ATL, which incorporates Mongolia's TFS provisions. However, the degree to which the NCTCC coordinates policy/operational activities related to TF is limited with no clear examples of its TF cooperation and coordination mandate provided. The NCTCC's primary objective is to coordinate terrorism related activities.

121. There is no formal cooperation and coordination mechanism between the NCTCC and the NCC, although the majority of key agencies are members of both councils.

122. Mongolia advised that the NCTCC is the coordination and cooperation mechanism for PF; however, no evidence of PF coordination or cooperation on policies or activities related to PF was provided to the assessment team.

Private sector's awareness of risks

123. Consultation with private sector stakeholders in the preparation of the NRA was limited to workshops on the purpose and process of the NRA and the provision of perception data by the private sector during these workshops. Notwithstanding: (i) a pre-publication version of the NRA was disseminated to key FIs just prior to the ME onsite visit, (ii) the FIU conducted a briefing on the findings of NRA just prior to the ME on-site visit, and (iii) a public version of the NRA is available on BoM's website. At the time of the ME on-site visit, FIs generally acknowledge that they are still analysing the findings and results of the NRA and have yet to incorporate the findings of the NRA into their risk assessments and preventative measures frameworks.

124. Private sector's awareness of the NRA and understanding of ML risks varies across the financial sector. Overall, banks were aware of the NRA and displayed, to some extent, an understanding of ML risks, which was mainly restricted to customer ML risks based on the findings of their own internal risk assessments and CDD. Due in part to the recent completion of the NRA, banks' awareness did not extend to an in-depth understanding of Mongolia's overall ML risks, consequences and vulnerabilities and ML typologies.

125. For other FIs; most NBFIs were aware of the NRA but displayed a lower level of understanding than banks. Other FIs including insurance companies, securities market entities, investment fund and SCCs were aware of the NRA but displayed a negligible understanding of Mongolia's ML risks. DNFBPs were unaware of the NRA findings. The private sector awareness of Mongolia's TF risk is negligible.

Overall Conclusion on Immediate Outcome 1

126. **Mongolia has a low level of effectiveness for Immediate Outcome 1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO.6

- STR filing is not commensurate with Mongolia ML risk. The FIU is receiving limited STRs with the vast majority from banks, very limited STRs from the non-bank sector, and no filing from DNFBPs. Furthermore, a significant proportion of STRs received are filed solely on the basis of transactions with higher-risk jurisdictions (mainly DPRK), and not on suspicion that funds are the proceeds of crime, particularly Mongolia's higher-risk predicate crimes.
- Financial intelligence including FIU operational analysis is being used to initiate ML and predicate crime investigations to a limited extent. The majority of the FIU's disseminations have been to the GIA and primarily related to transactions with DPRK – Mongolia provided no information on the outcomes of these disseminations. However, the GPA is making use of FIU disseminations to initiate ML inquiries. Furthermore, the MIAT case, which led to ML convictions, was initiated by FIU dissemination – convictions were later overturned in the Supreme Court.
- The FIU is primarily supporting the operational needs of LEAs through provision of information upon request.
- The FIU's operational analysis has been used to initiate TF inquiries by the GIA.
- The FIU has not conducted or disseminated strategic analysis.
- The FIU has MOUs with LEAs and is exchanging financial intelligence and other information. The FIU has access to a range of databases of other competent authorities, which it uses to a limited extent in STR analysis.
- The understanding of and ability to utilise financial intelligence and analysis across most LEAs and competent authorities is developing.

IO.7

- Mongolia lacks a national AML/CFT policy, internal directives and comprehensive guidance or mechanism to prioritise the use of the ML offence.
- While LEAs are conducting ML inquiries, very few inquiries result in LEAs opening an investigation of ML and even fewer prosecutions. LEAs have conducted ML inquiries into 4,345 persons, which resulted in 46 ML investigations with 20 investigations transferred to the GPO for prosecution, and two cases prosecuted.
- The GPO has prosecuted two ML cases in 2011 and 2013. In both cases, ML convictions obtained by lower courts were overturned by the Supreme Court.
- ML investigations have primarily been related to Mongolia's higher-risk predicate offences of fraud and corruption. However, in the assessment team's view, the number and type of ML investigations are not commensurate with Mongolia's ML risk - there have been very few or no ML investigations related to Mongolia's other higher-risk predicate threats, for example, environmental crime and tax evasion.

- Based on discussion during the ME on-site visit and data included in the NRA, LEAs are targeting ML threats by pursuing predicate crimes.

10.8

3

- Although the CPC and CCM provide for confiscation in keeping with the FATF Standards, Mongolia lacks national policy objectives for LEAs and prosecutors to pursue confiscations.
- While Mongolia has technically not confiscated assets related to ML due its ML convictions being overturned, the value of confiscations imposed by lower courts in these cases were not changed by the Supreme Court when it overturned the ML convictions.
- Mongolia is seizing and confiscating property related to predicate crimes including fraud, environmental crimes, tax evasion and corruption. However, detailed statistics were not provided on the individual value of funds receipted by the state in relation to these higher-risk predicate crimes.
- Mongolia has not confiscated proceeds located abroad but has repatriated funds to Korea and the Czech Republic.
- Mongolia has not confiscated assets in relation to TF - although this is not inconsistent with Mongolia's perceived TF risk.
- While Mongolia's ability to detect and seize falsely/not declared cross-border movements of currency is limited, Mongolia has made some confiscations of non-declared currency and precious metals.

Recommended Actions

10.6

- The FIU should enhance its operational analysis by; (i) providing outreach and further guidance to all REs on reporting obligations, (ii) maximize the use of accessible and available law enforcement and other information, (iii) target operational disseminations to the needs of LEAs and Mongolia's higher-risk predicate crimes.
- The FIU should conduct strategic analysis that supports the needs of LEAs and other competent authorities in accordance with Mongolia's ML/TF risk.
- Increase cooperation between domestic competent authorities to enhance their level of financial intelligence development, use and information/intelligence sharing in accordance with Mongolia's ML/TF risk.
- Maximize operational and strategic analysis to support respective LEAs investigation/operational needs with options to achieve this including the recruitment or secondment of additional FIU staff, either from LEAs or others authorities and the conduct of ongoing training for them to produce more targeted spontaneous disseminations.

10.7

- Increase commitment to investigate and prosecute ML by including clear directives within the national AML/CFT policy.
- Provide targeted ML training to LEA staff, prosecutors and the judiciary to enhance their understanding of ML investigation and prosecution issues.

IO.8

- Continue to support confiscations by LEAs and prosecutors by adopting as part of the national AML/CFT strategy a clear prioritisation for the confiscation of proceeds, instrumentalities and property of equivalent value in accordance with Mongolia's ML/TF risk.
- Continue to develop internal policies and procedures to improve confiscations, and maintain comprehensive and detailed statistics particularly on the value of funds receipted by the state in relation to ML and individual predicate crimes.
- Develop a strategic and coordinated approach to cross-border confiscations including through enhancing the capacity of agencies involved, improved intelligence, profiling and agency coordination.

127. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R.29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

128. Pursuant to the AML/CFT Law the FIU was established on 29 November, 2006 under the structure of the BoM. The FIU is an administrative FIU with no investigation power. The FIU serves as the national central agency for receiving and collecting financial transaction information filed by REs, conducting analysis, and disseminating information to the relevant LEAs.

129. While the FIU is located within the BoM, it has separate functions, systems, and access controls except for the IT infrastructure for which it utilizes the BoM's IT systems. Technical functions of the FIU operate with full autonomy and independence, free from undue influence or interference. At the time of the ME on-site visit, the FIU had ten staff members: the Head of FIU, eight analysts and one AML/CFT supervisor.

130. The FIU joined The Egmont Group of Financial Intelligence Units in 2009.

STRs received and requested by competent authorities***Reports received***

131. The FIU receives transaction reports from REs as required under the AML/CFT Law. These transaction reports include STRs, CTRs and foreign settlement transaction reports (FSTRs) for transactions above MNT 20 million (~USD8,000). In addition, the FIU receives cross-border cash transportation reports (CBCTRs) from the GCA for cross-border transportation of cash above the threshold of MNT 15 million (~USD6,000). To date, no CBCTRs relating to BNI have been submitted to the FIU. Table 6 displays statistical information on transaction reports received by the FIU.

Table 6: Financial Transaction and other Reports Received by the FIU

Report Type	Number of Transactions Reports						Total
	2011	2012	2013	2014	2015	Oct 2016	
STRs	71	158	285	212	113	174	1,013
CTRs	474,880	557,513	755,499	1,962,408	1,223,984	553,362	~5.5 million
FSTRs	49,221	98,657	60,274	149,682	86,329	65,653	509,816
CBCTRs	2,376	2,796	3,259	2,347	1,917	1,099	13,794
Total	526,548	659,124	819,317	2,114,649	1,312,343	620,288	~6.0 million

Table 7: STRs Received by the FIU

Reporting Entities	Number of STRs						Total
	2011	2012	2013	2014	2015	Oct 2016	
Banks	71	156	283	210	111	171	1,002
NBFIs	0	1	2	0	0	0	3
Insurance Company	0	0	0	0	0	0	0
Securities	0	1	0	0	0	0	1
SCC	0	0	0	0	0	0	0
DNFBPs	0	0	0	0	0	0	0
Other ⁴⁸	0	0	0	2	2	3	7
Total	71	158	285	212	113	174	1,013

132. Table 7 shows the annual STRs filing made by REs and other relevant authorities from 2011 up to October 2016. In the assessment team's view, STR filing is not commensurate with Mongolia's ML risk, as follows:

- Approximately 99% of the STRs (1,002) were filed by banks with very limited filing by the non-bank sector and no STR reporting by DNFBPs. While the assessment team acknowledges that banks makeup a significant proportion of the financial sector, the almost complete lack of reporting by the non-bank sector and no filing by DNFBPs is not consistent with ML risk including as identified in the NRA.
- Regarding the 1,002 STRs filed by banks, data included in Mongolia's NRA shows that between 2010 and 2015, 423 STRs (or 42% of all STRs) were submitted in relation transactions with higher-risk jurisdictions (mainly DPRK) and only 435 STRs filled on suspicion that funds were the proceeds of crime. The level of filing unrelated to higher-risk jurisdictions is not commensurate with Mongolia's ML risk.
- NRA data shows that STRs filed are not commensurate with Mongolia's ML threats. For example, corruption is one of Mongolia's higher-risk predicate crimes; however, between 2010 and 2015 only two STRs were filed in relation to PEPs.

133. As shown in Table 6, STR reporting increased significantly in 2012. This was due to the introduction of a requirement to file STRs on all transactions related to higher-risk jurisdictions. Furthermore, there is a significant decrease in STR reporting between 2014 and 2015. Mongolia's

⁴⁸ includes private companies, domestic competent authorities, foreign law enforcement agencies and FIU itself

explanation for this decrease is two-fold; (i) it is due to the reduction in higher-risk jurisdictions listed by FATF, and (ii) the quality of STR reporting between 2014 and 2015 improved and defensive filing decreased with the issuance of Guidance for Filling the STRs and CTRs, Regulation on Submitting Information to FIU for the Banks, and Guidance on KYC Procedures and the Reporting of Cash and Suspicious Transactions.

134. Between 2011 and 2015, two STRs were filled in relation to TF and three STRs were filled in relation to possible individual's name matches with persons listed in the UNSCR Consolidated Lists.

135. With regard to CTRs, the increase in CTRs between 2013 and 2014 was due to changes to the AML/CFT Law, which lead to banks reporting a CTR if the daily value for a particular account/entities transactions exceeded 20 million MNT (~USD8,000). In 2014, the issued guidance, which clarified CTRs filing requirements and lead to a decrease in erroneous filing.

Information requested from FIs/DNFBPs

136. The FIU can request and use additional information from FIs and DNFBPs during its analysis in line with its STR analysis standard operating procedures (SOPs). This process normally occurs via email or by formal request from the Head of FIU and takes between 1 to 5 working days depending on the volume of information required. Table 8 shows the number of requests made to banks. No data was provided on requests made to the non-bank sector or DNFBPs.

Table 8: Information Requests from Banks by FIU

	2011	2012	2013	2014	2015	Oct 2016	Total
Number of Requests	6	23 ⁴⁹	50 ³⁸	4	5	18	106
Number of individuals/entities included in the request	18	229	439	15	89	127	917

137. Under the CPC LEAs can request information from FI and DNFBPs. No data was provided on the number of request from LEAs to FIs and DNFBPs, although GPA investigators met during the ME on-site visit said they often request information from banks during ML and predicate crime inquiries and/or investigations.

Use of financial intelligence and other information to support operational needs (6.1 and 6.3 together)

138. To a negligible extent, FIU analysis and dissemination supports the operational needs of the Mongolian competent authorities, particularly the GPA, GIA and IAAC. These LEAs are making some use of financial intelligence and other relevant information to identify investigative leads, develop evidence in support of investigations, as well as trace criminal proceeds related to ML, associate predicate crimes and terrorism or TF.

Spontaneous disseminations of the FIU

⁴⁹ In 2012 and 2013 FIU requested information on behalf of LEA's. This practice is stopped in 2013.

139. The FIU conducts STRs operational analysis, as set out in its SOP, to develop intelligence on possible ML/TF and predicate offences. The FIU analyses STRs, other transaction reports and information maintained in a number of government databases in order to develop intelligence, which is disseminated to relevant LEAs, as shown in Table 9.

Table 9: Breakdown of STRs and Reports Disseminated to LEAs

	2011	2012	2013	2014	2015	Oct 2016	Total
STRs received by FIU	71	158	285	212	113	174	1,013
Number of STRs analysed	57	110	180	275	209	114	945
<i>Reports Disseminated to LEAs</i>							
GIA Possible violations under the CCM generally related to public security, borders crimes and all analysis related to STRs filed on transactions with higher-risk jurisdictions.	16	86	7	3	6	6	124
IAAC Possible violations under the CCM relating to public officials.	0	1	0	0	0	0	1
GPA Possible violations under the CCM relating to offences that are generally not under the jurisdiction of the GIA or IAAC	3	7	7	3	21	29	70
Other⁵⁰	2	0	0	0	0	0	2
Total	21	94	14	6	27	35	197

140. Commensurate with STRs received, in the assessment team's view, the FIU has disseminated a limited number of reports to LEAs and these disseminations are not consistent with Mongolia's ML/TF risk. For example, the NRA highlights corruption as one of Mongolia's higher-risk predicate crimes; however, the FIU has only disseminated one report to the IAAC.

141. It appears as if FIU reports focus predominantly on STRs with little indication of how other reports as per Table 6 inform or contribute to financial intelligence disseminations.

142. In the assessment team's view, use of FIU disseminations by the GIA is negligible. The FIU has disseminated 124 reports to the GIA, which have led to only two ML investigations and three TF inquiries (see Table 11 for details of ML investigations). The low level of ML investigations related to these disseminations is due, at least in part, to most of the disseminations relating to STRs on transactions with higher-risk jurisdictions (mainly DPRK). However, in reaching its conclusion on the use of FIU disseminations by the GIA, the assessment team did consider the GIAs use of these reports – the GIA did not provide any information on their use.

⁵⁰ Reports on ownership of banks disseminated to the Supervision Department of BoM. It is unclear what actions the Supervision Department of BoM undertook in relation to this dissemination.

143. Feedback from the GPA during the ME on-site visit confirmed that they do use FIU's disseminations for ML and predicate crime inquiries and investigations, and that the quality of the FIU's operational analysis is generally good. Since 2011, the FIU has disseminated 70 reports to the GPA, which resulted in some ML inquiries and investigations including the MIAT case, which led to ML convictions in the lower courts – convictions were later overturned in the Supreme Court (see IO.7 for details of this case).

144. The FIU has not conducted any strategic analysis although the FIU has one dedicated staff member to undertake strategic analysis and has recently developed internal guidelines on conducting strategic analysis. This strategic analyst is utilised elsewhere in the FIU, which suggests the FIU lacks sufficient skilled resources.

FIU information provided upon request

145. The FIU is actively supporting the operational needs of LEAs through the provision of information upon request, as outlined in Table 10. However, case details showing how this information was used to support ML and predicate crime inquiries and investigations were not provided to the assessment team.

Table 10: Information Provided Upon Request by FIU

LEAs	2011		2012		2013		2014		2015		2016	
	Req.	Pro.	Req.	Pro.	Req.	Pro.	Req.	Pro.	Req.	Pro.	Req.	Pro.
GIA	6	5	15	15	211	211	38	29	157	155	6	6
GPA	93	87	190	199	888	776	331	334	1081	1076	762	800
IAAC	30	29	285	282	68	63	265	268	10	10	0	0
SID	16	16	1	0	27	13	0	0	0	0	0	0
GPO	0	0	10	10	0	0	0	0	0	0	0	0
Other	5	0	0	5	3	3	0	0	0	0	0	0
Total	150	137	501	511	1,197	1,066	634	631	1,248	1,241	768	806

Note: Req.= Number of information requests; Pro. = Number of information requests provided to LEA.

146. During the on-site visit, LEAs said they develop and use their own financial intelligence, which is supplemented by information requested from the FIU (see Table 10), to support predicate crime inquiries/investigations, ML inquiries and to a lesser extent ML investigations. However, case details and examples to showing how this financial intelligence is being used were not provided to the assessment team.

147. Overall, the FIU is primarily supporting the operational needs of LEAs through provision of information upon request. However, sufficient evidence was not provided to show a wide variety of reliable, accurate, and up-to-date financial intelligence and other relevant information is developed by the FIU and LEAs, and used in ML/TF and predicate crime inquiries and investigations. The quality of FIU's products requires further development primarily through improvements to the quality and quantity of STR reporting, the broadening of analysis to include strategic analysis and the development of FIU products that better target the specific needs of LEAs and focus on Mongolia's ML/TF risk.

Cooperation and exchange of information/financial intelligence

148. The FIU has a central AML coordination role in Mongolia. As chair of the NCC, the FIU plays a critical role in AML/CFT policy development. In addition, the FIU cooperates with key relevant competent authorities through the NCC and exchanges information via MOUs with the GPA, GIA, IAAC, GCA and GPO. The GPA and GIA, have secure and direct access to the FIU's database through a designated terminal within each agency.

149. The FIU has access, either directly or via formal request, to the following databases:

- Direct access to database:
 - BoM's database of bank's management, which includes information of chief executive officers and shareholders.
 - BoM's credit information database.
 - BoM's high-value and low-value payment database with inter-bank payment information.
- Access via formal request:
 - IAAC's database of asset and income declaration.
 - GCA's database of custom declaration.
 - GIA's undercover operation data.
 - GAIPSR's database on registration of citizen, property and legal entities.
 - Social Insurance General Office's pension and benefit data.
 - General Department of Taxation's database registration of tax.
 - Criminal Police of General Police Department's database of undercover operation data.
 - Border Protection Office database of on border crossings.
 - Conviction database of Centre of Information and Statistics of General Police Department.

150. Although the FIU has five MOUs with competent authorities, domestic cooperation and information exchange with other Mongolian relevant authorities is limited. In addition, the FIU has limited direct access to certain databases, which impacts of its ability to conduct timely and more comprehensive analysis.

151. The FIU observes internal regulations and SOP's to protect the confidentiality its information. These procedures cover the receipt, analysis and dissemination of STRs and also processes aimed at safeguarding STR information received and disseminated by the FIU. Operational analysis is disseminated in paper form directly to the designated LEA and any electronic information is password protected. The reports are subject to confidentiality caveats that safeguard how information contained within them is to be used by the receiving LEA and restricts the further sharing of any information.

Overall Conclusion on Immediate Outcome 6

152. **Mongolia has a low level of effectiveness for Immediate Outcome 6.**

Immediate Outcome 7 (ML investigation and prosecution)

153. The GPA, GIA and IAAC are the LEAs designated to investigate ML in line with their predicate offence jurisdiction under the CPC and Decree Number A/67 Year 2015 of the General Prosecutor Office of Mongolia. LEAs conduct initial inquiries into potential ML cases before the case is transferred to the GPO. The GPO oversees the criminal investigation process and allocates ML investigations to the appropriate LEA based on Decree Number A/67 of 2015 as follows:

- *IACC* - ML cases involving public officials are investigated by the IAAC. The IAAC has a designated division for investigations of predicate crimes and ML with six investigators trained in ML investigations from the team of 13 dedicated investigators.
- *GIA* - ML cases where the predicate offence relates to public security or border crimes are investigated by the GIA. The GIA has a designated division for the investigation of ML and other predicate offences with seven trained ML investigators.
- *GPA* - ML cases involving all other predicate offences are investigated by the Anti-Money Laundering Unit of the Economic Crime Division of the State Investigation Department of the GPA. The AML Unit has 50 investigators trained in ML investigations.

ML identification and investigation

154. ML investigations are not being pursued as a policy priority in Mongolia. As indicated previously, Mongolia does not have a national AML/CFT policy informed by ML/TF risk, nor are there any internal LEA directives or comprehensive guidance on ML investigations. As displayed in Table 11, Mongolia has conducted inquiries into a large number of persons. Mongolia has also conducted a total of 46 ML investigations including 27 investigations by the GPA, 17 investigations by the IAAC and two investigations by the GIA. These 46 investigations led to the following outcomes:

- 20 cases transferred to the GPO for prosecution with two cases prosecuted – in both cases ML convictions obtained by lower courts were overturned by the Supreme Court (see Case Examples 1 and 2). Of the remaining cases; (i) chargers were laid in six cases, (ii) three cases were suspended, (iii) four cases were dismissed, and (iv) five cases remain in progress including two cases from 2014.
- 26 investigations were not transferred to the GPO for prosecution. Of these; (i) four were suspended, (ii) 10 remain under investigation including one case from 2014, and (iii) 12 cases were dismissed.

Table 11: ML Inquiries, Investigations, Prosecutions and Convictions

Year	LEAs	Inquiries (# of per person)	Criminal ML Investigations (# of cases)	Cases transferred to GPO for prosecution (# of cases)	Prosecutions (# of cases)
2011	GPA	87	1	1	1 ⁵¹
	IAAC	29	0	0	0
	GIA	5	0	0	0
2012	GPA	199	0	0	0
	IAAC	282	0	0	0
	GIA	15	0	0	0
2013	GPA	776	5	2	0
	IAAC	63	3	2	1 ⁴⁰
	GIA	211	0	0	0
2014	GPA	334	8	8	0
	IAAC	268	4	2	0
	GIA	29	1	1 ^s	0
2015	GPA	1,076	4	1	0
	IAAC	10	4	0	0
	GIA	155	0	0	0
2016	GPA	800	9	4	0
	IAAC	0	6	0	0
	GIA	6	1	0	0
Total		4,345	46	20	2

155. Based on discussions during the on-site visit, the majority of financial investigations of ML are initiated by LEAs, particularly by the GPA, including some through parallel financial investigations. LEAs, particularly the GPA, informed the assessment team that in the inquiry stage they contact the FIU for information held in its database (see Table 10) and by FIs. Very few of these inquiries result in LEAs opening a criminal investigation of ML. LEAs do however make use of financial intelligence and evidence collected for the investigation of related predicate offences. FIU proactive disseminations seldom initiate investigations.

156. In the assessment team's view the following factors contribute to the lack of inquiries leading to ML investigations and prosecutions: (i) lack of prioritisation of ML investigations due to no high-level strategic commitment to combating ML in the form of a national AML/CFT strategy, (ii) lack of internal directives or comprehensive guidance on ML investigations, (iii) lack of skilled resources and capacity to investigate ML (Mongolia has no forensic accountants), (iv) lack of understanding of the ML offence including in the judiciary, and (v) prioritisation of predicate offence investigations and prosecutions above ML, as it is quicker and less challenging given existing skills and resources.

⁵¹ ML conviction obtained in lower court and overturned by the Supreme Court.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

157. Mongolia has no AML/CFT national strategy based on identified ML/TF risks or internal LEA priorities to pursue ML in line with Mongolia's ML risk. Despite this, the GPA's ML investigations are primarily fraud related – Mongolia's highest ML threat predicate offence (see Table 12). The IAAC has investigated 17 corruption related ML cases – corruption is also rated as a higher-risk predicate crime. However, in the assessment team's view, the number and type of ML investigations are not commensurate with Mongolia's ML risk, and there has been very few or no ML investigations related to Mongolia's other higher-risk predicate crimes, for example, environmental crime and tax evasion.

158. Based on discussion during the ME on-site visit and data included in the NRA, LEAs are targeting ML threats by pursuing predicate crimes. However, as discussed in Chapter 1, Mongolia passed the Criminal Amnesty Law in 2015. While no ML investigation were dropped under the Amnesty, a total of 80 inquiries, investigation or judicial proceeding related to economic crimes were dismissed (see Table 1).

Table 12: Type of Predicate Offence for ML Investigations⁵²

Predicate Offence	Number of Investigations	Offence Risk (NRA)
Article 148 of the CCM: appropriation of property by fraud	18	High
Article 150 of the CCM: Misappropriation or embezzlement of property	4	High
Article 156 of the CCM: Violation of the banking legislation	2	Moderate
Article 157 of the CCM: Engaging in banking operation by abuse or excess of office	1	Moderate
Article 266 of the CCM: Excess of Authority by an Official of an NGO or a Business Entity	1	High
Article 166 ¹ of the CCM: Stand-alone ML	3	High

159. In addition, ML investigations are not being prosecuted with the GPO only prosecuting two ML cases (see Case Example 1 and 2 below)⁵³– lower court ML convictions were overturned by the Supreme Court in both cases.

⁵² Details on the seventeen IAAC cases and the two GIA cases have not been provided.

⁵³ See footnote 46 under IO.2

160.

Case Example 1: MIAT case

Three high-ranking public officials of the state-owned aviation company MIAT were prosecuted and convicted of misappropriation or embezzlement of property and ML by the first instance court and appellate court. These officials allegedly embezzled ~USD7.2 million through an insurance scheme where two airplanes were insured twice with two different companies. Between 2007 and 2010 funds paid to one company were transferred through several bank accounts owned by the officials in foreign jurisdictions and then returned to Mongolian banks. The Supreme Court found that the lower courts had incorrectly applied the ML offence under Article 166¹ retroactively; therefore, the ML offence was dropped.

Case Example 2: E-Systems case overturned by Supreme Court

Four officials from the civil aviation authority committed abuse of power and embezzled USD ~426,904 (MNT 1,062,959,200) through manipulation of a tender process. The officials transferred some of the service payments to a foreign joint venture company owned by two of the officers. The first instance and appeal court convicted the officials of ML and misappropriation or embezzlement (Article 150.3 of the CCM) with penalty of a total 7 year's imprisonment. However, the Supreme Court concluded that the official's actions of receiving money in a Mongolian commercial bank account was not in accordance with article 166¹ of CCM "purpose of concealing or disguising the illicit origin of the property or of helping any person to evade the legal consequences of his or her action" and overturned the lower court convictions.

Types of ML cases pursued

161. Mongolia has not obtained a conviction for ML. LEAs are largely pursuing self-laundering inquiries/investigations with no investigation of third-party laundering. However, the GPA did investigate three stand-alone ML cases in 2013: one case was transferred to the IAAC and the other cases related to foreign predicate crimes - these cases were not prosecuted. In addition, Mongolia has provided MLA in relation to ML cases (see IO.2).

162. It is notable that the two successful ML prosecutions were for corruption related ML, which involved elements of both domestic and foreign offending with the use of corporate structures and transnational transactions. These cases involved Mongolia obtaining foreign records and evidence through international cooperation.

Effectiveness, proportionality and dissuasiveness of sanctions

163. Article 166¹ of the CCM, provides for a range of sanctions for natural and legal persons, which, as discussed in R.3, are not proportionate and dissuasive for legal persons, and for natural persons, who are not part of an organized criminal group or misuse their official position.

164. With regard to the two ML cases that were overturned by the Supreme Court, the lower courts imposed concurrent sentences for the ML and predicate crime. Therefore, the proportionality and dissuasiveness of the ML sanctions can not be established.

165. As discussed in Chapter 1, Mongolia passed the Criminal Amnesty Law in 2015. While there were no ML convictions overturned under the Amnesty, a total of 900 persons sentenced for economic crimes had their sentences reduced/dismissed.

Other criminal justice measures

166. Mongolia has not taken any steps to utilise other criminal justice measures.

Overall conclusions on Immediate Outcome 7

167. **Mongolia has a low level of effectiveness for Immediate Outcome 7.**

3

Immediate Outcome 8 (Confiscation)*Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

3

168. While Mongolia has seizures and confiscations (see Table 13 and Table 14), the does not have a national policy for LEAs and prosecutors to follow the money and take actions to locate and restrain property that might be subject to confiscation in ML and predicate crime investigations. The GPO has issued an internal policy directive and guidance, which is used to assist GPO officials, at both the investigation and prosecution stage, to confiscate property in accordance with the CPC and CCM.

169. Mongolia's legal framework for confiscation is in keeping with the FATF Standards with the CPC providing measures to enable LEAs to confiscate the proceeds of crime, instrumentalities and property of equivalent value pursuant to the CCM. However, Case Example 3 suggests that Mongolia is not confiscating property of equivalent value in all cases.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

170. Mongolia's ability to provide comprehensive data and statistics impacted on the assessment team's rating of Mongolia's overall level of effectiveness. However, data provided in Table 13 and 14 shows the GPO has seized property during ML and predicate crime investigations/prosecutions, courts are confiscating property, and the Court Judgement Enforcement Department (CJED) is enforcing court judgements with property being allocated as compensation to victims and to the state budget and state funded entities.

171. NRA data adapted in Table 13 shows that between 2012 and 2015 the GPO seized assets to a total value of ~110 million USD with the vast majority of this related to higher-risk predicate crimes. From these seizures, 1st order courts confiscated ~89 million USD. Based on the same time period, data provided by the CJED, shows ~8.79 million USD was receipted by the Government and allocated to the state budget and state funded entities, and ~4.35 million USD was returned to citizens as compensation for losses. In addition, in 2016, ~2.66 million USD was receipted by the Government and allocated to the state budget and state funded entities, and ~1.67 million USD was returned to citizens as compensation for losses. Case examples one and two also show to some extent successful confiscations are being undertaken.

Table 13: Value of Funds Seized and confiscated in criminal cases between 2012 and 2015⁵⁴

Category of offences	Seizure by GPO			Confiscation by 1st Order Court		
	# of cases	MNT million	~USD million	# of cases	MNT million	~USD million
Higher-risk predicate offences						
Fraud	598	203,083.80	83.26	681	52,934.80	21.70
Environmental Crime	407	5,182.20	2.12	447	1,559.70	0.64
Tax Evasion	23	8,731.50	3.58	18	1,375.00	0.56
Corruption	195	16,078.50	6.59	72	20,918.10	8.58
Sub-total	1,223.00	233,076.00	95.56	1,218.00	76,787.60	31.48
Moderate risk predicate offences						
Drug offence	142	284.20	0.12	167	1.50	0.00
Smuggling	159	4,910.10	2.01	179	14,364.30	5.89
Banking violations	18	80.90	0.03	21	72,658.00	29.79
Theft/burglary	5138	8,640.30	3.54	5186	15,572.20	6.38
Sub-total	5,457	13,915.50	5.71	5,553	102,596.00	42.06
ML	6	7,855.6	3.1	1	19,009.92	7.6
All other predicate crimes	860	13,545.2	5.67	1,410	17475.88	7.36
Total	7,546	268,392	110.04	8,182	215,869	87.90

Table 14: Value of Funds Received by the State in Criminal Cases⁵⁵

Year		Compensation to Citizens	Allocation to State	Total (USD)
2012	# confiscation orders	1,733	799	2,532
	value (~USD)	1,125,446	688,107	1,813,554
2013	# confiscation orders	2,234	966	3,200
	value (~USD)	756,020	547,713	1,303,733
2014	# confiscation orders	2,041	628	2,669
	value (~USD)	699,330	2,083,175	2,782,506
2015	# confiscation orders	3,464	728	4,192
	value (~USD)	1,774,819	5,479,753	7,254,571
Sub-Total # confiscation orders		9,472	3,121	12,593
Sub-Total value (~USD million)		4.35	8.79	13.15
2016	# confiscation orders	2,268	614	2,882
	value (~USD)	1,669,857	2,675,214	4,345,070
Total # confiscation orders		9,472	3,121	12,593
Total value (~USD million)		6.02	11.46	17.48

172. While Mongolia has technically not confiscated assets related to ML due its ML convictions being overturned, the value of confiscations imposed by lower courts (see Case Example 1 and 2 in IO.7) were not changed by the Supreme Court when it overturned the ML convictions.

⁵⁴ Table constructed from data included in Mongolia's NRA

⁵⁵ data provided by the Court Judgement Enforcement Department

Anti-money laundering and counter-terrorist financing measures in Mongolia – 2017 @ APG 2017

173. While Mongolia has not confiscated proceeds located abroad, it has repatriated funds to the Czech Republic and Korea related to a ML conviction as highlighted in Case Example 3.

174. Mongolia has not confiscated assets in relation to TF - although this is not inconsistent Mongolia's perceived TF risk.

3

Case Example 1: Confiscation

Public officials, "Mr. T" and "Mr.T.B", were found guilty of Article 265 (Abuse of authority by an official of an NGO or a business entity), Article 150 (Misappropriation or embezzlement of property) and Article 166 (Tax evasion). Damage was estimated to MNT 2.84 billion (~USD1,143,781) with MNT 560 million (~USD225,534) confiscated and transferred to the State Fund.

Case Example 2: Confiscation (MIAT ML Case)

Mr. B, former Director of the MIAT, and Financial Manager Ms. N transferred a large amount of funds to insurance companies as risk insurance. These officers were found guilty in terms of the Article 263 (Abuse of power or of office by a state official) and Article 150 (Misappropriation or embezzlement of property). Damage was estimated to be MNT 1.06 (~USD426,904) and MNT 2.0 billion (~USD805,480) worth of property was confiscated.

Case 3: Funds Repatriated to Korea

In 2013 Mongolia received a request from South Korea through the Interpol Network in relation to a Korean citizen running a hotel business in Mongolia. He built the hotel in Ulaanbaatar using the money derived from illegal gambling. The Court decision of Seoul (dated in 2009) convicted him with ML and confiscated USD 4.5 million (~10 billion MNT). After investigation by Mongolian LEA it was established that this convict had transferred 65 % of this hotel to another two people (also Korean citizens). His remaining share 35% was confiscated and ~210,000 USD was returned to Korea.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

175. The 2016 NRA identifies the cross-border movement of cash as a ML risk area, particularly given the cash-based nature of Mongolian society. Furthermore, as discussed in Chapter 1, gold smuggling is a risk in Mongolia.

176. There have been only some confiscations by the GCA for falsely or undeclared cross-border transportation of currency and gold through the state border (Table 15 bad Table 16). While all customs points have been equipped with X-Ray screening and other tools, the assessment team is of the view that the availability of timely intelligence, split responsibilities and lack of operational co-ordination between relevant agencies (GCA, Border Agency, GPA and the FIU) impacts on Mongolia ability to confiscate falsely or undeclared currency. Some steps have been taken recently to improve the level of detection (increased signage; introduction of X-ray machines which can detect large amounts of cash), and further measures are planned (for example, use of canines trained in the detection of cash), but the lack of intelligence and profiling means that the approach being undertaken is ad hoc and relies primarily on GCA officials having a suspicion that a person might be carrying undeclared cash.

Table 15: Confiscated Banknotes between 2011-2015

Currency	Amount	~USD
Chinese RMB	2,419,000.00	355,897
US Dollar	20,000.00	20,000
Euro	48,620.00	54,432
Russian Ruble	100,000.00	1,740
Korean Won	6,000,000.00	5,347
Total		437,416

Table 16: Confiscated Gold and Silver between 2010-2016

Year	Gold value	Silver valued at (MNT)	Total amount transferred to the State Budget
2010-2016	2,822,898,803 (MNT) ~1,138,983 (USD)	5,010,079 (MNT) ~2,021 (USD)	2,827,908,883 (MNT) 1,141,004 (USD)

3

177. GCA officials met during the on-site visit consider the risk of movement of cash in the passenger environment to be relatively low, with higher risks existing in the cargo environment.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities.

178. As discussed, Mongolia lacks a national AML/CFT strategy. While Mongolia has not technically confiscated property related to ML, GPO has seized assets during ML and predicate crime investigations/prosecutions and courts are confiscating property related to Mongolia's higher-risk predicate crimes. Critical to the assessments team's conclusion regarding effectiveness, Mongolia was unable to demonstrate, using detailed statistics, the value of property receipted by the State related to individual predicate crimes particularly Mongolia's higher-risk predicate crimes.

179. In the assessment team's view, the lack of confiscation related to TF is not inconsistent with Mongolia's perceived risk.

180. Mongolia's cross-border confiscations are not consistent with the assessment team's understanding of Mongolia's cross-border risks.

Overall conclusions on Immediate Outcome 8

181. **Mongolia has a moderate level of effectiveness for Immediate Outcome 8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

IO.9

- Mongolia's exposure to TF threats seems to be limited. Based on available open source information, Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities, and Mongolia has not been identified as a major source or route jurisdiction for FTFs. Furthermore, there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.
- Notwithstanding, competent authorities have limited understanding of Mongolia's TF risk with the NRA only including negligible identification and analysis of Mongolia's TF threats and vulnerabilities.
- Mongolia does not have a strategic approach to TF within its broader counter-terrorism strategy. The GIA has conducted inquiries into two FIU TF related disseminations. Mongolia provided no other information of TF related inquiries or investigations or the GIA's capabilities to detect TF.
- There have been no prosecutions for TF in Mongolia and accordingly no sanctions imposed with no steps undertaken to employ other criminal justice, regulatory or other measures to disrupt TF activities where it was not practicable to secure a TF conviction. However, this is not inconsistent with Mongolia's perceived TF risk.

IO.10

- There are moderate gaps in Mongolia's legal framework for TFS. The ATL and ATL Regulation do not include sanctions for non-compliance with the obligations to freeze; prohibit from making funds available; and requirement for FIs and DNFBPs to report assets frozen or actions taken.
- The implementation of TFS varies across the financial sector and there is no implementation by DNFBPs. Larger banks are conducting automated screening of all transactions and new and existing customers against the UNSCR Consolidated List. Smaller banks and larger NBFIs are conducting manual screening, while all other REs are not conducting any screening.
- There have been no positive matches and no accounts or transactions frozen. However, given the level of screening undertaken by all FIs besides larger banks, the fact that there have been no matches may be due to poor implementation.
- Mongolia has not designated any individual or legal entities pursuant to UNSCR 1267 or UNSCR 1373, although no designation is not inconsistent Mongolia's perceived TF risk.
- Mongolia's understanding of its TF risk in relation to the NPO sector is limited with no formal risk assessment or review of the NPO sector undertaken. A basic governance-related regulatory regime is in place.

IO.11

- Mongolia seems to have exposure to PF related sanction evasion. There are DPRK citizens working in Mongolia, a number of known legal entities operating in Mongolia with direct links to

the DPRK, and Mongolian companies own/owned stakes in DPRK state-owned enterprises. In addition, Mongolia has recently deregistered all DPRK vessels sailing under the Mongolia Flag.

- Mongolia has no legal framework to implement TFS relating to the DPRK and Iran.
- Mongolia has undertaken some measures to identify assets and funds related to PF.
- REs displayed some knowledge of Mongolia's perceived exposure to PF related sanctions evasion, primarily in respect to DPRK workers, and larger banks are submitting STRs on transactions carried out by DPRK citizens.

Recommended Actions

IO.9

- Mongolia should conduct a comprehensive TF risk assessment, which should be used to enhance the understanding of TF risk among government agencies and REs.
- Develop a national strategy on TF based on the findings of the TF risk assessment. This strategy needs to cascade into the internal policies, training, priorities and procedures of relevant agencies and inform the further development of TF cooperation and coordination.
- Develop the capacity and expertise, and then implement the capability, to adequately identify TF activity and to conduct financial investigations alongside any terrorism investigations.

IO.10

- Enhance the legal framework for UNSCRs 1267 and 1373, specifically by the implementation of proportionate and dissuasive sanctions for non-compliance with the obligations to freeze; prohibit from making funds available; and requirement for FIs and DNFBPs to report assets frozen or actions taken⁵⁶.
- Provide clear direction and outreach regarding TFS, particularly in relation to where to obtain updates to the UNSCR 1267 list, to the non-bank sector and DNFBPs.
- As discussed in IO.3, supervisors should ensure that TFS related deficiencies identified during examinations lead to supervisory actions that are dissuasive, proportionate and effective in order to promote compliance with TFS obligations.
- Conduct a comprehensive review of the NPO sector focusing on its risk from the threat of terrorist abuse. And, based on this review, conduct outreach and awareness raising and monitoring of the activities of at-risk NPOs.

IO.11

- Introduce a comprehensive legal framework to comply with R.7. Once introduced, Mongolia should implement comprehensive institutional frameworks, procedures and measures to give effect to TFS obligations.
- Provide clear direction and outreach regarding PF, and support implementation of sanctions by FIs and DNFBPs.

⁵⁶ Post the ME on-site visit, Mongolia enacted legislation aimed at rectifying these deficiencies.

182. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

4

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

183. The GIA is the competent authority for the investigation of TF and public security offences including terrorism. As discussed in IO.1, while Mongolia, particularly the GIA, displayed an understanding of Mongolia's terrorism risk through the development of an annual terrorism threat assessment, competent authorities have limited understanding of Mongolia's TF risk. The NRA includes negligible identification and analysis of Mongolia's TF threats and vulnerabilities. Furthermore, it is not clear from the information included in the NRA how Mongolia reached some of its conclusions on TF (see IO.1).

184. Based on available open source material, and acknowledging Mongolia's regional risks, Mongolia's exposure to TF threats seems to be limited. Mongolia has no reported or identified instances of Al Qaeda, Taliban or ISIL related activities, and Mongolia has not been identified as a major source or route jurisdiction for FTFs and there have been no reports of terrorist attacks or indigenous terrorist groups operating in Mongolia.

185. Mongolia has a sound legal framework for the criminalisation of TF. Consistent with Mongolia's perceived TF risk, Mongolia has not prosecuted or convicted natural or legal persons of TF.

TF identification and investigation

186. In the period under review, the GIA has conducted inquiries into two TF disseminations from the FIU involving five individuals. Two inquiries were dropped due to lack of characteristics of TF, and the third STR is still under investigation. Based on evidence provided to the assessment team and discussions during the ME on-site visit, these are Mongolia's only potential TF cases. No further detail on these cases was provided to the assessment team. Mongolia provided no other information of TF related inquiries or investigations.

187. At the operational level, identification and investigation of TF within law enforcement is not undertaken. Mongolia provided no information on the availability of specialist skills to detect or undertake a TF investigation, if identified. Overall, understanding of what TF is and how it may be identified and investigated is negligible.

TF investigation integrated with -and supportive of- national strategies

188. Mongolia does not have a strategy to counter TF within its broader counter-terrorism strategy. However, the GIA is the lead agency for both terrorism and TF, and is the lead agency of the NCTCC and a member of the NCC.

189. Based on discussion with the GIA during the ME on-site visit, it appears TF investigations are not used to support the GIA's counter-terrorism investigations.

Effectiveness, proportionality and dissuasiveness of sanctions

190. Under Article 178² of the CCM, natural persons convicted of a TF offence are subject to a confiscation of assets and imprisonment of five to twelve years. Under Article 178^{2.2}, legal persons are punishable by restriction of certain types of its business activity and fine of MNT equal to 300 to 500 times of amount of minimum salary (~USD 29,000 to ~USD 48,500).

191. There have been no prosecutions for TF and accordingly no sanctions imposed.

Alternative measures used where TF conviction is not possible (e.g. disruption)

192. Mongolia has not taken steps to achieve the objective of IO.9 by employing other criminal justice, regulatory or other measures to disrupt TF activities where it was not practicable to secure a TF conviction. This should be noted in the context of Mongolia's perceived TF risk.

Overall conclusions on Immediate Outcome 9

193. **Mongolia has a low level of effectiveness for Immediate Outcome 9.**

Immediate Outcome 10 (TF preventive measures and financial sanctions)***Implementation of targeted financial sanctions for TF without delay***

194. There are moderate gaps in Mongolia's legal framework for TFS against terrorism. The ATL, as well as the ATL Regulation, provides for TFS. However, as discussed in R.6, the obligation to freeze; prohibit from making funds available; and the requirement for FIs and DNFBPs to report assets frozen or actions taken, are not enforceable. In addition, there are no publicly known procedures for de-listing and unfreezing of funds. Mongolia has not designated any individual or legal entity pursuant to UNSCR 1267 or UNSCR 1373 although not having made any designations is not inconsistent with Mongolia's perceived TF risks.

195. The process for implementing TFS in Mongolia is as follows: the UNSCR 1267 list is disseminated from Mongolia's UN representative through the Ministry of Foreign Affairs to the GIA, then from the GIA to the FIU, which sends it to the relevant supervisors, and finally to the REs – in total this takes between 5-8 days. However, the GIA via a letter issued by the FIU in May 2014 obliged all banks to use the link on its website to access the UNSCR Consolidated List and check for updates themselves. A similar obligation has not been imposed on all other REs (licensed by the FRC), and there is no uniform method for these entities to obtain an up-to-date copy of the UNSCR 1267 list. Although in practice larger NBFIs monitoring the UNSCR Consolidated List via the GIA's website (see below discussion).

196. FIs' implementation of TFS pursuant to UNSCR 1267 varies across the sector. Larger banks displayed a good understanding of their TFS obligations and are conducting automated screening of all transactions and new and existing customers against the UNSCR Consolidated List, which is updated daily from the UN's website. Smaller banks and larger NBFIs displayed some understanding of their TFS obligations and are monitoring the UNSCR Consolidated List and conducting manual screening of new customers. In discussions during the ME on-site visit, all other REs displayed a limited understanding of their TFS obligations and confirmed they are not conducting screening of customers or transactions.

197. While BoM is conducting AML/CFT supervision, it is unclear how many TFS breaches have been identified - BoM issued nine transaction/account monitoring rectification orders in 2016 and a rectification order for not submitting a STR related to a potential match against the UNSCR Consolidated List was issued to one bank. The FRC is conducting limited AML/CFT supervision as part of prudential supervision and it is unclear if any TFS breaches have been identified. No monetary sanctions have been applied by the BoM or FRC for non-compliance with AML/CFT obligations (see analysis of IO.3).

Deprivation of TF assets and instrumentalities

198. Larger banks which are conducting automated screening have not had any positive matches against the UN Consolidated List, and no accounts or transactions have been frozen. However, as discussed in IO.6, three STRs were filled in relation to possible individual's name matches with persons listed in the UNSCR Consolidated Lists.

199. For all other REs, there has been no positive matches and no accounts or transactions frozen. However, given the level of screening undertaken by these REs, the fact that there have been no matches may be due to poor implementation rather than confirmation of no activities.

200. The effectiveness of freezing and confiscating in the context of criminal investigations and prosecutions of TF is considered in IO.8.

Targeted approach, outreach and oversight of at-risk non-profit organisations

201. NPOs in Mongolia can take the form of associations, foundations or cooperatives. At the time of the ME on-site visit, there were 23,029 NPOs in Mongolia with an unknown number of unregistered NPOs, and Mongolian authorities estimate that only ~10% of registered NPOs are active.

202. Mongolia's understanding of the TF risk in relation to the NPO sector is limited. Mongolia has not identified NPOs which fall within the FATF definition, conducted a risk assessment of at-risk NPOs or provided outreach or AML/CFT awareness training for NPOs in Mongolia.

203. There is a basic governance-related regulatory regime for NPOs; however, there is no evidence that at-risk NPOs are subject to oversight and scrutiny to prevent their abuse for terrorism and TF activities. The GAIPSR and Tax Authority are only responsible for the registration of NPOs as legal entities and for tax purposes, respectively. The GAIPSR maintains information on NPOs' director/founder/board members/executive administration, assets, activities and contact details. In addition, NPOs are required to submit an annual activity report to the GAIPSR. Notwithstanding, there are no controls on collection of funds by NPOs or persons controlling NPOs, and the GAIPSR has no process for on-going monitoring of information provided by NPOs.

204. Based on discussions during the ME on-site visit, GPA and GIA are monitoring the activities of some NPOs based on their known activities and intelligence. However, specific examples were not provided to the assessment team.

205. Overall, Mongolia was unable to demonstrate effectiveness in implementing a targeted approach, conducting sufficient outreach and exercising oversight in dealing with at-risk NPOs. Furthermore, Mongolia did not demonstrate that it has taken any effective measures to protect NPOs from the threat of terrorism and TF, or to prevent the NPO sector from being misused for terrorism and TF purposes. The NPO sector lacks an understanding of its vulnerability to TF.

Consistency of measures with overall TF risk profile

206. Implementation of UNSCR 1267 TFS obligations in larger banks is consistent with Mongolia's perceived TF risk. The level of implementation of TFS in all other REs, which make up a very small percentage of the financial sector is however not consistent with Mongolia's perceived TF risks.

207. There have been no positive matches and no accounts or transactions frozen, and Mongolia has not designated a natural person or legal entity pursuant to UNSCR 1267 or UNSCR 1373. This is not inconsistent with Mongolia's perceived TF risk.

208. In relation to NPOs, the combination of the lack of understanding of Mongolia's TF risk in the sector, technical deficiencies and lack of supervision and outreach, raise concerns on the effectiveness of Mongolia's regime in relation to at-risk NPOs.

Overall conclusions on Immediate Outcome 10

209. Mongolia has a low level of effectiveness for Immediate Outcome 10.

*Immediate Outcome 11 (PF financial sanctions)**Implementation of targeted financial sanctions related to proliferation financing without delay*

210. As discussed in Chapter 1, Mongolia seems to have exposure to PF related sanctions evasion. There are approximately 1,500 DPRK citizens working in Mongolia in a range of industries, who are paid via formal arrangements between Mongolia and DPRK. NPO research suggests that in some jurisdictions a proportion of DPRK foreign worker wages are withheld by the DPRK Government⁵⁷. There are a number of known legal entities operating in Mongolia with direct links to the DPRK, and Mongolian companies own/owned stakes in DPRK state-owned enterprise⁵⁸. This level of exposure is reflected in: (i) submission of 177 STRs between 2010 and 2015 on individuals from DPRK, and (ii) a February 2012 letter from the FIU to all banks in which it suggests that Mongolia faces challenges in preventing real estate, mining and banking sectors from the risk of being exploited by jurisdictions that are currently highlighted by the international community including DPRK. In addition, Mongolia has recently deregistered all DPRK vessels sailing under the Mongolian flag.

211. Mongolia stated that its framework for implementing UNSCR 1267 could be used to give effect to the requirements related to PF. However, in the assessment team's view this framework can not be applied to UNSCRs on proliferation of weapons of mass destruction (WMD). Therefore, as discussed in R.7, the assessment team has concluded Mongolia has no legal framework for TFS relating to the DPRK and Iran under UNSCRs 1718, 1737, 1803, 1874 and 1929.

212. Notwithstanding, Mongolia is committed to combating the proliferation of WMDs. Mongolia has ratified the Treaty on the Non-Proliferation of Nuclear Weapons (1969), the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxic Weapons and on Their Destruction (1972), the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1995), the Comprehensive Nuclear Test-Ban-Treaty (1997), and the Convention on the Physical Protection of Nuclear Material (1987). To prohibit the manufacturing, possessing, developing, transporting, and financing of WMD, Mongolia has enacted the Law on Protection against Toxic Chemicals (1995), the Law on Mongolia's Nuclear-Weapon-Free-Status (2000), the Law on Hazardous and Toxic Chemicals (2006), the Law on Nuclear Energy (2009), and the Criminal Code (2002), which includes a criminal offence covering the acquisition, making or spreading of the chemical, biological, and other mass-destruction weaponry prohibited by the international treaties to which Mongolia is a party. Mongolia provided no evidence that these laws have been used to prevent persons and entities, involved in the proliferation of WMD, from raising, moving and using funds, consistent with relevant UNSCRs.

Identification of assets and funds held by designated persons/entities and prohibitions

213. While Mongolia lacks a legal framework for implementing UNSCRs related to PF, larger banks are conducting screening against the UNSCR Consolidated List. These banks have not identified assets and funds, held by persons or entities listed under UNSCR 1718. However, should a positive match occur, there is no legal obligation for banks to freeze the funds.

⁵⁷ <http://www.wsj.com/articles/north-koreas-lucrative-labor-exports-come-under-pressure-1467916815>;
<https://www.nknews.org/pro/mongolia-enforces-latest-sanctions-on-north-korean-ships/>;

⁵⁸ <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3016554>

214. In 2010, pursuant to the requirement for Mongolia to report on implementation and enforcement of UNSCR 1718 and 1874, the BoM issued a letter to banks requesting information on their economic, banking, financial ties and relations with the DPRK. The outcome of this process was not provided to the assessment team.

215. In addition, in 2012 the FIU requested that banks monitor and identify the transactions related to the DPRK, its citizens and entities, and report the outcomes on a monthly basis to the FIU. The level of compliance with this request is unclear. Banks are however submitting STRs on transactions with higher-risk jurisdictions including DPRK – since 2010 177 STRs were submitted related to DPRK citizens. As discussed in IO.6, these STRs have been disseminated to the GIA; however, the GIA did not provide any information of the use of these disseminations.

216. Besides the above mechanisms to identify assets and funds of designated persons/entities at the financial system level, Mongolia did not provide any evidence that it is identifying designated persons and entities (or those acting on their behalf) at the trade stage of transactions.

FIs and DNFBPs' understanding of and compliance with obligations

217. While Mongolia has no legal framework to give effect to TFS related to PF, larger banks and NBFIs displayed some knowledge of Mongolia's perceived exposure to PF related sanctions evasion, primarily in respect to DPRK workers, and larger banks are submitting STRs on transactions carried out by DPRK citizens. Understanding by all other FIs and DNFBPs is limited.

Competent authorities ensuring and monitoring compliance

218. While the BoM, FRC and FIU are conducting on-site and off-site AML/CFT supervision (see IO.3), Mongolia has no legal framework to give effect to TFS related to PF.

Overall conclusions on Immediate Outcome 11

219. **Mongolia has a low level of effectiveness for Immediate Outcome 11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- The degree of understanding of ML/TF risk and AML/CFT obligations and application of risk mitigation measures varies across the financial sector. Larger banks exhibited a reasonable understanding of ML risk compared to smaller banks, while larger NBFIs demonstrated a more limited understanding. Smaller NBFIs, Insurance Companies, Securities Market Entities, Investment Funds, and SCCs demonstrated less understanding of ML risk, AML/CFT obligations and application of appropriate mitigation measures. TF risk understanding is low amongst all FIs.
- FIs have not fully considered Mongolia's ML/TF risk and developed internal controls to manage such risks. This is primarily due to; (i) the PMR, which provides for the risk assessment obligations, was only issued in June 2016, (ii) the NRA was only finalised and disseminated to all REs during the ME on-site visit, and (iii) limited AML/CFT outreach by supervisors.
- DNFBPs, mainly real estate agents and notaries, are unaware of the findings of the NRA and have a negligible understanding of ML/TF risk and their obligations under the AML/CFT Law and the PMR. Hence, they are not applying the preventive measures to mitigate ML/TF risk. AML/CFT obligations are only enforceable on notaries.
- For the period of 2011 to October 2016, there were only 1,006 STRs filed by all REs and there was no filing by DNFBPs. This low level of STR filing is not commensurate with ML/TF risk as identified in the NRA.

Recommended Actions

- Supervisors must adopt a range of measures, to immediately increase REs understanding of their ML/TF risk and to enable effective implementation of AML/CFT obligations and risk mitigation measures, such as; (i) enhancing the outreach with the support of the SRBs and industry associations, and (ii) issuing sector specific guidance on; (a) RBA and the expectation of REs in relation to the NRA, (b) BO obligations, (c) PEP obligations, and (d) identification and mitigation of TF risk.
- REs should take a more pro-active and diligent role in increasing their understanding of ML/TF risk and AML/CFT obligations by ensuring appropriate and adequate training programmes are designed or identified for their front-line staff, compliance officers and directors.
- Based on a comprehensive understanding of the ML/TF risk associated with DNFBPs, the AML/CFT Law and appropriate regulations and enforceable means must be extended to entities such as lawyers, accountants, precious metal dealers and real estate agents.
- The FIU should provide further feedback and guidance to REs in meeting STR reporting obligations including sharing lists of examples of suspicious transactions to all non-bank entities and DNFBPs as well as developing lists of red flags to assist REs in identifying and reporting suspicious transactions.
- To enhance REs compliance of their AML/CFT obligations, supervisory authorities should follow-

up with sanctions that are effective, proportionate and dissuasive (see IO.3).

220. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Immediate Outcome 4 (Preventive Measures)

221. A detailed description of FIs, DNFBPs, and AML/CFT laws, regulations and enforceable means is provided in Chapter 1 and is not replicated in this Chapter.

222. The financial sector in Mongolia is dominated by banks. As at December 2015, banks comprise 95.7% of the total financial sector assets, with 450 NBFI, 253 SCC, 17 Investment Funds, 61 Securities Market Entities and 17 Insurance Companies comprising the rest. There are 14 local commercial banks in Mongolia with the three largest banks making up 70% of the total banking sector assets of 20.8 trillion MNT (~11.8 billion USD). As of October 2016, BoM indicated that four banks, representing 4% of the total assets, are conducting limited banking activities and one bank has ceased operations.

223. There are no foreign banks conducting banking activities in Mongolia.

224. The recent enforcement of the PMR in June 2016 introduced a RBA and brings Mongolia's preventive measures closer into compliance with the FATF standards. There is one Recommendation on preventive measures at a compliant level and eight Recommendations that are now at the largely compliant level.

Understanding of ML/TF risks and AML/CFT obligations and application of risk mitigating measures

Financial sector

225. FI's understanding of their ML/TF risk, AML/CFT obligations and application of mitigating measures varies across the sector. The following factors taken together have contributed to this situation: (i) the AML/CFT Law does not address all preventative measures, (ii) the PMR which provides for risk assessment obligations was only issued in June 2016, (iii) there has been limited AML/CFT outreach by supervisors, and (iv) the NRA was only finalised and disseminated to all FIs during the ME on-site visit.

226. Larger banks exhibited a reasonable understanding of their ML risks compared to smaller banks. However, this understanding is mainly restricted to customer ML risk, based on the findings of their customer risk assessments and does not extend to an understanding of enterprise level ML risks, which takes into account factors such as size, structure and the governance arrangements of the bank, products and services offered, transaction and distribution channels or the findings of the NRA or any other risk assessment. BoM's on-site inspection in 2016 supports this conclusion as one large bank was rated partially compliant in relation to its AML/CFT risk assessment. Furthermore, due in part to the recent completion of the NRA, these larger banks also did not display an adequate understanding of the impact of Mongolia's higher-risk ML/TF threats and vulnerabilities in relation to their ML/TF risks assessment, although they do agree with the findings of the NRA.

227. Although NBFIs make up only 2.77% of the total financial asset, representing 623.2 billion MNT (~258 million USD), the 450 NBFI entities are conducting various activities from credit and loan facilities, foreign currency exchange, electronic payment and remittance services. Overall, NBFIs displayed limited understandings of ML/TF risk with larger NBFIs demonstrating better understanding of their customer ML risk compared to their enterprise ML risk.

228. Smaller NBFIs, Insurance Companies, Securities Market Entities, Investment Funds and SCCs were aware of the NRA; however, they are less familiar with their ML risk.

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229. While larger banks displayed an adequate understanding of their TFS obligations (see below), other FIs displayed a negligible understanding of their TF risks. This is due, in part, to very limited identification and analysis of Mongolia's TF threats and vulnerabilities in the NRA (see IO.1) and limited outreach to the financial sector on TF.

230. The assessment team found that the understanding of AML/CFT obligations and application of risk mitigating measures varies across the financial sector. Larger banks are more aware of their AML/CFT obligations including some new requirements under the PMR compared to smaller banks. These larger banks are largely applying mitigating measures commensurate with their customer ML/TF risk. Notwithstanding, these banks are not applying mitigating measures commensurate with Mongolia's higher-risk predicate crimes. In addition, banks, as gate-keepers for DNFBPs, do not have mitigating measures commensurate with ML risks arising from DNFBPs, particularly those operating in real estate sector.

231. Overall NBFIs, Insurance Companies, Securities Market Entities, Investment Funds and SCC, have a limited understanding of their AML/CFT obligations and are not applying mitigating measures commensurate with their risks.

DNFBPs

232. DNFBPs and in particular real estate agents and notaries are unaware of the findings of the NRA and have a very low understanding of their ML/TF risks and obligations under the AML/CFT Law and PMR. Consequently, DNFBPs are not applying mitigating measures commensurate with their ML/TF risk. AML/CFT obligations are only enforceable on notaries, and DNFBPs are not supervised; therefore, the level of implementation of the AML/CFT obligations and mitigation measures are unknown.

Application of CDD and record keeping requirements

233. Mongolia did not provide meaningful statistics to determine how well CDD and record-keeping measures are applied by REs.

Financial sector

234. The application of CDD requirements varies across the financial sector. Banks and larger NBFIs are aware of the CDD requirements; however only larger Banks and larger NBFIs demonstrated implementation of customer on-boarding processes i.e. identifying and profiling customers on the basis of risk. Based on a review of the banks' account opening forms, customers generally provide self-declaration on certain information including details of shareholders of a legal person, PEP status and the source of funds, with larger banks and larger NBFIs normally classifying their customers as low, medium or high risk, and applying enhanced CDD for higher risk customers. However, it is unclear to what extent verification is conducted on CDD information.

235. The on-going monitoring of customers does vary across banks and larger NBFIs. It is unclear whether all banks and larger NBFIs are applying a RBA when conducting on-going CDD, as frequency of on-going monitoring is conducted between 6 months and 2 years for all customers.

236. On-site supervision of banks conducted by BoM has identified some deficiencies in the implementation of CDD, which have been addressed via rectification orders as per Table 17. The assessment team was not provided with any data on the CDD related breaches by FIs supervised by the FRC.

Table 17: Bank Rectification Orders Issued for CDD Breaches

Number of bank rectification order issued for CDD	2014	2015	2016
General CDD requirements	1	0	2
Identifying and verifying BO	0	2	9
EDD	10	2	0

237. Smaller NBFIs, Insurance Companies, Securities Market Entities, Investment Funds and SCCs, follow their own “know your customer” procedure and the level of CDD information collected is very limited. It is unclear whether these FIs adopt detailed CDD obligations in relation to natural persons, legal persons and foreign legal arrangements⁵⁹ and verification is not conducted on the purpose and nature of the business relationship or source of funds. For individual customers, the national registration identity card provides a strong source of reference for identification and verification. Importantly, these FIs revealed during ME on-site visit that they rely, to a large extent, on the banks as gatekeepers – they do not verify the legitimacy of the source of funds where monies are transferred via a bank account. These FIs do not risk profile customers and are not conducting on-going monitoring.

238. For customers that are legal persons and foreign legal arrangements, FIs rely on the information from the GAIPSR such as the certificate of registration and company charter. The assessment team found that the understanding of the concept of ultimate beneficial ownership varies across the sectors. Discussions with larger banks and NBFIs suggest that identifying the ultimate beneficial owners when a legal person owns another legal person or where a natural person is acting on behalf of another person remain a challenge.

239. While some FIs require customers to attend in person when opening an account, other FIs rely on “notarized copies” of identification document where the customer is unable to come in person to open an account. This suggests that some FIs rely on notaries to perform some of the elements of the CDD process, i.e. the verification of the customer’s identity. However, since notaries do not fully implement CDD obligation and are not supervised, FIs relying on notaries may not be applying appropriate mitigating measures.

240. All FIs maintain records, which by law is five years. Feedback from supervisors and LEAs indicate that implementation of record keeping requirements are good and sufficient for the purpose of their investigations.

⁵⁹ Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law (see chapter 1).

241. Mongolia did not clearly demonstrate instances where REs have refused new business or have terminated existing business relationships where CDD is incomplete. Notwithstanding, STR data included in the NRA indicates that between years 2010 to 2015, there were 14 STRs filed by FIs on the failure of a customer to provide the required information or for providing incomplete or false information.

DNFBPs

242. As no AML/CFT supervision of DNFBPs has occurred, compliance with CDD obligations and record keeping obligations is unknown. During the on-site, real estate agents and notaries advised that while they are aware of the AML/CFT Law, they have not fully implemented the CDD obligations, and rely, to a large extent, on the banks as gate-keepers. CDD is conducted in a formalistic approach rather than on the basis of a clear understanding of the ML/TF risk and AML/CFT obligations.

Application of EDD measures

Financial sector

243. The assessment team found that the application of EDD measures varies across the financial sector. Larger banks and larger NBFIs are applying EDD, to some extent, while all other FIs displayed limited implementation, as follows:

- *PEPs* - Mongolia has not issued any specific guidance for REs in relation to PEPs. Banks and some larger NBFIs during the ME on-site visit explained that they have an internally developed lists for domestic PEPs, whereas identification of foreign PEPs are generally based on commercial databases. Notwithstanding, it is unclear the degree to which FIs are implementing PEP requirements as; (i) the NRA identified five banks that have not identified their PEP customers, and (ii) in 2016, BoM issued nine rectification notices in relation to breaches concerning PEPs.
- Supervisors further recognised that identifying all domestic PEPs and their family members and close associates remains a challenge.
- *Correspondent banking* - awareness on correspondent banking requirements appears to be satisfactory. Correspondent banking relationships are generally maintained with international banks based in countries with stringent AML/CFT requirements. In establishing correspondent banking, Mongolian banks require the AML/CFT policies, charter and shareholder information of the correspondent bank. Larger banks have subscribed to a database or system to establish correspondent banking.
- *New technologies* - while some banks have developed new technologies, for example, internet banking, it is unclear whether banks have conducted any ML/TF risk assessment in relation to the development of such new business practises prior to the launch of services, and whether banks have taken any specific measures to mitigate and manage identified risks. In 2015, BoM issued 12 rectification orders on banks for non-compliance in relation to new products and technology.
- *Wire transfer rules* - larger banks generally have a good understanding of wire transfer requirements. Controls are put in place to ensure that the originator and beneficiary's basic information is required, by an automated system, for any inward or outward wire transfer otherwise, the transaction will not be carried through.

- In relation to the 12 NBFIs that carry out remittance services, it is unclear to what extent adequate mechanisms are put in place to apply enhanced measures.
- *TFS related to TF* - As discussed in IO.10, larger banks displayed a good understanding of their TFS obligation and are conducting automated screening of all transactions and new and existing customers against the UNSCR Consolidated List, which is updated daily from the UN's website. Smaller banks and larger NBFIs displayed some understanding of their TFS obligations and are conducting manual screening of new customers against the Consolidated List. Other FIs displayed a limited understanding of their TFS obligations and are not conducting screening of customers and transactions.
- *Higher risk jurisdictions identified by FATF* - Larger banks and some larger NBFIs demonstrated a good understanding in relation to higher risk jurisdictions such as Iran and DPRK. To this end and as discussed in IO.11, between 2010 and 2015, banks have submitted 177 STRs related to DPRK citizens. However, apart from the enhanced due diligence measures including limiting certain products or services, requiring senior management approval for new account opening and requiring information on the source of funds, it is unclear whether these entities adopt any other specific counter measures for customers from higher risks countries.

DNFBPs

244. Overall, DNFBPs displayed a very limited understanding of their obligations under the AML/CFT Law and PMR. Furthermore, as no supervision has occurred, DNFBPs' application of EDD is unknown.

Reporting obligations and tipping off

245. Suspicious transaction reporting from all REs is low with no filing by DNFBPs. For the period of 2011 to October 2016, a total of 1,006 STRs were received by the FIU from FIs of which 99.5% were filed by banks, as shown in Table 18.

Table 18: Number of STRs filed by FIs and DNFBPs

Sector	2011	2012	2013	2014	2015	Oct 2016	Total
Banking	71	156	283	210	111	171	1,002
NBFI	0	1	2	0	0	0	3
Securities	0	1	0	0	0	0	1
Insurance	0	0	0	0	0	0	0
Investment Fund	0	0	0	0	0	0	0
SCCs	0	0	0	0	0	0	0
DNFBPs	0	0	0	0	0	0	0
Total STRs received							1,006

246. NBFIs, Insurance Companies, Securities Market Entities, Investment Funds, SCCs and DNFBPs do not meet STR reporting obligations. This is largely due to the limited understanding of ML/TF risk, AML/CFT obligations and limited outreach by the FRC and FIU on reporting obligations.

247. While in 2016 BoM issued nine rectification orders to banks in relation to breaches concerning transaction and account monitoring, FRC has not provided any data of breaches in

relation to transaction and account monitoring by NBFIs, Insurance Companies, Securities Market Entities, Investment Funds and SCCs.

248. In relation to STR reporting on TF, between years 2011 to 2015 there were two STRs filed in relation to TF and three STRs filed in relation to possible individual's name matches with persons listed under the UNSCR Consolidated List or OFAC lists. The FIU confirmed that the three STRs were not related to any name match with a designated person. In the assessment team's view this level of TF related STR filing is not inconsistent with Mongolia's perceived TF risk.

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249. In the assessment team's view, STR reporting by banks is not commensurate with the size of the sector or Mongolia's ML/TF risk. Since 2011, only 1,002 STRs were filed with the FIU. In the assessments teams view, this is low for this sector given that (i) banks operate a total asset of 20.8 trillion MNT (~11.8 billion USD), (ii) a significant proportion of Mongolia's commercial transactions are carried out through banks, and (iii) there are approximately 6,045,491 current and deposit accounts within the banking sector as at December 2015.

250. Furthermore, data included in Mongolia's NRA shows that the STRs filed, are not commensurate with Mongolia's higher-risk ML threats:

- Regarding the 1,002 STRs filed by banks, data included in Mongolia's NRA shows that between 2010 and 2015, 423 STRs (or 42% of all STRs) were submitted in relation to transactions with higher-risk jurisdictions (mainly DPRK) and only 435 STRs filled on suspicion that funds were the proceeds of crime. The level of filing unrelated to higher-risk jurisdictions is not commensurate with Mongolia's ML risk.
- While corruption is one of Mongolia higher-risk predicate offences, NRA data shows that between 2010 and 2015 only two STRs filed in relation to PEPs.
- As identified in the NRA, NBFIs are exposed to higher ML/TF risk; however, the sector has only filed three STRs in the last 7 years.
- There is no filing from notaries and real estate agents (although notaries are assessed as medium risk and the real estate sector as high risk in the NRA).

251. FIs have a reasonable understanding of their obligation to file CTRs as demonstrated by the Table 19. However, there has been no filing from DNFBPs.

Table 19: Number of CTRs Filed by FIs and DNFBPs

Sector	2010	2011	2012	2013	2014	2015	Oct 2016
Banking	462,847	474,876	555,390	712,582	1,949,920	1,214,476	539,769
All entities in non-bank sector	0	4	2,123	42,917	12,488	9,508	13,593
DNFBPs	0	0	0	0	0	0	0

252. FIs are generally aware of their legal obligation in relation to tipping off. Larger banks and larger NBFIs explained that the confidentiality of reporting is incorporated into their Code of Conduct and feedback from supervisors and LEAs did not indicate particular challenges from FIs.

Mongolia has reported no cases in connection to tipping off. However, it is unclear whether DNFBPs are aware of their legal obligation in relation to tipping off.

Internal controls and legal/regulatory requirements impending implementation

253. The AML/CFT Law and PMR require REs to implement an internal monitoring program to combat ML/TF. However, based on the information included in the NRA, not all 14 banks implemented the internal controls effectively. BoM has issued the following rectification orders in relation to breaches of internal controls (Table 20). While the decrease of rectification orders suggests an impact on compliance, given that the PMR introduced new requirements in June 2016, banks are still in the midst of updating their internal AML/CFT policies and regulations.

Table 20: Bank Rectification Orders Issued for Internal Control Breaches

Number of bank rectification order issued for internal controls	2014	2015	Sept 2016
Internal AML/CFT policy and regulation	10	2	6
AML/CFT Structure and Compliance officer	10	2	0
Internal audit and control	0	12	0
Staff training	10	12	9

254. In relation to the FIs under FRC's supervision, the data in Table 23 suggests that the application of internal controls and procedures of AML/CFT requirements is limited. There are two financial groups operating in Mongolia. While FRC suggested that REs do implement internal controls and procedures for compliance with AML/CFT requirements, Mongolia did not provide any evidence to support such findings. Overall, the application of internal controls and procedures by FIs other than banks is limited mainly due to resources constraints and are totally absent in the DNFBPs.

255. Mongolia does not have any legal or regulatory requirements that impede the implementation of AML/CFT preventative measures.

Overall Conclusion on Immediate Outcome 4

256. **Mongolia has a low level of effectiveness for Immediate Outcome 4**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- Licensing and other controls can to some extent prevent criminals and their associates from entering the banking sector. Fit-and-proper tests on founders or shareholders, boards of directors and executive managers are conducted by the BoM through verification of criminal records, source and origin of the paid-in capital, and audited financial statements of their business activities. The verification takes place during the application and licencing renewal stages, inspections or when there are changes in senior positions. However, there are limitations in the verification of beneficial owners.
- While BoM has a limited understanding of Mongolia's overall ML/TF risk due in part to the recent completion of the NRA, it has a greater understanding of sector specific ML risk and individual institutional ML risks in the banking sector due to its risk-based AML/CFT supervision.
- BoM completed its first full round of risk-based off-site inspections in June 2016 and identified three high risk banks, five medium risk banks, three low risk banks, and three very low risk banks. Before December 2015, Mongolia was conducting rule-based AML/CFT supervision. At the time of the ME on-site visit, BoM had conducted four on-site AML/CFT inspections of Mongolia's higher risk banks; however, the on-site inspection reports had not been finalised.
- BoM can impose a range of enforcement measures, which are applied progressively. However, BoM has only applied rectification orders for AML/CFT breaches. These supervisory actions have had limited impact on the level of awareness and compliance with AML/CFT obligation in the banking sectors (see IO.4).
- For the non-bank sector, fit-and-proper requirements extend to criminal record checks on shareholders, boards of directors and executive officers are evaluated by the FRC in accordance with respective laws. BOs' information of FIs is to some extent tracked by the FRC on the basis of referrals from relevant agencies. However, it is unclear how far FRC goes to identify and assess the fitness-and-propiety of ultimate BO of FIs.
- The FRC's understanding of ML/TF risks is at the developmental stage including sector specific ML risk and individual institutional ML risks. The FIU, in its capacity as a supervisor, displayed a sounder understanding of ML/TF risk primarily based on its lead role in the NRA process.
- The FRC is in the process of implementing a RBA to AML/CFT supervision. The FRC's current supervisory actions on AML/CFT are limited in number and scope. No sanctions have been imposed, and the FRC was unable to provide data and statistics demonstrating its actions have been effective in promoting greater understanding and compliance with the AML/CFT requirements amongst the REs it supervises.
- Real estate agents and notaries are the only DNFBPs included as REs under AML/CFT Law with obligations only enforceable on notaries. The FIU and the FRC are responsible for supervising real estate agents although no supervision has occurred. There are some fit-and-proper tests for notaries and lawyers at the application stage.

- Mongolia has issued some guidance to promote an understanding of AML/CFT obligations but has not issued guidance to assist FIs and DNFBPs implement the new requirements of the PMR. FIs did confirm that they found supervisors outreach, such as training, useful.

Recommended Actions

- Supervisors should implement policies and procedures to assess and maintain ongoing ML/TF risk assessments and ratings of all REs, and should raise REs' awareness of their ML/TF risk.
- Based on a comprehensive understanding of the ML/TF risk associated with DNFBPs, entities should be included in Mongolia's AML/CFT regime, and risk-based supervision should be urgently undertaken on real estate agents, notaries, dealers in precious metals and stones and other entities included in the FATF Standards.
- BoM should continue to develop its risk-based supervision of banks including the use of proportionate and dissuasive sanctions for AML/CFT breaches and ensuring BoM has sufficient resources and expertise for AML/CFT supervision.
- The FRC should implement AML/CFT risk-based supervision, including the use of proportionate and dissuasive sanctions for AML/CFT breaches. This should include ensuring the FRC has sufficient resources and expertise for AML/CFT supervision.
- Supervisors should continue to provide outreach and guidance to REs on their AML/CFT risks and AML/CFT obligations particularly on the recently adopted PMR and the verification of BO.

257. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

Financial sector

258. The BoM is the licencing and supervisory authority for the 14 banks in accordance with BoM Law and Banking Law and the AML/CFT Law, which provides for AML/CFT supervision by the BoM.

259. The FRC is the licencing and supervisory authority for the non-bank sector (450 NBFIs, 17 Insurance Companies, 17 Investment Funds, 61 Securities Market Entities, and 253 SCCs). Regulatory authority is provided under FRC Law and individual laws of the respective entities, with AML/CFT supervision conducted jointly with FIU in line with the AML/CFT Law.

260. BoM's licensing and other controls can to some extent prevent criminals and their associates from entering the banking sector. Fit-and-proper tests on founders or shareholders, board of directors and executive managers are conducted by the BoM through verification of criminal records, source and origin of the paid-in capital, and audited financial statements of their business activities. Verification of all information takes place during the application of a banking licence, renewal of licences, inspections and when changes in senior positions occur. However, as highlighted in the NRA, information on beneficial owners of banks is not fully verified. The recently implemented risk-

based off-site bank supervision (see below) includes monitoring of bank's shareholders, board of the directors, executive management, and AML/CFT compliance officer. At the time of the ME on-site visit, BoM had conducted four risk-based on-site AML/CFT inspections of Mongolia's higher-risk banks; however, on-site inspection reports had not been finalised.

261. With respect to foreign founders or shareholders, directors and executive managers, although BOM can request references and clarification letters from domestic and foreign competent authorities, it relies on information provided by the foreign applicant for criminal records checks. BoM has not sought verification of such information from foreign counterparts.

262. There have been no cases where a banking application was rejected for failure to meet fit-and-proper requirements. Since 2010, two banking licenses were not approved due to insufficient and unverifiable information.

263. For the purposes of preventing criminals entering the non-bank sector, the FRC requires applicants to prove the legality of their paid-in capital by way of requesting the source of money, past or current business activity, and paid-in capital must be exclusively in the form of cash in bank accounts. Fit-and-proper requirements extend to criminal records checks on shareholders, boards of directors and executive officers in accordance with respective laws.

264. Between 2011 and 2016, the FRC has refused to issue special licenses to carry out NBFIs activities to 26 companies, for the following reasons: (i) 24 companies could not provide sufficient evidence of the origins of the investment amount, and (ii) two companies didn't provide adequate business plans. The FRC provided no data on cases where an application was rejected for failure to meet fit-and-proper requirements in the other sectors it licenses. The FRC has however revoked four NBFIs licenses and four SCC licenses since August 2015, and 30 licenses in Securities Market Entities since 2012 for not fulfilling the prudential ratio, not carrying out activities after obtaining a license and/or not reaching the minimum charter fund.

265. Information on beneficial owners of FIs is to some extent tracked by the FRC on the basis of referral from relevant agencies. However, similar to the banking sector, it is unclear how far FRC goes to identify and assess fitness-and-propriety of ultimate beneficial owners of FIs as only two simple examples were provided to the assessment team, which did not demonstrate an adequately level of effectiveness. In addition, the FRC provided no evidence that it had sought to verify information with foreign counterparts. In the case of changing positions or shared capital, the FRC may cooperate with the GPA for background screening.

266. The BoM and FRC can request criminal record checks from the GPA with a response taking approximately one week. BoM and FRC also have access to legal entities' information via the GAIPSR website. However, as discussed in IO.5 the accuracy of this information may not be complete, and the NRA suggests supervisors are unable to sufficiently prevent criminals and their associates from entering the market under the name of a legal entity or through individuals representing them.

DNFBPs

267. Real estate agents and notaries are the only DNFBPs included as REs under AML/CFT Law with obligations only enforceable on notaries. The FIU and the FRC are responsible for supervising real estate agents.

268. Available licensing, registration and other controls for DNFBPs are as follows:

- Casinos are prohibited in Mongolia.

- The real estate sector in Mongolia is not regulated. Real estate companies are only required to be registered with the GAIPSR. There is no fit-and-proper requirements associated with this registration.
- Dealers in precious metals and stones are required to be licensed under Article 15.10.2 of the Enterprise License Law and by the Ministry of Mining and Heavy Industry; however, no evidence was provided on fit-and-proper tests on founders or senior managers is required during the licensing stage.
- Notaries are licensed by the Ministry of Justice and undertake criminal record checks which occur at the application stage. Notaries are also required to adhere to professional practice obligations pursuant to the Notaries Law. No data was provided on cases where an application was rejected for failure to meet fit-and-proper requirements or a practicing license was suspended or revoked.
- The Bar Association has the authority to issue practicing license to legal professionals under its licensing framework, which includes fit-and-proper tests. An applicant must provide criminal record clearances and a health reference letter and adhere to professional practice obligations in order to practice law. In addition, lawyers are obligated to inform the Bar Association of any violations of professional practice obligations. No data was provided on cases where an application was rejected for failure to meet fit-and-proper requirements or a practicing license was suspended or revoked.
- While the Mongolian Institute (association) of Certified Public Accountants is responsible for enforcing the code of professional ethics for Certified Public Accountants (CPAs) and auditing firms and licensing of CPAs, licensing requirements do not include fit-and-proper obligations, and it is unclear if a code of professional ethics for CPAs has been developed.

Supervisors' understanding and identification of ML/TF risks

Financial sector

269. Due in part to the recent completion of the NRA, the BoM like many competent authorities, has a limited understanding of Mongolia's overall ML/TF risk. BoM has not undertaken sector specific risk assessments and the NRA does not include a detailed and systematic analysis of risks related to banking products and services. However, the BoM does have some understanding of sector specific ML risks and individual institutional ML risks through involvement in the NRA process, and undertaking AML/CFT supervision of banks, which has been risk-based since December 2015.

270. In June 2016, BoM completed a ML/TF risk assessment of all banks, as part of its off-site AML/CFT supervision (see below for details), and ranked three banks as high risk, five as medium risk, three as low risk, and three as very low risk. BoM utilised a risk matrix tool together with paper forms and questionnaires to quantify the net risk for each bank. Input was of variable quality as this was a new approach to seeking information with no guidance on how to respond to and undertake risk assessments, and the accuracy of responses was yet to be validated. The limited outreach and minimal time spent with private sector stakeholders through the NRA process suggests that regulators could not develop a comprehensive understanding of ML/TF risks.

271. The FRC's understanding of ML/TF risks is at the developmental stage. While the FRC was involved in the NRA process, the NRA does not adequately cover the ML/TF risks associated with the

entities regulated and supervised by the FRC. The FRC is in the process of implementing a RBA to supervision; however, from discussions during the ME on-site visit, it appears the focus is primarily on prudential risk. The FRC does not have an established process to identify and maintain an on-going and more detailed understanding of the ML/TF risks between different sectors and individual institutions.

DNFBPs

272. The FIU displayed a sounder understanding of ML/TF risks primarily based on its lead role in the NRA process. However, the FIU's understanding of the DNFBP sector specific ML/TF risks and risks between different sectors and individual institutions is very limited due to the lack of AML/CFT supervision of DNFBPs.

Risk-based supervision of compliance with AML/CFT requirements

Financial sector – supervision of banks by BoM

273. With technical assistance provided by the IMF, BoM began its risk-based AML/CFT supervision in December 2015, with approval of on-site and off-site regulations. Before this time, the FIU was responsible for rules-based AML/CFT supervision of banks in combination with BoM prudential supervisors. At the time of the ME on-site visit, BoM had conducted four on-site AML/CFT inspections of Mongolia's higher-risk banks (two on-site AML/CFT inspections in September 2016 and two during the ME on-site visit); however, on-site inspection reports had not been finalised. Mongolia did not provide any information on supervisors' findings from on-site inspections during the ME on-site visit or the face-to-face visit.

274. Under the BoM's supervision model, supervisors conduct biannual off-site AML/CFT supervision, the first full round of which was completed in June 2016. This supervision includes; (i) review of a Quantitative Data Collection Sheet completed by banks, (ii) review of a Monitoring and Compliance Assessment Questionnaire completed by banks, (iii) review of previous recommendations and remedial actions issued as part of BoM/FIU supervision, (iv) review of Bank's AML/CTF quarterly reports, (v) review of banks compliance with FIU reporting obligations, (vi) review of origin and source to increases in capital or secondary debts, and (vii) review of changes to bank's shareholders, board of the directors, executive management, and AML/CFT compliance officers. Based on this data and using a risk matrix, BoM ranked banks into five categories from very low to very high. In June 2016, three banks out of 14 were identified as high risk.

275. BoM developed a supervisory handbook to assist in implementing risk-based supervision in line with; (i) the Regulation of Onsite Supervision of The Banks on Anti-Money Laundering and Combating Financing of Terrorism, and (ii) Regulation of Off-site Supervision of The Banks on Anti-Money Laundering and Combating Financing of Terrorism. A range of techniques are used when conducting on-site examinations including interviews, reviewing and assessing bank's AML/CFT activities, and implementation of preventative measures for the effective management of ML/TF risks.

276. To support a clear understanding of a bank's risks, off-site examinations also involve rating of the banks use of the Risk Assessment Tools and analysis of other information sources such as internal and external audit reports, press reports and market intelligence.

277. AML/CFT on-site supervision of banks is usually conducted together with prudential examinations. BoM has 60 supervisors with 9 staff dedicated to AML/CFT supervision. In each on-site examination conducted recently, the BoM had two teams of supervisors. One team with three supervisors focused on AML/CFT with the other team conducting prudential supervision. The on-site examinations lasted between two weeks to one month depending on the size and pre-evaluated AML/CFT risk level of the bank. Mongolia conducts on-site supervision mainly on a head office of the bank. Operational data may be collected from bank branches.

278. While BoM's AML/CFT supervision manual for banks outlines that the intensity of supervisory activities will be higher for banks with higher ML/TF risks, BoM did not articulate to the assessment team the frequency of off-site examinations for higher risk and lower risk banks. In addition, during the ME on-site visit, BoM had not yet finalised the priorities for off-site and on-site inspections in the future.

279. The number of joint AML/CFT and prudential on-site examinations is outlined in Table 21 with the off-site supervision of banks outlined in Table 22. This table predominantly highlights rule-based supervision, with four risk-based assessments undertaken in 2016.

Table 21: Joint AML/CFT and Prudential On-site Supervision of Banks

	2012	2013 ⁶⁰	2014	2015	2016
Examined Banks (rule-based)	12	0	10	12	5
Examined Banks (risk-based)	0	0	0	0	4

Table 22: Off-site Supervision of Banks

	2012	2013 ⁶¹	2014	2015	2016
AML/CFT quarterly reports received	-	-	56	56	56
Follow-up meetings	-	-	28	28	28
Follow-ups rectification order and administrative action notices	-	-	51	47	44

Financial sector – supervision of non-bank sector by FRC

280. At the time of the ME on-site visit, the FRC had not conducted any risk-based AML/CFT supervision. However, the FRC is in the process of developing a RBA to supervision with technical assistance from the World Bank and the Asian Development Bank (ADB). At the time of the ME on-site visit, a working group had been set up to draft the on-site and off-site AML/CFT supervision regulations, and to develop Risk Assessment Tools and Questionnaires for relevant REs⁶².

281. Since 2013, the FRC has conducted rule-based AML/CFT supervision, as outlined in Table 23. FRC supervision activities were mainly on NBFIs and on-site examinations have mainly focused on basic requirements of the AML/CFT Law such as; (i) whether the FI had established AML/CFT policies, (ii) whether they had designated a compliance officer, and (iii) whether CTRs and STRs were submitted.

⁶⁰ No supervision was conducted in 2013 because of the revision of the AML/CFT Law.

⁶¹ No supervision was conducted in 2013 because of the revision of the AML/CFT Law.

⁶² The above regulations came into force in December 2016 (after the on-site visits); however, it is unclear when risk-based supervision will commence.

282. The FRC informed the assessment team that the drop in the number of NBFIs' breaches between 2013 and 2014 was because the NBFIs rectified issues in 2014, reflecting no other breaches had been found (see Table 23). In addition, besides the NBFIs, nearly no breaches had been identified in other sectors. In the assessment team's view, this AML/CFT supervision is not comprehensive. The assessment team was informed that on-site examinations were usually conducted within three weeks, but sometimes only one week's duration, and mainly covered inspections of daily transactions. Off-site examinations largely focused on compulsory regular reports, which included quarterly operations reports and annual statement reports. Besides compliance reports with STRs and CTRs obligations, no other AML/CFT related information is required to be provided to the FRC.

283. Furthermore, while the FRC informed the assessment team that all supervision includes AML/CFT (as shown in Table 23), some FIs met during the ME on-site visit suggested that some supervision did not include AML/CFT.

284. The FRC has not conducted any AML/CFT supervision of Investment Funds.

Table 23: Joint AML/CFT and prudential supervision by FRC

	2011	2012	2013	2014	2015	2016
NBFIs						
No. of legal entities	195	212	263	378	450	518
No. of onsite inspections	70	35	30	36	5	117
No. of off-site inspections	777	815	950	1332	1660	1867
No. of breaches identified	0	0	35	3	2	0
No. of administrative actions	31 ⁶³		2	155	12	3
SCCs						
No. of legal entities	162	148	141	159	253	280
No. of onsite inspections	40	34	36	35	30	24
No. of off-site inspections	606	586	557	570	941	1039
No. of breaches identified	0	0	0	0	3	0
Securities market entities						
No. of legal entities	94	97	93	70	61	62
No. of onsite inspections	0	0	0	0	61	49
No. of off-site inspections	0	0	0	0	61	62
No. of breaches identified	0	0	0	0	0	0
Insurance companies						
No. of legal entities	17	18	17	17	17	17
No. of onsite inspections	13	12	10	7	8	7
No. of off-site inspections	68	72	68	68	68	68
No. of breaches identified	0	0	0	0	0	0
Total onsite inspections	123	81	76	78	106	197
Total off-site inspections	1451	1473	1575	1970	2730	3036
Total breaches identified	0	0	35	3	5	0
Total administrative actions ⁶⁴	31 ⁶⁵		2	155	12	0

⁶³ These 31 administrative actions were issued between 2008 and 2012

⁶⁴ Data on administrative actions was only provided for NBFIs

DNFBPs

285. Under the AML/CFT Law, the FIU and the FRC are responsible for supervising real estate agents. There is no AML/CFT supervisor for other DNFBPs, and no supervision on DNFBPs has been conducted.

286. Overall, the resources and capacity to conduct effective AML/CFT supervision are not adequate and specialist knowledge is insufficient. FIU has 10 staff members with only one staff member for supervision. BoM has only 9 staff members out of 60 supervisors who are tasked with AML/CFT supervision, and the FRC has 28 staff members who have to supervise more than 700 FIs. In addition, according to some non-bank FIs, turnover among FRC supervisors is high, which impacts on effective continuity of supervision.

6

*Remedial actions and effective, proportionate, and dissuasive sanctions**Financial sector – supervisory actions on banks by BoM*

287. Under the banking Law, BoM can impose a range of enforcement measures from written warnings to revoking banking licenses, which can be applied progressively. Since 2014, BoM has only applied rectification orders for AML/CFT breaches, which emphasize breaches and lists requirements on banks to rectify, as outlined in Table 24. If banks do not rectify as required, more severe sanctions (such as penalties) can be imposed. BoM informed the assessment team that in 2015, 91.4% of breaches were rectified within the specified timeframe and no further actions including monetary penalties were taken - only four rectification orders (not AML/CFT related) that applied to non-operational banks were not fulfilled. However, based on the performance of preventive measures taken by the private sector and considering only “rectification orders” were issued for all types of breaches, the assessment team is not convinced that rectification orders are both proportional and dissuasive.

288. Some of the rectification orders given by supervisors to banks are very general. Some orders, for example, were “To identify beneficial ownership” or “To improve activities relating to identifying STRs”. In the assessment team’s view, improved practices may not occur unless BoM provide additional clarity in recommendations made to banks.

Table 24: BoM Rectification Orders on Banks

Related Area of Rectification orders	2014	2015	2016
Internal AML/CFT policy and regulation	10	2	6
AML/CFT Structure and Compliance officer	10	2	0
Transaction and account monitoring	0	0	9
Risk assessment systems and procedures	10	2	0
General KYC requirements	1	0	2
Identifying and verifying BO	0	2	9
Enhanced DD	10	2	0
Requirements for PEPs	0	0	9
Wire transfers	0	1	0
Internal audit and control	0	12	0
Staff training	10	12	9
New products and Technologies	0	12	0
Total Rectification Orders	51	47	4465
<i>Total supervisory activities by BoM (on-site and off-site)</i>	<i>10</i>	<i>12</i>	<i>23</i>

Financial sector – supervisory actions on non-bank sector by FRC

289. Available sanctions for entities supervised by the FRC vary across the sector. In addition, based on discussion during the ME on-site visits, the FRC does not clearly understand its sanction powers and has not imposed sanctions. During the ME on-site visit, the FRC informed the assessment team that administrative action notices were issued for all breaches identified in off-site and on-site supervision; however, only data for NBFIs was provided to the assessment team (see Table 25). In addition, it seems that adequate follow-up measures were not undertaken, and Mongolia did not provide evidence that breaches were rectified.

290. Limited data was provided to the assessment team with respect to types of breaches identified. For NBFIs, only two types of AML/CFT related breaches were identified: (i) no approved internal policies and procedures for combating ML/TF, and (ii) no appointed officer in charge of AML/CFT (see Table 25). In the assessment team's view these breaches are foundational elements of an effective preventive measures regime and warrant more proportionate and dissuasive sanctions. The FRC has not revoked any license for non-compliance with AML/CFT requirements.

Table 25: AML/CFT Breaches in NBFI Sector

Type of Breach	2013	2014	2015	2016
No approved internal policies and procedures for combating ML/TF	215	116	72	63
No appointed officer in charge of AML/CFT	137	117	72	63

DNFBPs

291. Mongolia has not conducted any AML/CFT supervision of DNFBPs, and not imposed any remedial actions or sanctions. The AML/CFT Law and PMR are not enforceable on real estate agents

⁶⁵ Rectification orders issued in 2016 relate to rule-based supervision of banks. At the time of the on-site, inspection reports from the four on-site AML/CFT inspections of Mongolia's high risk banks were not finalised.

due to a lack of sanctions and the sanctions for notaries are not proportionate and dissuasive. The FRC claims that if real estate agents violate the AML/CFT law, the FRC will ask the GAIPSR to remove them from the registration list. Mongolia did not provide data to support this claim.

Impact of supervisory actions on compliance

Financial sector – supervisory actions on banks by BoM

292. Supervisory actions, through rectification orders, have had an impact on the level of awareness and compliance in the banking sector. Banks appeared to have been receptive to a RBA and on-site findings of supervisors. For example, during the ME on-site visit, larger banks indicated that as a result of the on-site inspections by BoM they had ranked customers by risk, set up PEP lists, improved their CDD processes, and increased the frequency and quality of their internal AML/CFT training for staff members. The banks meet during the ME on-site visit appeared willing to work with the BoM to revise their internal AML/CFT policies based on the new requirements in the PMR. However, as shown in Table 24, there is no clear decreasing trend in rectification orders imposed on banks especially with regard to internal AML/CFT policy and regulation, identifying and verifying BO, and staff training. Moreover, the impact of the four risk-based on-site inspections is unknown, as finalised supervision findings were not provided to the assessment team.

Financial sector – supervisory actions on non-bank sector by FRC

293. The FRC's supervisory actions on AML/CFT are limited in number and scope, and the FRC was unable to provide data and statistics demonstrating its actions have been effective in promoting greater understanding and compliance with the AML/CFT requirements. In addition, discussions with FRC supervised entities during the ME on-site visit did not convince the assessment team that FRC activities had improved AML/CFT compliance.

294. The FIU's limited supervisory actions seem to have had a positive effect on AML/CFT compliance, as demonstrated by the below case. However, no empirical data demonstrating supervisory impact was provided to the assessment team.

Case Example 1: FIU Supervision

One NBFIs firm was inspected by the FIU on AML/CFT in 2012. Two recommendations were given to the firm. One was to submit the CTRs and STRs on time and the second was to properly collect citizens ID documents in clear form. After the inspection, the FIU provided training to the firm, which changed the attitudes of all the staff members. They realised the importance of KYC and CDD measures, the necessity of following the AML/CFT rules and regulations, which resulted in speedy rectification of the identified issues. Three months later, the FIU undertook a follow-up AML/CFT inspection on the firm and were satisfied with the rectifications.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

295. The BoM and FIU have issued several guidance documents on AML/CFT issues including the guidance on how to recognize and report STRs. However, most guidance documents are translations of FATF publications such as the Guidance of Transparency and Beneficial Ownership and Guidance on Politically Exposed Persons, and do not include Mongolia-specific information or guidance. In addition, no written guidance has been issued to facilitate understanding of supervisory expectations on sectoral KYC/CDD requirements, and due in part to its recent finalisation and circulation, no

guidance has been issued on the PMR. However, recent training has included some coverage of the PMR.

296. The FRC has not issued any guidance to promote a clear understanding of AML/CFT obligations. Besides the AML/CFT law, rules on reporting STRs and CTRs, and the newly adopted PMR, entities regulated by the FRC have no other AML/CFT related guidance from supervisors.

297. Supervisors' understanding of TF is limited and no guidance has been provided to REs on TF. Most REs, except for banks, met during the ME on-site visit did not utilise the UNSCR Consolidated Lists for screening.

6

298. Supervisors have conducted AML/CFT related training as outlined in Table 26. Generally, training is for half a day and conducted by the FIU or jointly with other organizations such as BoM, FRC, GIA, GPO, Mongolian Banking Association, and NBFIs Association, with support of IMF, EBRD, and ADB. Generally, this training focusses on general AML/CFT awareness. Attendees are wide ranging from tellers, internal auditors and compliance officers to senior managers of banks, non-bank FIs, notaries, and lawyers. During the ME on-site visit, FIs commented that they found supervisors' outreach useful in deepening their understanding of AML/CFT issues; however, the type and quantity of outreach provided was not adequate.

Table 26: Training Conducted by Supervisors

	2016	2015	2014	2013
No. of workshops/seminars organized by FIU	0	6	4	4
No. of attendees	0	239	164	229
No. of workshops/seminars organized by FIU jointly with other organizations	5	20	10	5
No. of attendees of workshops/seminars organized by FIU jointly with other organizations	260	738	428	421

299. The FRC has itself organized very little AML/CFT related training (a total of three events). Two training events were organized in 2014 and one in 2016. The FRC has regular training but not on AML/CFT. The Association of Securities Dealers organizes training on AML/CFT compliance for licensing experts in the securities market at least twice a year.

300. Outreach on Mongolia's ML/TF risks has been limited, due in part to the recent finalisation and publication of the NRA.

Overall Conclusion on Immediate Outcome 3

301. Mongolia has a low level of effectiveness for Immediate Outcome 3

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- Mongolia has not adequately identified and assessed the ML/TF risks and vulnerabilities of legal persons including in the NRA.
- Information on the creation and types of legal persons is available through the GAIPSR. The GIA, GPA and IAAC have timely and adequate access to this basic information on legal persons via direct access to the GAIPSR's database. However, accuracy of this information may not be complete because the GAIPSR has no mechanisms to verify the authenticity of information provided and has not applied sanctions for non-compliance.
- REs are required to obtain BO information during CDD. LEAs and the FIU have timely access this information; however, implementation varies across the financial sector with only larger banks and larger NBFIs implementing specific CDD requirements. Therefore, BO information may not be available, accurate and/or current.
- Mongolia has implemented some other measures to prevent the misuse of legal persons for ML/TF purposes, including; (i) Mongolia requires registration of bearer shares, (ii) Mongolia does not allow for companies to issue nominee shares or appoint nominee directors, and (iii) recently Mongolia implemented a scheme to promote the accuracy and updating of legal persons information registered with the GAIPSR.
- Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law. Based on discussions during the on-site, it seems foreign trusts are not a significant feature in the Mongolian economy with no evidence to suggest DNFBPs are involved in the formation or management of foreign trusts in Mongolia. However, Mongolia has not assessed the ML/TF risks associated with legal arrangements.

Recommended Actions

- Mongolia should assess the risks and develop a comprehensive understanding of the vulnerabilities and risks posed by legal persons and arrangements.
- Mongolia should consider reviewing the role of the GAIPSR concerning the verification of information subject to registration, and consider granting the GAIPSR a more proactive role in that verification process.
- Mongolia should conduct outreach, specifically in the DNFBP sector, in order to promote awareness by REs and competent authorities on their obligations concerning obtaining BO information.
- Mongolia should consider creating an obligation for legal persons to maintain and make available to competent authorities updated and accurate information about their beneficial ownership in a timely manner. This information should be maintained in a way that allows timely access by the relevant authorities without legal restriction or hindrance.
- Mongolia should take measures to make its sanctions regime more effective, proportionate and dissuasive.

302. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

303. In accordance with the CvC and LESRL, the following types of legal persons can be incorporated and registered in Mongolia: limited partnerships, limited liability partnerships and companies as subtypes of profitable legal persons; and associations, foundations and cooperatives as non-profitable legal persons. Table 27 shows the number of legal persons registered with the GAIPSR at the time of the ME on-site visit.

Table 27: Number of Registered Legal Persons

Type of Legal Person	Number of Entities at Oct 2016
<i>For-profit Legal Persons</i>	
Partnerships ⁶⁶	3,957
Company – Shareholding	298
Company – Limited Liability	112,480
Company – Foreign Investment Limited Liability	9,417
Company – State and local owned self-financing industrial organization	465
Sub-total	126,617
<i>Non-profit Legal Persons</i>	
Cooperatives	4,093
SCCs	475 ⁶⁷
Non-government organizations	23,027
Religious organizations	746
Foundations	1,119
Labour union organisations	2,676
Media	3,561
Public legal persons ⁶⁸	1
Culture, education training, research and health organisations	331
Sub-total	36,029
<i>For-profit and Non-profit Legal Persons</i>	
Culture, education, training, research and health organizations	331
Total	162,977

⁶⁶ A breakdown of the limited partnerships and limited liability partnerships in Mongolia was not provided.

⁶⁷ A number of savings and credit cooperatives registered with the GAIPSR, which may not be conducting activities and licensed by FRC

⁶⁸ Mongolia Bar Association

304. Information on the creation and types of legal persons in Mongolia is available through the publication of legislation on the Official Gazette of Mongolia. The GAIPSR is the government agency responsible for maintaining in both in physical and electronic format the information related to each legal person registered in Mongolia.

305. Key competent authorities have direct access to the GAIPSR's database, and the public can obtain information contained in the GAIPSR's database via an in-person application.

306. Under the Company Law, companies are required to maintain their incorporation documents, any amendments therein, and other BO information.

307. Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law⁶⁹.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

308. The NRA does not adequately assess the risk of ML and TF associated with legal entities, nor does Mongolia understand the risks arising from all forms of legal entities including public and foreign companies registered in Mongolia.

309. Based on their investigations, LEAs, particularly the GPA, has some understanding and awareness of the vulnerabilities and the extent to which legal persons may be misused for predicate crimes and ML. However, most other agencies including the GAIPSR lack a clear understanding of the ML risks and vulnerabilities associated with legal persons. There has been no concentrated effort to monitor those entities and understand the differing risks posed by the various forms of legal persons.

310. Understanding of TF risks and vulnerabilities associated with legal persons is negligible.

311. Express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law. Based on discussion during the on-site, it seems foreign trusts are not a significant feature in the Mongolian economy with no evidence to suggest that DNFBPs are involved in the formation or management of foreign trusts in Mongolia. However, Mongolia has not assessed the ML/TF risks associated with legal arrangements.

Mitigating measures to prevent the misuse of legal persons and arrangements

312. Mongolia has some mitigating measures to prevent the misuse of legal persons and arrangements. As discussed in R.24, mandatory documentation for legal person creation and amendments provides for the availability of basic information. However, the GAIPSR has no mechanisms in place to check or verify the authenticity of information filed including for foreign legal persons.

313. The GAIPSR can refuse to register the changes of legal persons, either newly founded persons, reorganized, liquidated or subject to any other changes in cases of submission of incomplete

⁶⁹ Under Article 406 CvC Mongolian has a legal framework for statutory trusts under the form of a "trust contracts". The adoption in 2008 of the Regulation on Non-Bank Financial Trust Services clarified the structures or functions of the "trust contract". Based on this, the assessment team has concluded this arrangement is not an express trusts or other legal arrangement with similar structures or functions.

documents, where the foundation documents do not satisfy the requirements specified in the law, or in cases of any documents submitted being identified as forged.

314. As identified in Chapter 1, to improve accuracy of GAIPSR information, the PET Law included an exemption from sanctions, between August 2015 and February 2016, for updating legal person registration information. However, Mongolia did not provide meaningful information or statistics to determine the effectiveness of this measure.

315. Article 3.7. and 4.2. of the Company Law determines the registration of bearer shares issued by open public companies in a securities trading organization before their trading in open market. Any transfer of shares made through other means than the securities trading organization must be immediately registered with it.

7

316. The AML/CFT Law and PMR require FIs and DNFBPs to apply CDD, including BO information, to legal persons and foreign legal arrangements, which may mitigate their misuse. . However, as discussed in IO.4; (i) implementation of CDD requirements vary across FIs sectors with only larger banks and larger NBFIs aware of, and implementing CDD requirements, and (ii) due to the recent enforcement of the PMR, implementation of the detailed requirement is limited even for larger banks. The CDD implementation by DNFBPs is unknown.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

317. The GIA, GPA and IAAC have timely and adequate access to basic information on legal persons via direct access to the GAIPSR's database. However, accuracy of that information may not be complete because the GAIPSR has no mechanisms to check or verify the authenticity of information provided and the sanctions for not updating the information subject to registration are not dissuasive. The GPA estimates that approximately 73% of its ML investigations involve the misuse of legal persons, and they informed the assessment team that during such ML/predicate crime investigations they have identified that information held by the GAIPSR is not accurate and current.

318. LEAs and the FIU have timely access CDD information including BO information. However, as discussed in IO.4; (i) implementation of CDD requirements varies across the financial sector with only larger banks and larger NBFIs implementing specific CDD requirements, (ii) CDD implementation by DNFBPs is unknown, (iii) Mongolia provided no evidence that REs have refused new business or have terminated existing business relationships where CDD is incomplete, and (iv) detailed BO requirements in the PMR are being applied as this regulation only came into force prior to the onsite visit. Therefore, while LEAs have access, BO information may not be accurate or current.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

319. As outlined above, express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law. Based on discussion during the on-site, it seems foreign trusts are not a significant feature in the Mongolian economy with no evidence to suggest that DNFBPs are involved in the formation or management of foreign trusts in Mongolia. Notwithstanding, LEAs and the FIU would have timely access to CDD information including BO

information of foreign legal arrangements from REs, if they were found to exist in Mongolia. However, as discussed above, implementation of CDD requirements varies across the financial sector with only larger banks and larger NBFIs implementing specific CDD requirements, and Mongolia has not assessed the ML/TF risks associated with legal arrangements.

Effectiveness, proportionality and dissuasiveness of sanctions

320. The GAIPSR did not provide evidence of sanctioning natural or legal persons who did not comply with registration requirements. In addition, as discussed in R.24 sanctions are not significantly dissuasive.

321. As discussed in IO.3, Mongolia has not applied dissuasive sanctions on REs that fail to comply with their CDD obligations.

Overall Conclusion on Immediate Outcome 5

322. **Mongolia has a low level of effectiveness for Immediate Outcome 5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- Mongolia can provide a wide range of MLA and extradition in accordance with the CPC, its bilateral agreements and international mechanisms. Mongolia can also provide assistance without an mutual legal assistance treaty (MLAT) based on the principle of reciprocity.
- Mongolia is providing constructive MLA and extradition with a range of foreign and regional jurisdictions on a range of predicate crimes and ML. However, until recently this assistance was not always provided on a timely basis.
- Mongolia is seeking MLA on a range on predicate crimes and ML with some statistics and examples of outgoing MLA requests provided to the assessment team.
- There is a formal national cooperation mechanism in place; however there is no clear procedure of cooperation which hampers effective international cooperation and information exchange.
- Mongolia has not sought or provided MLA or extradition in relation to TF.
- LEAs and the FIU are using the Egmont Group Secure Web and Interpol I-24/7 connections to exchange information. Besides this, LEA cooperation with foreign counterparts is limited, although mechanisms are in place.
- International cooperation by supervisors is limited to two cases where the FRC has replied to two information requests. There has been no international exchange of supervisory or BO information.

Recommended Actions

- Competent authorities (including financial supervisors) should continue to establish, strengthen and enhance their agency level cooperation mechanisms including signing MOUs and other bilateral mechanisms.
- Mongolia should develop clear national coordination mechanisms and procedures to execute MLA in a timely and efficient matter, and maintain comprehensive and detailed statistics in relation to international cooperation.
- In order to facilitate BO information exchange, Mongolia should consider establishing clear mechanisms for GAISPR to obtain updated and reliable BO information (see IO.5).

323. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

324. Mongolia can provide a wide range of MLA and extradition in accordance with the CPC, its bilateral agreements and international mechanisms. Mongolia can also provide assistance to

Anti-money laundering and counter-terrorist financing measures in Mongolia – 2017 @ APG 2017

jurisdictions without a MLAT based on the principle of reciprocity. There is no evidence that MLA has been refused due to an absence of an MLAT.

325. Mongolia has 28 MLATs with 20 jurisdictions⁷⁰ and 15 extradition agreements with 15 jurisdictions⁷¹.

326. While the central authority for receiving MLA and extradition requests for criminal matters is the Ministry of Justice (MoJ) and the GPO, in practice MLA requests generally come through the MFA and Embassy channels.

327. There were some discrepancies between MLA data provided to the assessment team and data included in the NRA and in responses to the APG's international cooperation information request⁷². However, based on the data provided, between 2014 and 2016, GPO received a total of 31 MLA requests (see Table 28) from range of jurisdictions, which were primarily related to theft (~20% of all MLA requests), fraud (~20% of all MLA requests), tax evasion (~10% of all MLA requests) and murder (~10% of all MLA requests).

328. As outlined in Table 28, the majority of these requests were fulfilled. In four cases where MLA was refused, refusal was due to inadequate and/or non-official information. Foreign jurisdictions that were successful with MLA requests to Mongolia included Russian Federation, Kazakhstan, Poland, Korea, Turkey, Hungary, the United States and Belarus.

Table 28: MLA and Extradition Requests Received by GPO

Number and Type of Request	2014	2015	2016
<i>MLA</i>			
Number of requests received	5	16	10
Number of requests fulfilled	4	14	6
Number of request in progress	0	0	3
Number of requests refused	1	2	1
<i>Extradition</i>			
Number of requests received	1	2	2
Number of requests fulfilled	0	1	0
Number of request in progress	0	1	1
Number of requests refused	1	0	1

329. Mongolia extradited one individual, for embezzlement of property, to Korea in 2015. Two requests are on-going, and Mongolia has refused two extradition requests because under the Constitution of Mongolia extradition of Mongolian Citizens is prohibited. None of these requests were related to ML or TF.

330. While data on the individual response times for each MLA and extradition request was not provided, data included in the NRA shows Mongolia has made significant improvements to its ability to provide timely MLA: in 2014 all requests (MLA, extradition and prisoner exchanges) took from 2

⁷⁰ Bulgaria, Canada, China, Cuba, Czech Republic, DPRK, India, France, Hong Kong, Hungary, Kazakhstan, Kyrgyzstan, Poland, Romania, Russian Federation, Slovakia, Korea, Turkey, Ukraine, Vietnam.

⁷¹ five of which are separate Agreements while provisions of other jurisdictions included in general MLATs – China, India, Hong Kong, Kazakhstan and Korea

⁷² For example, one jurisdiction identified that it had sought MLA with Mongolia on five occasions, however, the GPO only identified that this jurisdiction had sought MLA on one occasion.

months to 2 years to complete; in 2015 all requests took between 14 and 90 days; and in 2016 all requests were completed in 30 to 60 days. This is consistent with counterpart responses, which show that Mongolia takes on average between 90 to 300 days to respond with responses generally being of good quality.

331. Consistent with the assessment team's understanding of Mongolia's TF risk, Mongolia has not received any MLA or extradition request related to TF.

332. Overall, Mongolia is providing constructive MLA and extradition with a range of foreign and regional jurisdictions on a range of matters including ML. However, until recently this assistance was not always provided on a timely basis.

Case 1: MLA with the USA in Relation to Wire Fraud and ML

In 2015, Mongolia provided MLA to the USA in relation to concurrent wire fraud and ML investigations in the USA and Mongolia. The offenders were using US bank accounts and forged documents to operate a fraudulent scheme targeting victims in numerous jurisdictions around the world. Requested assistance was provided including bank and travel records; forensic examination and copies of electronic devices; and interviews with defendant and witnesses. As Mongolia and the USA do not have a MLAT, upon receipt of a formal request from the authorized party, Mongolia completed the MLA within three months⁷³.

Case 2: MLA with Korea in Relation to Fraud and ML

In 2015 Mongolia provided MLA to Korea in relation to a fraud and ML case where funds were transferred from unidentified sources to the bank accounts held by the suspect's wife who operates an educational Institute in Mongolia. In order to trace the flow of funds, Mongolia was requested to obtain bank account information opened overseas in the names of the corporation that the suspect used to cover his crimes. Initial action taken by police in Mongolia did not reveal any suspicious transactions and no additional request had been made by Korean side. Mongolia provided requested assistance within 3 months.

Case 3: Funds Repatriated to Korea

In 2013 Mongolia received a request from South Korea through the Interpol Network in relation to a Korean citizen running a hotel business in Mongolia. He built the hotel in Ulaanbaatar using the money derived from illegal gambling. The Court decision of Seoul (dated in 2009) convicted him with ML and confiscated USD 4.5 million (~10 billion MNT). After investigation by Mongolian LEA it was established that this convict had transferred 65 % of this hotel to another two people (also Korean citizens). His remaining share 35% was confiscated and ~210,000 USD was returned to Korea. The request was finalised within 10 months.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

333. While detailed statistics on outgoing MLA requests was not provided to the assessment team and where information was provided there were inconsistencies, the GPO has made 74 MLA

⁷³ Post the ME-onsite visit, in June 2017, the first instance court convicted offenders related to this case of Fraud and ML. Sanctions included 13-15 years imprisonment and confiscation of property.

requests to foreign jurisdictions including 54 requests between 2015 and 2016. Two of these requests related to ML and were with Germany and Poland in 2015 (see below case studies).

334. While the vast majority of other MLA requests relate to fraud (one of Mongolia's higher-risk predicate offences), Mongolia has not requested MLA in relation to its other higher-risk ML threats. MLA requests were however with key regional jurisdictions including China (~18.5% of total MLA in 2015 and 2016), Russian Federation (~27% of total MLA in 2015 and 2016) and Korea (~15% of total MLA in 2015 and 2016).

335. Mongolia has never sought extradition from other jurisdictions related to ML, which does not accurately reflect risks faced by country.

Case 4: MLA request sent to multiple jurisdictions – ML case

In 2015, the IAAC through the GPO sought MLA from Germany, Korea, Singapore, Hong Kong, USA and Switzerland in relation to Mr E who was under investigation for ML; giving of a bribe; abuse of power or of office by a state official; misappropriation or embezzlement of property; and violation of the legislation on intelligence activities. A response was only received from one jurisdiction and the case is ongoing.

Case 5: MLA request sent to Germany – ML case

In 2015, Mr. K laundered money in Mongolia and conspired with a Mongolian citizen Ms. MM. A request was sent to Germany to obtain witness statements and obtain materials from a criminal file as evidence of ML. Information was frequently exchanged between the parties regarding the progress of the case. The German side were requested to give guarantees to enforce the MLA request. The GPO of Mongolia fulfilled the requirement of the MLA request. In follow up an extradition request was submitted related to a criminal case initiated for murder and money laundering. The case is currently still in progress.

Case 6: MLA request sent to Poland

In 2015, the offenders in Nigeria created a bogus email account under name of company A and then from this email account, they sent a fictitious email to B.T that convinced him to transfer USD 35,000 to accounts in a Polish bank, between 28 August and 22 September, 2015, as payment for the products. Assistance was requested by Mongolia to obtain bank records and account holder information. Requests to freeze money or assets in these bank accounts were also made, equal to total defrauded amount of USD 35,000. Requested assistances provided by the competent authority.

336. During the ME-onsite visit, LEAs highlighted the need for MLA to support their investigations and difficulties in receipt of timely responses. The GPO highlighted a number of cases over the past 3 years where either follow-up letters for cooperation were sent or more frequent exchanges occurred to support investigations. These were with China, Germany, Russian Federation, Netherlands, Hong Kong, Korea, Australia, Kazakhstan, Canada and the United States. However, in general Mongolia is not proactively seeking MLA from other jurisdictions.

337. Mongolia has not sought MLA or extradition in relation to TF. This is not inconsistent with Mongolia's perceived TF risk.

Seeking and providing other forms of international cooperation for AML/CFT purposes

FIU

338. The FIU is actively involved in international cooperation, in particular at the stage of analysis. The FIU has 18 MOUs⁷⁴ with foreign jurisdictions including key regional partners, and as a member of the Egmont Group has exchanged financial intelligence with other FIUs, as shown in Table 29 and Table 30.

Table 29: Requests Received By FIU via Egmont

	2013	2014	2015	2016
Total requests received	11	6	13	11
Requests Sent only to Mongolian FIU	4	2	3	4
Requests Sent to multiple jurisdictions	7	4	10	7
Reasons for request sent exclusively to Mongolian FIU	Misappropriation of funds; TF/ML; Mongolian PEP; ML	ML; Gathering intelligence information	Gathering intelligence information; Embezzlement and ML; Cyber Fraud	Investment fraud; Cyber Fraud; ML criminal proceeds
<i>Response Time for Request Sent Exclusively To Mongolian FIU</i>				
Minimum response time	1 month	13 days	24 days	6 days
Maximum response time	6 months	28 days	1 month	40 days
Average response time	2.75 months	20.5 days	28 days	18.25 days

Table 30: Request Sent by FIU via Egmont

	2013	2014	2015	2016
Requests sent	20	8	18	34
Reasons for request⁷⁵	Embezzlement of public funds; ML; Fraud and ML;	Embezzlement of public funds and Money laundering (3); Fraud (2); Fraud and ML(1); Tax evasion and ML(2)	Cyber fraud (5); Embezzlement of public funds and ML (5); Fraud and ML(6); ML(2)	Cyber fraud (7); Embezzlement of public funds and ML (2); Fraud and ML(15); ML(10)
<i>Response Time</i>				
Minimum response time	1 day	7 days	2 days	3 days
Maximum response time	4 months	8 months	5 month	3 months
Average response time	59 days	50 days	39 days	40 days

339. Based on discussions during the ME on-site visit, it appears that the above requests sent to foreign FIUs were during the analysis stage, and the Mongolian FIU has not disseminated its financial analysis spontaneously to foreign FIUs.

GPO and GPA

340. The GPO has a number of MOUs/cooperation agreements with regional counterparts including Russian Federation, China and Korea. As a member of Interpol, Mongolia actively provides

⁷⁴ Afghanistan, Bangladesh, Belarus, China, Japan, Kazakhstan, Malaysia, Mexico, Moldova, Nepal, Philippines, Russian Federation, Slovenia, South Korea, Sri Lanka, Chinese Taipei, Turkey and Ukraine.

⁷⁵ number of requests in brackets

and seeks LEA information and assistance via this network, as shown in Table 31. In addition, in 2013 the Provincial Mongolian Police Department of Dornogobi signed a MOU with the Chinese City of Ereen Customs and Police Agency on terrorism, ML and illegal drugs trafficking. Under this agreement a total of 17 requests have been received by Mongolia and 10 requests were made by Mongolia.

Table 31: Exchange of information via Interpol

	2013	2014	2015
Number of requests received related to ML	38	3	28
Number of requests sent related to ML	0	0	0

Customs

341. Customs did not provide statistics or anecdotal evidence of international cooperation. However, customs is not an investigative agency. Customs has 16 cooperation and MLA agreements with foreign counterparts including key regional partners of the Russian Federation and China.

GIA

342. While the GIA commented during the ME on-site visit that a significant proportion of their ML inquiries and predicate crime investigations involved international cooperation, statistics or details were not provided to the assessment team as this information was classified.

IAAC

343. The IAAC has MOUs with China, Korea and Thailand. However, it is unclear if these instruments have been used to exchange LEA and other information related to ML or predicate crimes.

344. Overall, the assessment team has concluded that LEAs are involved in international cooperation to some extent through Interpol and their individual agency MOUs; however, they do not seem to be proactively seeking information exchange with counterparts.

Supervisors

345. The BoM has mechanisms (MOUs) to exchange information with foreign counterparts although information exchange has not been demonstrated in practice. The foreign presence in the financial sector is limited to local banks with significant foreign equity.

346. Over the last two years the FRC has received two foreign requests to provide information (from Hong Kong and Malta) and answered both. FRC has not requested information from foreign counterparts even though there are an unknown number of foreign entities operating subsidiaries within the non-bank sector.

International exchange of basic and beneficial ownership information of legal persons and arrangements

347. Mongolia has never exchanged basic or beneficial information; however, there is no legal limitation to exchange such information including through diplomatic channels from the MFA and Embassies. The GAIPSR recently signed a bilateral agreement with its Russian Federation counterpart; however, this mechanism has not been used.

Overall Conclusion on Immediate Outcome 2

348. **Mongolia has a moderate level of effectiveness for Immediate Outcome 2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2007. This report is available from the APG's website.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

1. These requirements were added to the FATF Recommendations in 2012, and were not therefore assessed in APG's 2nd round mutual evaluation report of Mongolia in 2007.
2. *Criterion 1.1* - Mongolia completed its first ML/TF NRA in 2016 with final sign-off and publication of the sanitized version on the BoM's website occurring during the on-site visit (24 October to 4 November 2016). Besides BoM's risk assessment of banks as part of their supervision of banks, details of any other ML/TF sectoral risk assessments were not provided to the assessment team.
3. The FIU led the development of the NRA with the support of an NRA WG comprising of key agencies from the NCC.
4. The NRA is focused on the identification of threats. There is limited focus on analysis and understanding - threats, consequences and vulnerabilities are not incorporated into a comprehensive assessment of Mongolia's ML/TF risk.
5. The NRA identifies the following high risk predicate offences to ML (in order of priority): (i) fraud, (ii) environmental crime, (iii) tax evasion, and (iv) corruption.
6. The NRA also identifies the following high risk sectors: (i) banking, (ii) real estate, (iii) accountants, and (iv) dealers in precious stones & metals followed by notaries as medium risk and the securities market and insurance sectors as low risk. Amongst the financial sector services and products, remittance was classified as the most-risky service. However, with the exception of the banks to some extent, identification of the ML risks associated with these sectors is not adequate. Further, the NRA does not assess the ML or TF risks associated legal entities, public and foreign companies registered in Mongolia and the non-for-profit sector.
7. For TF, the NRA includes very limited identification and analysis of Mongolia's TF threats and vulnerabilities.
8. *Criterion 1.2* - The NCC, established under article 22 of the AML/CFT Law, is the designated authority responsible for national AML/CFT policies in Mongolia including assessing and mitigating ML and TF risks. Under Article 3.1 of the Cooperation Council Regulation 2014 (NCC Regulation), the NCC has the power to organize activities to analyse and assess the ML and TF risk of Mongolia and to cooperate with other government organizations, the private sector and international organizations to carry out this function. Within the NCC, the BoM and the FIU are the lead agencies.

9. *Criterion 1.3* - Article 3.2 of the NCC Regulation requires the NCC to organize activities to analyse and assess ML and TF risk of Mongolia every year.
10. *Criterion 1.4* - Two versions of the NRA were produced by the NRA WG: (i) a detailed version to which access was restricted to key competent authorities, and (ii) a public version. The detailed version was disseminated to competent authorities via the NRA WG, NCC and NCTCC. The public version is available on the BoM's website and Mongolia briefed key private sector entities on the findings of the NRA, just prior to the ME on-site visit, and provided those entities with a copy of the NRA.
11. *Criterion 1.5* - As the NRA has only recently been adopted (Oct 2016), Mongolian authorities have not yet implemented a strategically focussed approach to allocating resources across all government sectors to address the identified risks in the NRA. Mongolia is, however, in the process of developing a Strategic Plan based on the understanding of the AML/CFT risks identified in the NRA.
12. *Criterion 1.6* - Sectors currently exempted from AML/CFT requirements were not excluded based on assessments of risk.
13. *Criterion 1.7* - Under Chapter 3 and 4 of the PMR, REs are required to take enhanced measures to manage and mitigate risks based AML/CFT risk assessments. However, there is scope deficiencies in the coverage of DNFBPs (see R.22 and R.23).
14. *Criterion 1.8* - Mongolia has no enforceable means that allow FI and DNFBPs to take simplified actions where lower risks have been identified.
15. *Criterion 1.9* - As reported in the analysis of R.26 and R.28, FIs and DNFBP supervision has moderate and major shortcomings, respectively. While some guidance on AML/CFT obligations has been provided to FIs and some DNFBPs, this has only included very limited outreach to FI's and DNFBP's obligations under R.1. There are scope deficiencies in the coverage of DNFBPs (see R.22 and R.23).
16. *Criterion 1.10* - Article 14.1 of the AML/CFT Law requires REs to develop and implement internal monitoring programmes to combat ML and TF, which includes an assessment of their ML and TF risks in relation to their customers, services and products. These obligations are further clarified in Chapter 2 of the PMR to include; (i) assessment of geographical product, service, transaction and delivery channel risk, and (ii) under Article 2.4 REs are required to document and keep risk assessments up-to-date and readily available to supervisors. However, neither the AML/CFT Law nor PMR explicitly require REs to understand their risks, and there are scope deficiencies in the coverage of DNFBPs (see R.22 and R.23).
17. *Criterion 1.11* - Under Article 3.2 and 3.3 of the PMR, REs are required to have internal policies, procedures and internal controls, approved by the Board, consistent with the RE's size, nature, risk, structure to sufficiently and effectively deal with AML/CFT risk. Under Article 3.5, the Board or Internal Audit Committee of REs shall review implementation of the internal policies and procedures regularly. Under Article 4.1 of the PMR, REs are required to apply enhanced CDD to customers and transactions identified as high risk customers. However, there is no requirement for enhanced measures to manage and mitigate risks.
18. *Criterion 1.12* - Mongolia does not allow FIs or DNFBPs to undertake simplified measures.

Weighting and Conclusion

19. Mongolia completed its first ML/TF NRA in 2016; however, it is focused on the identification of threats with limited analysis and understanding. For TF, the NRA includes very limited identification and analysis of Mongolia's TF threats and vulnerabilities. Mongolia has not implemented a RBA to allocating resources or the FATF Recommendations. REs are required to identify and assess their MT/TF risks and implement controls and enhanced measures to mitigate their risks. Notwithstanding, there are scope deficiencies in the coverage of DNFPBs with only real estate agents and notaries included as REs. **Recommendation 1 is rated partially compliant.**

Recommendation 2 - National Cooperation and Coordination

20. In the 2007 MER, Mongolia was rated partially compliant with former R.31. The report highlights that while Mongolia had established statutory provisions, under Article 20 of the AML/CFT Law, for the creation of the NCC, implementation had not occurred. With regard to combating terrorism, Mongolia had established The Coordinative Council, under article 20 of the AML/CFT Law, which was operating effectively but did not yet include all relevant CFT stakeholders in its work and had not taken any steps to coordinate in relation to implementing UNSCR 1267.

21. *Criterion 2.1* - While Mongolia has developed a draft National Strategy and Action Plan, at the time of the ME on-site visit this document was not approved.

22. *Criterion 2.2* - The NCC, established under article 22 of the AML/CFT Law is the designated authority responsible for national AML/CFT policies. In addition, NCTCC is established under Article 6.3 of the ATL and is the designated authority responsible for national security including TF.

23. *Criterion 2.3* - The NCC is the supernumerary body which functions to ensure the implementation of the AML/CFT Law and other relevant legislations, to exchange information, to make a proposal to the Governor of the BoM to approve strategy, organizational structure, budget of the FIU, to assess and mitigate ML/TF risks of Mongolia, and to draft policy as well as recommendations to prevent and combat ML and TF.

24. The Secretary of the NCC is the head of the FIU with members from:

- Ministry of Justice and Internal Affairs (represented by the Head of Department for Facilitation of Policy Implementation).
- Ministry of Foreign Affairs (Head of Agreement and Legal Department).
- Ministry of Finance (Head of Financial Policy Department).
- Bank of Mongolia (First Deputy Governor, Director of Legal Department, Director of Supervision Department).
- Financial Regulatory Commission (Director of Administration Department).
- General Prosecutor's Office (Deputy General Prosecutor).
- General Police Agency (Head of Economic Crime Division of State Investigation Department).
- General Intelligence Agency (Head of Second Department).
- Independent Authority Against Corruption (Head of the Procedural/Covert Action Department).

- General Customs Authority (Director of the Department for Combating Customs Violations).
- General Taxation Authority (Head of Risk Management Department).

25. The NCC Regulation allows for the FIU, law enforcement authorities, supervisor and other relevant competent authorities to cooperate and coordinate on the development and implementation of AML/CFT policies and activities. However, the degree to which the NCC is used for AML/CFT operational level cooperation or coordination is limited.

26. With regard to TF, the NCTCC with the GIA as the lead agency is mandated to coordinate the implementation and monitoring of the ATL, which incorporates Mongolia's TFS provisions. However, the degree to which it coordinates policy/operational activities related to TF is limited. The NCTCC's primary objective is to coordinate terrorism related activities.

27. *Criterion 2.4* - Mongolia advised that the NCTCC is the coordination and cooperation mechanism for PF; however, no evidence of PF coordination or cooperation was provided to the team.

Weighting and Conclusion

28. Mongolia is yet to implement national AML/CFT policies informed by identified risks. Mongolia has established the NCC as the designated authority responsible for national AML/CFT policies, and the NCTCC as the designated authority responsible for the implementation and monitoring of the ATL; however, the degree to which these councils cooperate or coordinate on operational ML or TF issues is limited. Coordination on PF is absent. **Recommendation 2 is rated partially compliant.**

Recommendation 3 - Money laundering offence

29. In the 2007 MER, Mongolia was rated partially compliant with former R.1 and R.2. The report highlighted that while Mongolia criminalized ML under Article 163 of the CCM 2002, the scope of the offence did not meet the requirements of the Palermo Convention. The offence did not allow intention to be inferred from objective factual circumstances, criminal liability did not extend to legal persons and they were not subject to proportionate sanctions. Mongolia's 2014 follow-up report highlighted that amendments to the CCM in 2014 brought compliance with R.1 to a level essentially equivalent to largely compliant

30. *Criterion 3.1* - All the physical and material elements of the ML offence are contained in the provision of article 166¹ of the CCM in line with the requirements of the Vienna and Palermo Conventions.

31. *Criterion 3.2* - The ML offence is applicable to all proceeds generating predicate offences contained in the CCM. All the FATF's designated categories of predicate offences are covered with the exception of piracy (any form).

32. *Criterion 3.3* - Mongolia does not use a threshold approach or a combined approach but rather an all crimes approach.

33. *Criterion 3.4* - The ML offence under Article 166¹ of the CCM extends to any type of property as defined in articles 83 to 88 of the CvC, which contains a number of concepts and definitions that

match the concept of property contained in the glossary that makes part of the international standards.

34. *Criterion 3.5* - In the CCM, there are no requirements that a person must be convicted of a predicate offence when proving that property is the proceeds of crime. Article 166¹ of the CCM defines that any type of property obtained by committing crimes specified in the Special Part of the CCM shall be property subject to be laundered. The courts require evidence of the existence of the predicate offense and that the property is obtained by way of commission of such predicate offense, but it does not require conviction for the predicate offense. However, this has not been tested as the only two ML convictions that were passed by Mongolian Courts have been overturned on appeal.

35. *Criterion 3.6* - Under article 14 of the CCM, a natural person who committed a crime under the Criminal Code in another country will be subject to criminal liability in Mongolia.

36. *Criterion 3.7* - The definition of ML in article 166¹ covers both self-laundering and third party money laundering.

37. *Criterion 3.8* - Article 79 and 284 of the CPC directly addresses this criterion.

38. *Criterion 3.9* - Article 166¹ paragraph 1 to paragraph 3 of the CCM, have staggered levels of penalties for the ML offence that range from the application of a fine between 50 and 100 times the minimum salary, or incarceration (solitary confinement) of up to six months or imprisonment up to five years. Paragraph 2 of article 166¹ establishes a penalty of a fine of 300 to 500 times the amount of the minimum salary or imprisonment for a term of more than five to 12 years when the ML crime is committed by an organized criminal group, or individuals using their official position, or if it has caused damage in a large amount.

39. The sanctions for ML imposed under Article 166¹ paragraph 2 seem adequate, proportionate and dissuasive, although the possibility of the application of an alternative fine instead of the prison sentence raises concern. Indeed, the possibility to leave at the discretion of the judge to impose a pecuniary penalty (fine) in alternative to an effective prison sentence would render the proportionality and dissuasiveness of the penalties totally non-existent as the commission of the ML offence punished with a fine would be only a “cost of business” easily supported by the perpetrators.

40. The basic sanction under Article 166¹ paragraph 1, raises concern because a penalty of fine, or incarceration for up to six months or up to 5 years imprisonment are not proportionate or dissuasive enough. The highest end of the imprisonment sentence may be considered proportionate and dissuasive although the lighter sentence raise concerns in terms of proportionality and dissuasiveness. All considered, the penalties for individuals committing the ML offense are not considered proportionate and dissuasive enough.

41. *Criterion 3.10* - General criminal liability for legal persons is provided for under Articles 8.3 and 20.2 of the CCM. ML criminal liability for legal persons is under 166¹ paragraph 3 and includes: (i) restriction of certain types of its business activity, and (ii) fine of MNT equal to 300 to 500 times of amount of minimum salary. These sanctions are neither proportionate nor dissuasive.

42. The principle of criminal liability being personal in nature with the criminal liability of legal persons being exceptional towards the personal criminal liability suggests that although article 166¹ of the CCM contains provisions determining the criminal liability of legal persons it does not exempt the individuals committing the ML offense through a legal person from individual criminal liability in cases where the legal person is convicted of the ML offense itself.

43. *Criterion 3.11* - There is a wide range of ancillary offences contained in the General Part of the CCM (namely in articles 30 to 39) applicable to the ML offence.

Weighting and Conclusion

44. Mongolia ML offence has some minor shortcomings particularly in the proportionality and dissuasiveness of sanctions for legal persons, and for natural persons, who are not part of an organized criminal group or misuse their official position. **Recommendation 3 is rated largely compliant.**

Recommendation 4 - Confiscation and provisional measures

45. In the 2007 MER, Mongolia was rated partially compliant with the former R.3. The report highlighted that the existing provisions in the CCM and CPC were general in nature and Mongolia's powers of confiscation, seizure, freezing, identification and tracing were not set out clearly in any statutory provisions. Mongolia's 2014 follow-up report highlighted that amendments to the CPC in 2014 brought compliance to a level essentially equivalent to largely compliant.

46. *Criterion 4.1* - Article 49 of the CCM addresses this criterion. Paragraph 1 contemplates the laundered proceeds as property to be confiscated. The combined interpretation of article 49 with article 14 determines that confiscation of property can be applicable to both domestic and foreign committed offences.

47. Paragraph 2 contemplates that assets derived by way of crime or its value, weapons, means of transport or other instrumentalities used for committing it, or income gained by way of crime incidental thereto shall be subject to mandatory confiscation.

48. Because this is included in the general part of the CCM these rules are applicable to all offenses included in the special part in which ML is included in article 166¹ of the CCM.

49. *Criterion 4.2* - Chapter 18 of the CPC, namely through articles 132 to 141 deal with the procedural measures relating to the conducting of identification, tracing and seizure of assets. Specifically, Mongolia CPC, allows for the identification, tracing and seizure of assets when those assets are proceeds of crime (amendment made in January 2014 in relation to article 134/1 of the CPC) while article 134/11, allows for the provisional measures to be applied *ex parte*.

50. *Sub-criterion 4.2(c)* - is covered by a general rule contained in Article 59 of the CvC. Article 59 allows a party, that has seen his/her interests affected by contracts made with the specific intention of deceiving him/her, to file suit against the deceiver in order to declare the contract void. This civil remedy is available to natural and legal persons including state authorities when a fraudulent transaction is made with the specific aim of avoiding the seizure and confiscation of assets.

51. *Criterion 4.3* - The protection of rights of *bona fide* third parties is covered by articles 20 and 43 of the CPC as well as by a provision contained in a Resolution of the Supreme Court of Mongolia dated from 20 February 2006 that, amongst other things determines that, "If it is established that a culprit obtained a property that was owned, used or possessed by another person while committing the crime and possessed of illegal weapons and means of transport they shall be confiscated and returned back to the original owners, users or possessors".

52. *Criterion 4.4* - Article 134 of the CPC provides for a basic system of managing of seized property that falls short of the requirements of the international standards.

Weighting and Conclusion

53. Mongolia has confiscation and provisional measures for ML/TF and predicate crimes. Minor shortcomings include Mongolia not having a mechanism for managing and, when necessary, disposing of property frozen, seized or confiscated. **Recommendation 4 is rated largely compliant.**

Recommendation 5 - Terrorist financing offence

54. In 2007, Mongolia was rated non-compliant with former SR. II. The MER concluded that the TF offence had not been criminalized as set out in the UN Convention on the Suppression of Terrorist Financing. Mongolia's 2014 follow-up report highlighted that amendments to the CCM in 2014 brought compliance with SR.II to a level essentially equivalent to largely compliant.

55. *Criterion 5.1* - Under Article 178² of the CCM, the TF offences covers collection, provision, use of funds directly or indirectly, wilfully or illegally, wholly or partially knowing that these funds will be used for the financing of terrorists, terrorist organizations, or terrorist acts.

56. *Criterion 5.2* - TF offence as stipulated in the Article 178² of the CCM is wide in scope and covers all elements of terrorism financing.

57. *Criterion 5.2^{bis}* - TF offence as stipulated in the Article 178² of the CCM is wide in scope and covers many elements of terrorism financing; however there is no specific reference to financing the travel of individuals for the purposes stated in the current criterion.

58. *Criterion 5.3* - There is no restriction to TF offences in Article 178² of the CCM that would indicate that funds from both legitimate and illegitimate sources are not covered.

59. *Criterion 5.4* - Under Article 178² of the CCM, the TF offence does not require that the funds were actually used to carry out or attempt a terrorist act or are linked to a specific terrorist act.

60. *Criterion 5.5* - The intent and knowledge required to prove the offence can be inferred from objective factual circumstances as provided in Chapter 11 of the CPC.

61. *Criterion 5.6* - Natural persons convicted of TF are subject to confiscation of assets and imprisonment of five to 12 years, which is proportionate and dissuasive. Persons convicted of ancillary offences are liable to the same penalty as TF offence.

62. *Criterion 5.7* - Article 178² of CCM provides for criminal liability of legal persons, who shall be subject to restriction of certain types of its business activity and to a fine of 300 to 500 times of amount of minimum salary (approx. USD21,000 to 35,000). The available sanctions are proportionate; however, sanctions such as liquidation or revocation of a licence are not available and therefore are not sufficiently dissuasive.

63. *Criterion 5.8* - A full range of ancillary offences, applicable to all offences in the CMM including TF, are available under Articles 30 to 39 of the CCM including attempt, complicity, accomplices and forms of complicity.

64. *Criterion 5.9* - Mongolia has adopted an all crimes approach to the criminalization of ML and therefore TF offences are predicate offences for ML.

65. *Criterion 5.10* - TF offences apply regardless of geographical location pursuant to Articles 13 and 14 of CCM.

Weighting and Conclusion

66. Mongolia has criminalized TF in keeping with the FATF standards with the exception of minor technical deficiencies: (i) criminalization of travel by foreign terrorist fighters or an individual for a purpose unrelated to a planned terrorist act through Mongolia, and (ii) the dissuasiveness of sanctions for legal persons. In the context of Mongolia, Criterion 5.2^{bis} deficiencies were given less weight. **Recommendation 5 is rated largely compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

67. In 2007, Mongolia was rated to be non-compliant for SR III. Mongolia was lacking effective laws and procedures to freeze without delay terrorist funds or other assets of entities designated under UNSCR 1267, nor were there effective laws or procedures to implement UNSCR 1373. Mongolia's 2014 follow-up report highlights that amendments to the ATL in 2013 and enactment of the Regulation on Designation of Terrorist, Freezing of Assets and Review of Assets 2013 (TFS Regulation) brought compliance with SR.III to a level essentially equivalent to largely compliant.

68. *Sub-criterion 6.1(a)* – The GIA is a competent authority with responsibility for proposing persons or entities to the 1267/1989 Committee for designation according to the Articles 2.2 and 3.1 of the TFS Regulation pursuant to Article 6 of the ATL.

69. *Sub-criterion 6.1(b)* – the GIA via MFA proposes to the relevant Committee of the UN, persons or entities that meet the specific criteria for designation. The proposals are performed in accordance with the set rules described in Article. 3.1 to 3.5 of the TFS Regulations.

70. *Sub-criterion 6.1(c)* – Pursuant to Article 3.5 of the TFS Regulations an evidentiary standard of proof of reasonable grounds in deciding whether to make a proposal for designation is applied, and the process is not conditional on the existence of a criminal proceeding.

71. *Sub-criterion 6.1(d)* – There is nothing that would prevent Mongolia from following the procedures and standard forms for listing, as adopted by the relevant Committees (Article 3.2 of the TFS Regulations).

72. *Sub-criterion 6.1(d)* – Article 3.2.2 and 3.2.3 of the TFS Regulations sets the standard to provide as much relevant information as possible to be included in the forms.

73. *Sub-criterion 6.2(a)* – according to Article 2.2 of the TFS Regulation, the GIA is identified as a competent authority for designations pursuant to UNSCR 1373.

74. *Sub-criterion 6.2(b)* – Articles 2.2 to 2.5 sets the authority and legal basis for designations pursuant to UNSCR 1373.

75. *Sub-criterion 6.2(c) - (d)* – under Article. 2.2 and 2.4 of the TFS Regulation designation of persons and entities in Mongolia under UNSCR 1373 includes listings done at the request of a foreign state. The request is examined and considered whether it is supported by reasonable grounds, or a reasonable basis to suspect or believe that the proposed designee meets the criteria for designation under UNSCR 1373.

76. *Sub-criterion 6.2(e)* – the GIA should follow similar procedures set forth in Article 3.2.2 of the TFS Regulation (which is for UNSCR 1267), i.e. provide as much relevant information as possible on the proposed name.

77. *Criterion 6.3* - Under Article 3.5 of the TFS Regulation, the GIA shall solicit information to identify persons or entities that might meet the criteria for designation.

78. *Sub-criterion 6.3(b)* – while the TFS Regulations do not contain an explicit provision for GIA to operate *ex parte*, Article 2.5 only requires the GIA to inform designated individuals and entities of their designation (and provide other information), within 15 working days after the designation has taken effect.

79. *Criterion 6.4* - TFS are implemented without delay, this is performed by the country, as well as by the request of a foreign competent authority. It is prohibited to make any funds, economic resources, or financial or other related services available, directly or indirectly, for the designated persons or related persons under their control or for the persons not permitted by United Nations Security Council (Article 7.1.7 and 8.2. of the ATL).

80. *Criterion 6.5*. Pursuant to the ATL, the TFS Regulation designates the GIA as the competent authority responsible for implementing and enforcing TFS, as follows:

81. *Sub-criterion 6.5(a)* - The obligation for legal persons to freeze without delay is set out in Article 7.1.7 of the ATL. Pursuant to this article, Article 5.1 of the TFS Regulation extends this obligation to all natural and legal persons within Mongolia. However, in the assessment team's view the obligation to freeze is not enforceable, for the following reasons; (i) the ATL does not contain sanctions for non-compliance with Article 7.1.7 (the ATL contains sanctions for non-compliance with other articles in the law), (ii) there are no sanctions for non-compliance with Article 5.1 of the TFS Regulation, (iii) the ATL and TFS Regulation contain no cross-reference to indirect/broader sanctions for non-compliance, and (iv) Mongolia provided no evidence that indirect/broader sanctions could be applied to legal or natural persons.

82. *Sub-criterion 6.5(b)* - Article 5 of the TFS Regulation and Article 7.1.7 of the ATL use the exact language of sub-criterion 6.5(b). However as discussed above, Article 7.1.7 of the ATL is not enforceable.

83. *Sub-criterion 6.5(c)* - Article 8.2 of the ATL sets out Mongolia's prohibition on citizens to make any funds, economic resources, financial or other related services available, directly or indirectly to persons designated or related persons under the control of designated persons. This prohibition does not apply to; (i) other assets, (ii) any person or entities apart from citizens (including owned or controlled directly or indirectly by designated persons or acting on behalf of, or at the direction of, a designated person or entity), within Mongolia. However, in the assessment team's view the prohibition on making funds available is not enforceable, for the following reasons; (i) the ATL does not contain sanctions for non-compliance with Article 8.2 (the ATL contains sanctions for non-compliance with other articles in the law), (ii) the ATL contains no cross-reference to indirect/broader sanctions for non-compliance, and (iii) Mongolia provided no evidence that indirect/broader sanctions could be applied to legal or natural persons.

84. *Sub-criterion 6.5(d)* - Pursuant to Article 2.3 of the TFS Regulation the GIA publishes a link to the Consolidated List on its website. Besides the ATL and TFS Regulation guidance on the obligation to freeze has not been provided to the FIs or DNFBPs.

85. *Sub-criterion 6.5(e)* - Under Article 5.2 of the TFS Regulation, banks, FIs and DNFBPs are required to report, any assets frozen or actions taken, to the BoM and FRC, respectively. However, in line with the discussion under Sub-criterion 6.5(a), in the assessment team's view this article is not enforceable.

86. *Sub-criterion 6.5(f)* - While the ATL and TFS Regulation, particularly Article 4 of the TFS Regulation, provide the legal basis for the GIA to issue regulation on protection of *bona fide* third parties such regulation has not been issued.

87. *Criterion 6.6* - While Article 4 of the TFS Regulations provides for the role and responsibilities of the GIA with respect to de-listing and unfreezing of funds, the GIA has not developed publicly known procedures for de-listing and unfreezing of designations pursuant to UNSCR 1267, 1373 or persons with similar names, and for communicating such de-listings or unfreezing to the private sector.

88. *Criterion 6.7* - Under Article 4.8 and 4.9 of the TFS Regulations, the GIA is able to authorize access to frozen funds or other assets in accordance with UNSCR 1452.

Weighting and Conclusion

89. While Mongolia has established a framework to implement targeted financial sanctions pursuant to UNSCR 1267 and UNSCR 1373, Mongolia's primary shortcomings include obligation to freeze, prohibit the making of funds available, and requirement for FI and DNFBPS to report assets frozen or actions taken are not enforceable. **Recommendation 6 is rated partially compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

90. Targeted financial sanctions relating to proliferation is a new FATF Recommendation added in 2012.

91. *Criterion 7.1* - Mongolia has not implemented TFS without delay to comply with UNSCR relating to the prevention, suppression and disruption of proliferation of WMD and its financing. The ATL and TFS Regulation do not cover the requirements of R.7.

92. *Criterion 7.2* - A number of governmental bodies, through their respective functions and duties, are responsible for the enforcement of UNSCRs, however their functions do not include the relevant UNSCRs related to PF. GIA investigates the act of manufacturing, possessing and distributing WMD, as well as undertaking freezing of assets in coordination with the FIU. Whereas, the GCA enforces restrictions of export, import or transit of goods that are subject to UNSCRs 2270 (2016), 1718 (2006), 1737 (2006) and other relevant resolutions. Also the Maritime Administration is responsible for enforcing the UNSCRs upon ships registered under Mongolian flag. Sub-criteria (a-f) TFS Regulation does not extend to PF related issues.

93. *Criterion 7.3* - Mongolia's measures for monitoring and ensuring compliance by FIs and DNFBPs with the obligations under R.7 are not developed, nor implemented.

94. *Criterion 7.4* - The provisions of the TFS Regulation do not extend to the requirements of the relevant UNSCRs related to PF.

95. *Criterion 7.5* - Contracts, agreements or obligations on which accounts are subject to TFS in Mongolian Law does not extend to the requirements of the relevant UNSCRs relating to PF.

Weighting and Conclusion

96. There are no statutory provisions in place in Mongolia to give effect to TFS under R.7. **Recommendation 7 is rated non-compliant.**

Recommendation 8 – Non-profit organisations

Preamble

97. As discussed in Chapter 1, under Article 33.2 CvC, non-profit legal persons in Mongolia can take the form of associations, foundations or cooperatives and are required to be registered with GAIPSR and are regulated under specific legislation as outlined in Table 32.

Table 32: Regulating laws of Non-profit Legal Persons

Type of Non-profit Legal Persons	Number of entities at Oct 2016	Regulating law
Cooperatives	4,093	Law on Cooperative
SCCs	475 ⁷⁶	Law on Saving and Credit Cooperative
Non-government organizations	23,027	Law on Non-government Organisations
Religious organizations	746	Law on Relation of State and Church and Monasteries
Foundations	1,119	Law on Non-government Organisations
Labour union organisations	2,676	Law on Labour Union Rights
Media Association	3,561	- ⁷⁷
Public legal persons ⁷⁸	1	Law on Legal Status of Lawyers
Culture, education training, research and health organisations	331	Law on Education
Total	36,029	

98. In the 2007 MER, Mongolia was rated partially compliant with former SR.VIII. The identified deficiencies were; (i) no domestic NPO sector review, (ii) no outreach to the NPO sector on AML/CFT, and (iii) registration requirements do not include obligations to record the details of persons who own, control or direct NPOs.

99. *Criterion 8.1* - Mongolia has not; (i) identified which organisations fall within the FATF definition of NPO, and used all relevant sources of information, in order to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse, (ii) identified the nature of threats, including in the NRA, posed by terrorist entities to the NGO and religious organisations which are at risk as well as how terrorist actors abuse those NPOs, (iii) review the adequacy of measures, that relate to the at risk subset of NPOs, to address identified risks, and (iv) periodically reassess the sector.

100. Notwithstanding, ML/TF risks associated with sSCCs were examined in the NRA and they are included in Mongolia's AML/CFT regime as a RE and required to implement preventives measures as discussed in R.9 to 21.

⁷⁶ A number of savings and credit cooperatives registered with the GAIPSR may not be conducting activities and licensed by FRC

⁷⁷ It is unclear if there is specific legislation regulating media NPOs

⁷⁸ Bar association

101. *Criterion 8.2* - Chapter 5 of NGO Law provides for Mongolia's policies for promoting transparency, integrity, and public confidence in the NGOs. NGOs are required to be registered and submit an annual activity report to the GAIPSR. The GAIPSR also maintains records on NGOs including changes of NGO's structures and administration. NGOs are also required to submit annual financial reports for tax purposes. NGOs also undergo an external audit according to the Law on Accounting and Auditing. However, Mongolia has not; (i) encouraged or undertaken outreach to raise awareness among NGO and religious organisations potential vulnerabilities of NPOs and TF abuse and TF risks, (ii) worked with NGOs and religious organisations to develop best practice to address TF risks and vulnerabilities, and (iii) encouraged NPOs to conduct transactions via regulated financial channels.

102. The SCC Law provides for Mongolia's policies for promoting transparency, integrity, and public confidence in SCCs. SCCs must be licensed by the FRC; submit quarterly and annual audited financial statements; and are subject to AML/CFT obligations including CDD in the AML/CFT Law and PMR and prudential and AML/CFT supervision. Mongolia has conducted outreach to SCCs as part of outreach to the financial sector; however, the level of coverage of TF issues in relation to NPOs abuse was limited. Mongolia has not worked with SCCs to develop best practice to address TF risks and vulnerabilities.

103. *Criterion 8.3* - Mongolia has taken some steps to promote effective supervision and monitoring. GAIPSR receives annual activity reports but the level of monitoring on NGOs is unclear. The GPA monitors the provision, extension and revoking of special permissions, and monitoring the activities of the branches and resident representative offices of the international and foreign NPOs in Mongolia.

104. SCCs are supervised for prudential and AML/CFT by the FRC.

105. *Criterion 8.4* - Under Article 8 and 24 of the NGO Law there is a range of sanctions that can be applied by a court; however, these sanctions are not proportionate or dissuasive. Sanctions include: (i) dissolution for illegal activity or activities that is inconsistent with the NGOs mission, (ii) fine (~20 to ~30 USD on the individual and ~50 to ~75 USD on the organisation) for illegal distribution of income in the form of dividends or payment, (iii) fine (~20 to ~30 USD) and confiscation of earned income for using the organisation's assets and finances for personal gain, (iv) fine (~50 to ~75 USD on the individual and ~100 to ~125 USD on the organisation) for contributions to political parties, party coalitions or candidates, and (v) fine (~5 to ~10 USD on the individual) failure to file its annual report.

106. For SCCs, as discussed in R.35, under Article 56 of the SCC Law, if a credit cooperative breaches laws and legal acts, which could include the AML/CFT Law, and PMR, the FRC can impose remedial actions; and suspend and terminate licenses. Under Article 57.1.4 the FRC can also impose a fine if the SCC disobeys obligations prescribed by the FRC. Fine for the legal entity is 3 to 5 times the minimum wage (~USD375 to ~USD625), and the fine for the natural person in charge is 3 times the minimum wage (~USD375).

107. *Criterion 8.5* - Information maintained by the GAIPSR, can be shared with the GPA, GIA, IAAC, General Authority of Customs and Taxation, General Authority for Implementation of the Court Decisions, and General Authority for Border Protection. This information includes information on the administration and management of particular NGOs. Information on SCCs, maintained by the FRC, can be shared with LEAs and other competent authorities, as required.

108. The GIA is the authority to investigate terrorism and TF. However, their investigative expertise and capability to examine NPOs suspected or either being exploited by, or actively supporting, terrorist activity or terrorist organizations is limited – no details of previous TF investigations relating to NPOs was provided to the assessment team.

109. The GIA can access information on the administration and management of particular NGOs and SCCs during the course of an investigation. Should an investigation be initiated, the NTCC would be the primary mechanism to promptly share information in order to take preventive or investigative actions.

110. *Criterion 8.6* - The GIA is the point of contact to respond to international requests for information regarding particular NPOs and SCCs for TF or other forms of terrorist support. The GPA responds to requests from Interpol regarding a specific NPO or NGO suspected of TF and other offences based on the 'Regulation on Receiving and Transmitting of Interpol Information and Documents'.

Weighting and Conclusion

111. Mongolia has not identified at-risk NPOs. NGO Law provides policies for promoting transparency, integrity, and public confidence in the NGOs through registration and some monitoring by the GAIPSR. Information maintained by the GAIPSR, can be shared with the competent authorities. The GIA is the point of contact to respond to international requests for information regarding particular NPOs and SCCs suspected of TF or other forms of terrorist support. There are major shortcomings. The NRA did not adequately assess the threats and risks associated with NPOs. Mongolia has not; (i) encouraged or undertaken outreach to raise awareness among at-risk NGO, (ii) worked with at-risk NGOs to develop best practice to address TF risks and vulnerabilities, and (iii) encouraged NPOs to conduct transactions via regulated financial channels. The sanctions under the NGO Law are not proportionate and dissuasive. **Recommendation 8 is rated partially compliant.**

Recommendation 9 – Financial institution secrecy laws

112. Mongolia was rated largely compliant with former R.4 in 2007 MER, which concluded that effectiveness could not be fully established.

113. *Criterion 9.1* - Mongolia does not have banking or FI secrecy legislation that would inhibit competent authorities gaining access to information. The Law of Mongolia on Privacy 1995 (Privacy Law), The Law on the Confidentiality of Legal Person and Banking Law do not inhibit implementation of the FATF Recommendations, as follows:

- Article 12.1 of the AML/CFT Law provides that the provision of reports by REs to the FIU and competent authorities shall not be considered as a breach of banking and professional confidentiality. There are provisions to ensure that information can be shared.
- Access to information by competent authorities to properly conduct their AML/CFT functions is ensured through Article 7 of the Banking Law; (i) paragraph 2.2-2.5 enables the BoM and its supervisors, the court and prosecutor's office, the FRC to access information when performing their legitimate duties, and (ii) paragraph 2.4 & 2.5 enables the provision of information to foreign competent authorities under the laws of Mongolia.

- Article 7.4 of the AML/CFT Law requires entities to provide information to the FIU, LEAs and authorities responsible for anti-terrorism on specific transactions and their participants.
- Sharing of information between competent authorities is ensured through article 22.1 of the AML/CFT Law, which provides an explicit derogation to the professional secrecy obligation that they are subject to, by allowing the FIU, the financial sector supervisory authorities, the LEAs, taxation and custom authorities, authorities responsible for CFT, to cooperate including by exchanging information amongst themselves. Furthermore, article 21 allows the FIU to cooperate and provide information to foreign counterparts.
- However, there is a lack of clarity concerning the ability of sharing information within FIs on correspondent banking, wire transfers and reliance on third parties.

Weighting and Conclusion

114. FI secrecy laws do not inhibit the implementation of AML/CFT measures; however, minor shortcoming include it is unclear whether FIs can share information for the purpose of implementing the requirements on correspondent banking, wire transfers and reliance on third parties.

Recommendation 9 is rated largely compliant.

Recommendation 10 – Customer due diligence

115. In the 2007 MER, Mongolia was rated as non-compliant with former R.5. Notwithstanding that the CDD requirements under the AML/CFT Law captured all FIs in Mongolia, the MER found that there were no legislative requirements in the following areas:

- CDD measures for wire transfers.
- Verification of the customers' identity.
- Verification that any person purporting to act on behalf of a legal entity was so authorised.
- Determining for all customers whether the customer was acting on behalf of another person.
- Obtaining relevant information and data for beneficial owners.
- Obligation to take reasonable steps to determine who were the natural persons that ultimately owned or controlled the customer that was a legal entity.
- Keeping documents, data and information collected in the CDD process up-to-date and relevant.

116. The AML/CFT Law also had no specific provision that required FIs to vary the intensity of the due diligence according to the risk categories of the customers. In addition, there was no requirement to lodge a suspicious transaction report if an existing customer refused to provide information data or the requirement to terminate the business relationship and lodge an STR for existing customers, where there were doubts about the veracity of previously obtained customer identification data. In Mongolia's 2014 follow-up report, former R.5 was considered not at a level essentially equivalent to largely compliant.

117. *Criterion 10.1* - Article 4.2 of the AML/CFT Law prohibits REs from opening anonymous accounts or accounts in fictitious names. The provision also prohibits REs from making transactions from or to such accounts.

118. *Criterion 10.2* - Article 5.1 of the AML/CFT Law requires REs to undertake CDD measures; (a) prior to establishing business relations, (b) prior to conducting occasional transactions equal to or more than 20 million MNT (~9,900 USD) by a natural or legal person who has not established business relations and has no permanent bank account, (c) where the total sum of several inter-related transactions made within 24 hours is 20 million MNT or above, (d) where there are grounds to suspect that the customer or transaction is involved with ML/TF, and (e) when there is doubt about the veracity and accuracy of previously obtained customer identification data. Article 5.2.6 of the AML/CFT Law provides for CDD measures for wire transfers and does not prescribe any threshold.

119. The CDD obligation for inter-related transactions made within 24 hours may be limiting, as transactions can occur in a few days and exceed the designated threshold. For transactions where there is suspicion of ML or TF, it does not state that it is regardless of any threshold or exemption, although it is implied.

120. *Criterion 10.3* - Articles 5.2.1, 5.2.2 and 5.2.5 of the AML/CFT Law requires REs to identify and verify the customer's identity whether natural person, legal entity, legal person or arrangement. In this regard, REs shall verify such information using reliable or independent sources of information or documents such as the identity card or the legal entity's national registration certificate. Based on Article 3.1.1 of the LESRL, the definition of "legal entity" refers to a legal person under Article 25 of the CvC. In addition, Articles 5.2, 5.3 and 5.4 of the PMR provides further details on the CDD information required and documentation to verify customers that are natural person, legal person and legal arrangement.

121. *Criterion 10.4* - Article 5.2 of the PMR provides that where REs identify a customer is acting on behalf of another customer who is a natural person, REs must obtain the CDD information and verify the identity of that person acting on behalf of the customer. Articles 5.3 and 5.4 of the PMR to some extent require the same obligation for legal person or legal arrangement. In addition, Article 5.2.5 of the AML/CFT Law requires REs to identify and verify that the person purporting to act on behalf of a legal person or legal arrangement is authorised to do so. The former article however excludes the requirement for REs to verify the person purporting to act on behalf of a natural person.

122. *Criterion 10.5* - In undertaking CDD measures, Article 5.1 of the AML/CFT Law provides that REs are required to identify and verify customer information based on reliable independent sources of information or documents. In relation to CDD measures for beneficial owners; (i) Article 5.2.4 of the AML/CFT Law requires REs to identify and verify the beneficial owners of a legal entity; (ii) Article 5.8 of the PMR requires REs to take reasonable steps to identify and verify the beneficial owners; and (iii) Article 5.1 of the PMR further requires REs identifying and verifying beneficial owners with layering structures to identify and verify the components of each layer until the ultimate beneficial owner or controller is identified.

123. *Criterion 10.6* - Article 3.1.2 of the PMR requires REs to create a risk profile on customers and transactions including the purpose and nature of the relationship. In addition, Article 5.7.3 of the PMR requires REs to review the customer information when the information held is insufficient to enable the RE to understand the nature of the financial relationship or transactions being conducted.

124. *Criterion 10.7* - Article 3.1.4 of the PMR requires REs to conduct on-going due diligence including scrutinizing the customer transactions to ensure that transactions are consistent with the REs knowledge of the customer and customer risk profile. Article 5.6 of the PMR further require REs to ensure documents, data and information collected under the CDD process are reviewed and

updated frequently, impliedly including high risks customers. Article 5.7 of the PMR requires REs to review information when; (i) a significant transaction takes place, (ii) there is a change in type, frequency, purpose, amount of transactions or there is a change in the way the account is operated, and (iii) information held on the customer is insufficient to enable the RE to understand the nature of the financial relationship or transactions being conducted. Hence read together there is an implied obligation to scrutinise the customer's source of funds, where necessary.

125. *Criterion 10.8* - Article 5.2.4 of the AML/CFT Law requires REs to amongst others understand the ownership and control structures of customers that are legal entities. This requirement is further supported by Article 5.1 and 5.4 of the PMR which requires REs to obtain the information on shareholders and the type of business of customers that are legal persons and legal arrangements in order to understand the nature of the customer's business and its ownership and control structure.

126. *Criterion 10.9* - Article 5.2.2 of the AML/CFT Law provides that where the customer is a legal entity, REs must identify and verify the customer information by obtaining the name, address, establish the proof of existence and obtain detailed information on its management. Article 5.3 of the PMR further extends this requirement to ensure REs identify and verify legal persons by obtaining the (i) name on the state registration documentation, (ii) formation/ownership documentation including shareholder establishment, internal regulation documents and detailed information about the management, and (iii) the permanent address of the office. For customers that are legal arrangements, Article 5.4 of the PMR requires REs to identify and verify similar requirements for a legal person as well as obtain information on, (i) any person or entity with the authority to hold or deal in the property held pursuant to the legal arrangement, (ii) any person or entity with powers to appoint or dismiss trustees or other persons responsible for implementing the legal arrangement, and (iii) any person entitled to receive the benefit of the property held by the legal arrangement.

127. *Criterion 10.10* - Article 5.2.4 of the AML/CFT Law establishes the requirement for REs to identify and take reasonable steps to verify the identity of the beneficial owner of a legal entity. This requirement is further clarified under Article 5.1 of the PMR, which requires REs to "identify and verify beneficial interest in the assets of the customer or who, in the case of a legal person or arrangement, owns, controls or has a beneficial interest in its property. Where layered ownership structures are used, REs are required to identify and verify the components of each layer until the ultimate beneficial owner or controller is identified". However, to the extent that there is doubt about the natural person who has the ultimate controlling interest of a legal person, the AML/CFT Law and PMR does not provide for the identification of the natural person exercising control via other means, or alternatively identification of the natural person holding a senior management position.

128. *Criterion 10.11* - For customers that are legal arrangement or trusts, pursuant to Articles 5.1 and 5.4 of the PMR, REs are required to identify and take reasonable measures to verify the information of person who owns, controls or has a beneficial interest in the property (the settlor), persons with the authority to hold or deal in the property (the trustees), persons entitled to receive the benefit of the property (the beneficiaries). Article 5.1 of the PMR, further requires REs to "identify and verify the beneficial interest in the assets of the customer or who, in the case of a legal person or arrangement, owns, controls or has a beneficial interest in its property. Where layered ownership structures are used, REs are required to identify and verify the components of each layer until the ultimate beneficial owner or controller is identified". As discussed in Chapter 1, Mongolian

law does not allow for express trust or other legal arrangements with similar structures or functions and foreign trusts are not a feature in the Mongolian economy.

129. *Criterion 10.12* - In addition to the CDD measures required for customers and beneficial owners, Mongolia has no specific CDD requirements on the beneficiaries of life insurance.

130. *Criterion 10.13* - Mongolia has no requirement to ensure REs consider the beneficiary of a life insurance as a risk factor in the application of enhanced CDD.

131. *Criterion 10.14* - Article 5.1.1 of the AML/CFT Law requires REs to verify the identity of the customer prior to establishing a business relationship. Hence Mongolia does not allow for delayed verification. In addition, Article 5.10 of the PMR prohibits REs from opening an account or commencing a business relationship or carrying out the transaction, when it is unable to verify the identity of the customer and beneficial owner(s).

132. *Criterion 10.15* - Since delayed verification is not allowed in Mongolia, the AML/CFT Law does not provide any risk management procedure for business relationships that are conducted prior to the verification of the customer identity.

133. *Criterion 10.16* - Article 3.1.4 of the PMR require REs to apply CDD requirements particularly on-going due diligence to customers based on REs knowledge of the customers and customer risk profile. Article 5.7 of the PMR also obliges REs to review information held on customers which impliedly includes existing customers. Furthermore, Articles 5.5 and 5.6 of the PMR require REs to gather and maintain customer and beneficial owners information throughout the business relationship and ensure that such data and information collected under the CDD process are reviewed and updated frequently.

134. *Criterion 10.17* - Article 5.8 of the AML/CFT Law requires REs to identify high risk categories of business relations and transactions and apply enhanced due diligence for higher risks business relations. Similarly, Article 4.1.1 of the PMR requires REs to apply enhanced CDD for customers and transactions identified as higher risks.

135. *Criterion 10.18* - The AML/CFT Law or PMR does not provide for simplified CDD.

136. *Criterion 10.19* - Article 5.4 of the AML/CFT Law require REs to refuse service, where the customer refuses to provide identification and verification information. This requirement is further reinforced under Article 5.10 of the PMR, which provides where REs cannot comply with the CDD measures, they shall refrain from opening an account or commence the business relationship or carry out the transaction, or terminate the business relationship; and consider filing a suspicious transaction report.

137. *Criterion 10.20* - Article 5.11 of the PMR allows REs not to pursue the CDD process if they believe performing the CDD will pose a risk to tip-off the customer following the RE's suspicion that the asset or transaction is connected to ML/TF or proceed of crime. In such cases, the RE must submit an STR to the FIU immediately.

Weighting and Conclusion

138. While the CDD requirements are largely provided for under the AML/CFT law and PMR, there are minor shortcomings on specific CDD requirements such as; (i) the CDD obligation for inter-related transactions made within 24 hours may be limiting; and (ii) the extent of identification of

natural person exercising control of a legal person. Further since Mongolia has only 1 life insurance company and the sector as a whole is rated as low risk, deficiencies in criterion 10.12 and 10.13 are given less weight. **Recommendation 10 is rated largely compliant.**

Recommendation 11 – Record-keeping

139. In the 2007 MER, Mongolia was rated partially compliant with former R.10. The report noted that; (i) there was no requirement for RE to keep sufficient transaction records to permit reconstruction of individual transactions, and (ii) there was no legal or regulatory requirement for RE to maintain information on customers' identification data, account files and business correspondence for five years following the termination of an account or business relationship, and to keep transaction records available on a timely basis to competent authorities.

140. Mongolia's 2013 follow-up report notes that Mongolia has made significant progress in relation to former R.10, and the adoption of the new AML/CFT Law addresses most of the R.10 deficiencies identified in the MER and the level of compliance can be considered as being essentially equivalent to largely compliant or compliant.

141. *Criterion 11.1* - Under Article 8.1 of the AML/CFT Law FIs are obligated to retain all information and records of transactions, accounts and information of customers obtained, both domestic and international. Information must be maintained for at least five years after the date of transaction and the closure of the account. In addition, Article 6.1 of the PMR prescribe types of record, including cash or non-cash transactions, which must be maintained five years from the date of completion of the transaction or an occasional transaction.

142. *Criterion 11.2* - Under Article 8.1 of the AML/CFT Law, FIs are obligated to retain, for five years, all the customer information obtained in accordance with KYC (Article 5 of the AML/CFT Law) and special transaction monitoring (Article 6 of the AML/CFT Law). These requirements are clarified under Article 6.1 of the PMR, which requires five years retention after the customer relationship has ended, or after the date of an occasional transaction. Information retained includes copies of identification documents, documents on analysis of ongoing CDD, analysis of enhanced monitoring of transactions, and account file and business correspondence.

143. *Criterion 11.3* - Article 6.2 of the PMR prescribes that records maintained in accordance with the requirements of the PMR and AML/CFT Law must be sufficiently detailed to permit the reconstruction of each individual transactions.

144. *Criterion 11.4* - FIs are required under Article 8.2 of the AML/CFT Law to keep records and information in a way that they can be made available on timely basis to competent authorities. Article 7.4 of the AML/CFT Law requires FIs to provide information on specific transactions to LEAs in accordance with the prescribed procedure. In addition, Article 6.2 of the PMR prescribes that records maintained are capable of swift retrieval and production for authorities in accordance with a request for information made pursuant to the AML/CFT Law or the PMR.

Weighting and Conclusion

145. **Recommendation 11 is rated compliant.**

Recommendation 12 – Politically exposed persons

146. Mongolia was rated non-compliant with former R.6 in the 2007 MER. It summarized that the definition of a PEP under the current law was not extensive enough to cover all the individuals defined as PEPs in the FATF Standards, and no requirement for the FIs to take enhanced CDD measures in relation to PEPs was required.

147. Mongolia's definition of foreign (under Article 7.2 of the PMR) and domestic (under Article 20.2 of the Regulation of Public and Private Interests and Prevention of Conflict of Interest in Public Service and under Article 7.2 of the PMR) PEPs is consistent with the FATF Standards.

148. *Criterion 12.1* - Under Article 7.1 of the PMR, FIs are required to implement an internal monitoring programme to identify if customers, including beneficial owners, are a PEP and conduct enhanced CDD procedure on PEPs, their families, or parties with common interests. Under Article 4.2 of PMR, enhanced CDD procedures include; (i) obtaining additional information from the customer relating to the customer's business, source of funds, the purpose of intended transactions and take measures to verify such information, (ii) obtaining the approval of senior management before establishing (Article 4.3 of PMR) and for continuation of the business relationship with the customer, and (iii) to increase the frequency and depth of monitoring against accounts of customers, to conduct enhanced CDD for other parties of relationship and review information received from customers during CDD.

149. *Criterion 12.2* - Article 7.1 and Article 4.2 of the PMR are applicable to domestic PEPs, and persons who are or have been entrusted with a prominent function by an international organization. However, it does not include provisions covering beneficial owners of the customer or a person who holds a prominent function in an international organization.

150. *Criterion 12.3* - Article 7.3 of the PMR applies PEP requirements to persons who are family members or close associates of the PEP.

151. *Criterion 12.4* - The above requirements are applicable to the insurance sector. Insurers are not required to determine whether the beneficiaries and/or the beneficial owner of the beneficiary are PEPs according to the PMR. In addition, there are no specific requirements for life insurers to inform senior management before a policy payout, conduct enhanced scrutiny of the whole business relationship or consider making an STR, where higher risks are identified.

Weighting and Conclusion

152. Mongolia has minor scope deficiencies and minor shortcoming in the life insurance sector in relation to PEPs. Considering Mongolia has only one life insurance company and insurance is rated as low risk, deficiencies in *c.12.4* is given less weight. **Recommendation 12 is rated largely compliant.**

Recommendation 13 – Correspondent banking

153. Mongolia was rated non-compliant with former R.7 in the 2007 MER. It summarized that there was no requirement for FIs to take enhanced CDD measures in relation to cross-border correspondent banking and other similar relationships. Since 2007, Mongolia has enacted a new AML/CFT Law to give effect to this recommendation.

154. *Criterion 13.1* - Correspondent banking requirements are included under Article 5.6 of the AML/CFT Law and Chapter 8 of the PMR. Under Article 8.1 of the PMR, FIs are required to; (i)

evaluate the respondent institution's reputation and the nature of supervision including whether it has been subject to a ML/TF investigation or regulatory action, (ii) assess the respondent institution's AML/CFT controls, (iii) obtain approval from senior management before establishing a correspondent relationship, and (iv) establish an agreement on the respective responsibilities of each party under the relationship.

155. *Criterion 13.2* - Article 8.1.6 of the PMR requires FIs to ensure that the respondent institution has verified its customer's identity, implemented mechanisms for ongoing monitoring with respect to its clients, and is capable of providing relevant identifying information upon request to the correspondent bank, in the case of a payable-through account.

156. *Criterion 13.3* - Article 8.1.7 of the PMR prohibits FIs from establishing correspondent relationship with shell bank and financial institution. However, there is no prohibition on the continuing business relations with shell banks. Under Article 8.1.8 of the PMR, FIs should not establish or continue business relations with respondent FIs in a foreign country if the respondent institution permits its accounts to be used by a shell bank.

Weighting and Conclusion

157. There are minor shortcomings in the obligations in AML/CFT Law relating to prohibition on the continuing business relations with shell banks. **Recommendation 13 is rated largely compliant.**

Recommendation 14 – Money or value transfer services

158. Mongolia was rated non-compliant with former SR.VI in the 2007 MER. It summarized that no guidance on AML/CFT obligations has been provided to MVTS operators, there is little evidence of AML/CFT implementation in the NBFIs sector, and MVTS operators are not required to maintain current list of agents.

159. *Criterion 14.1* - MVTS providers in Mongolia are licensed. They either hold a (i) "foreign settlement licence" issued by the BoM pursuant to Article 6 of the Banking Law and Chapter 4 of the Regulation on Banking Licence; or (ii) are licenced for the activity of "electronic payment and remittance service" by FRC under Article 7 of the NBFIs Activities Law.

160. *Criterion 14.2* - Mongolia has not provided any evidence that it has proactively identified and sanctioned unlicensed or unregistered MVTS operators. Pursuant to Article 68.1.2 of the Banking Law, persons engaging in a banking activity without license will be subject to confiscation of all illegal income and a fine equal to 50 - 150 times the minimum wage. Whereas Article 20.1.2 of the NBFIs Activities Law provides FRC with the power to confiscate the illegally earned proceeds and imposes a fine of 20-40 months of the minimum salary against any person engaging in non-bank financial activities without a license. The sanctions under the respective laws however do not seem to be proportionate or dissuasive.

161. *Criterion 14.3* - As MVTS providers in Mongolia fall within the definition of REs under the AML/CFT law, either as a banks or NBFIs, they are subject to supervision and monitoring for AML/CFT compliance by BoM and FRC respectively.

162. *Criterion 14.4* - Banks operating MVTS do not use agents. For domestic MVTS, banks use their own branches; while for cross border MVTS, banks use their correspondent banking relationship.

However it is unclear whether (i) NBFIs that operate MVTs use agents, and (ii) agents are required to be licensed or registered or alternatively NBFIs are required to maintain a list of its agents.

163. *Criterion 14.5* - While banks do not use agents, it is unclear whether NBFIs involved in the activity of MVTs have included agents in their AML/CFT programmes and they monitor their compliance.

Weighting and Conclusion

164. Mongolia's has moderate shortcoming in giving effect to R.14. It is unclear if Mongolia has (i) applied proportionate and dissuasive sanctions against unlicensed persons carrying out the activity of MVTs, and (ii) whether agents of NBFIs operating MVTs are licensed, registered or alternatively NBFIs are required to maintain a list of agents and include such agents in their AML/CFT programmes and monitor them for compliance. **Recommendation 14 is rated partially compliant.**

Recommendation 15 – New technologies

165. In its 2007 MER, Mongolia was rated non-compliant for former R.8. The report highlights that there is no law, regulation or other enforceable means that require FIs to have policies in place to prevent the misuse of technological development in ML/TF schemes. Since 2007, Mongolia has enacted a new AML/CFT Law to give effect to this Recommendation.

166. *Criterion 15.1* - In relation to REs, Article 5.5 of the AML/CFT Law requires REs to pay special attention to transactions conducted by new or developing technologies and take certain measures to prevent the associated ML/TF risks that may arise from these transactions. In addition, Article 9.1.1 of the PMR also requires REs to undertake an assessment of the risks associated with new products, services and delivery mechanisms, and risk assess the use of new or developing technologies for both new or existing products.

167. Mongolia has identified and assessed ML/TF risks related to the development of new technologies under the NRA for the banking sector in relation to payment services which was identified as higher risk due to the advancement of new technology. BoM's risk based AML/CFT supervisory framework also takes into account new technologies when assessing the level of inherent ML/TF risks. However it is unclear if FRC takes into account new technologies when assessing ML/TF risks in respect of new or developing technologies.

168. *Criterion 15.2* - Article 9.1.2 of the PMR requires REs to implement appropriate measures to manage and limit the impact of risks that may arise in relation to new products, services, delivery mechanisms and developing technologies. While, there is no explicit requirement for the risk assessment to take place prior to the launch of such products, practises and technologies, it may be implied.

Weighting and Conclusion

169. Mongolia has minor shortcomings in giving effect to R.15. It is unclear whether FRC identifies and assesses the ML/TF risks associated with new products or developing technologies and Article 9.1.2 of the PMR has no express requirement for REs to conduct the required risk assessments prior to implementation of such products, practises and technologies. **Recommendation 15 is rated largely compliant.**

Recommendation 16 – Wire transfers

170. Mongolia was rated as non-compliant with former SR.VII. The 2007 MER noted that Mongolia had no specific requirements by law, regulation or other enforceable means for: (i) ordering REs to obtain and maintain information relating to the originator or to verify the identity of the originator for all wire transfers, (ii) REs to include the full originator information in the message or payment form accompanying cross-border wire transfers, (iii) intermediary and beneficiary REs to transmit all originator information with the wire transfers, and (iv) beneficiary REs to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Since 2007, Mongolia has enacted a new AML/CFT Law to give effect to this Recommendation.

171. *Criterion 16.1* - Pursuant to Article 5.2.6 of the AML/CFT Law, Mongolia does not prescribe any threshold for wire transfers. Under Article 10.1 of the PMR, REs engaged in cross-border wire transfers are required to include accurate information about the originator, recipient and correspondent bank in related messages including; (i) full name of the originator and recipient, (ii) originator's and recipient's account number where such an account is used to process the transaction, and (iii) originator's address, or customer identification, or date and place of birth.

172. *Criterion 16.2* - Article 10.3 of the PMR fulfils this criterion as it sufficiently mirrors the requirement of the criterion.

173. *Criterion 16.3* - Mongolia does not apply any *de minimis* threshold for cross border wire transfers.

174. *Criterion 16.4* - Mongolia does not apply any *de minimis* threshold for cross border wire transfers.

175. *Criterion 16.5 - .6* - Under Article 10.5 of the PMR, the ordering FIs for domestic wire transfer are required to include full originator information or the account number / unique identifier. Further, Article 10.6 of the PMR provides that where full originator information has not been included in a domestic wire transfer, this information must be made available by the ordering FIs within three business days of receiving the request either from the beneficiary FIs or from the FIU.

176. *Criterion 16.7* - Article 10.9 of the PMR obligates REs to keep all wire transfers information including originator and beneficiary information for at least five years, and under Article 6.2 of the PMR, all information retained should be sufficiently detailed to permit the reconstruction of each individual transaction and be capable of swift retrieval and production to the appropriate competent authorities.

177. *Criterion 16.8* - Article 10.2 of the PMR prohibits wire transfers if REs do not comply with *c.16.1* only; the prohibition of wire transfers does not extend to the requirement of *c.16.2 - .7*.

178. *Criterion 16.9* - Since Article 10.2 of the PMR prohibits REs that are engaged in cross border wire transfers to execute wire transfer which lacks the originator or beneficiary information, it may be implied that intermediary FIs are also required to ensure that for all cross border wire transfers, the originator and beneficiary information accompanies such wire transfers. Further, Article 10.7 of the PMR requires these intermediary FIs to keep wire transfer information including originator and beneficiary information for at least five years.

179. *Criterion 16.10* - Article 10.7 of the PMR requires REs engaged in cross border wire transfers to keep all wire transfer information for at least five years. Therefore, notwithstanding any technical limitation that prevents the originator and beneficiary information accompanying a cross border wire transfer from remaining with a related domestic wire transfer, the RE will be required to keep records of all information received from the ordering FI or another intermediary FI.

180. *Criterion 16.11* - Given that Article 10.1 and 10.2 of the PMR, prohibits REs that are engaged in cross border wire transfers to execute wire transfer which lacks the originator or beneficiary information, an intermediary financial institution is therefore indirectly required to identify cross border wire transfer that lacks the required originator and beneficiary information.

181. *Criterion 16.12* - Pursuant to Article 10.8 of the PMR, RE engaged in wire transfer should have risk-based policies and procedures for determining when to execute, suspend, or reject a wire transfer. Article 10.8 also provides appropriate follow up actions such as filing of STRs and termination of business relationships.

182. *Criterion 16.13* - Given that Article 10.1 and 10.2 of the PMR, prohibits REs that are engaged in cross border wire transfers to execute wire transfer which lacks the originator or beneficiary information, a beneficiary financial institution is therefore indirectly required to identify cross border wire transfers that lack the required originator and beneficiary information.

183. *Criterion 16.14* - Pursuant to Article 10.9 of the PMR when a RE receives a wire transfer it should implement CCD procedures and keep all wire transfers information including originator and beneficiary information for at least 5 years. Under Article 5.2.3 of the AML/CFT Law, the CDD procedure extends to identifying and verifying information on the beneficiary of the wire transfer. Further, pursuant to Article 6.2 of the PMR, all information retained should be sufficiently detailed to permit the reconstruction of each individual transaction and be capable of swift retrieval and production to the appropriate competent authorities.

184. *Criterion 16.15* - Pursuant to 10.8 of the PMR, a RE engaged in wire transfers should have risk-based policies and procedures for determining when to execute, suspend, or reject a wire transfer. Article 10.8 also provides appropriate follow up actions such as filing of STRs and termination of business relationship.

185. *Criterion 16.16* - All MVTs operating in Mongolia are REs under Article 4.1 of the AML/CFT Law and hence are required to comply with the requirements on wire transfers. However, not all measures under R.16 are fully addressed by the law or other enforceable means.

186. *Criterion 16.17* - MVTs operators are REs under Article 4.1 of the AML/CFT Law. While there is a general reporting obligation of STRs to the FIU pursuant to Article 7 of the AML/CFT Law, there is no specific requirement for MVTs providers that control both the ordering and beneficiary side of a wire transfer to consider the information from both sides in order to determine whether an STR has to be filed or to require the MVTs provider to file an STR in the country affected by the suspicious wire transfer and make available such transaction information to the FIU.

187. *Criterion 16.18* - All REs under Article 4.1 of the AML/CFT Law that are processing wire transfers are obliged to comply with Article 7.1.7 of the ATL, which requires legal entities to comply with freezing obligations in combating the financing of terrorism related to persons designated by the UNSCR. Article 5.1 of the TFS Regulations further require natural person or legal person to freeze without delay, all funds or assets wholly or jointly owned or controlled directly or indirectly by the designated person and entities. Articles 5.2 of the same Regulations also require Banks to report to

BoM, and FIs and DNFBPs to report to FRC of any assets frozen. However, in line with the discussion in *sub-criterion 6.5(a)*, the obligation to freeze is not enforceable. Nonetheless some level of TFS implementation may be affected pursuant to Article 5.12 of the PMR, which prohibits REs from opening account, conducting transaction or providing service with any individuals and entities designated in UNSCR 1267.

Weighting and Conclusion

188. Mongolia has minor shortcomings in its compliance with R.16, namely; (i) the prohibition for wire transfers under *c.16.8* is limited; (ii) while MVTs providers are required to comply with the requirements on wire transfers, there are minor shortcoming in R.16; (iii) there is no additional requirement for MVTs providers that controls both the ordering and beneficiary side of a wire transfer to consider filing an STR in the country affected; and (iv) while the ATL and TFS Regulations provides for freezing obligation in combating the financing of terrorism, it is not enforceable. To this end, the latter shortcoming is given less weight, taking into consideration Mongolia's perceived TF risk. **Recommendation 16 is rated largely compliant.**

Recommendation 17 – Reliance on third parties

189. In 2007, Mongolia was rated as partially compliant with former R.9. The MER found that the AML/CFT Law does not; (i) specify duty on the REs to conduct verification on the customer information obtained, (ii) require REs that rely on notaries to obtain their customer identification and verification process, and (iii) include an explicit requirement to ensure REs undertake ultimate responsibility for the customer identification and verification measures.

190. *Criterion 17.1* - Chapter 11 of the PMR allow REs to use a third party to undertake KYC procedures on its behalf including ensuring the identification data is made available soonest practicable upon request and that the third party is subject to AML/CFT supervision and complies with the CDD and record keeping requirements. However, Chapter 11 is unclear on; (i) whether third party reliance is confined to only FIs and DNFBPs and excludes outsourcing and agency relationships, (ii) which elements of CDD can be carried out by third parties, and (iii) whether the ultimate responsibility for CDD measures remains with the RE. In addition, for third party reliance on notaries, it is unclear whether REs have an obligation to conduct independent verification of the identification document.

191. *Criterion 17.2* - Mongolia has no law or other enforceable means that takes into account the third-party country level risk.

192. *Criterion 17.3* - Mongolia has no law or other enforceable means that prescribes for reliance on third parties for REs that are part of the same financial group.

Weighting and Conclusion

193. Mongolia has major shortcoming in its AML/CFT Law or other enforceable means to give effect to R.17. The deficiencies include; (i) there is no requirement for the reliance on third parties to be limited to only third party FIs and DNFBPs, (ii) that third party reliance is limited to only identification of customer, beneficial owner and understanding the nature of business, (iii) for the ultimate responsibility of CDD measures to remain with the RE, (iv) in determining which countries the third party is based, regard must be made to the country level risks, and (v) to prescribe for

reliance on third parties of REs that are part of the same financial group. **Recommendation 17 is rated non-compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

194. Mongolia was rated as partially compliant with former R.15 and the MER noted that former R.22 was not applicable to Mongolia, as at the time of the on-site visit, no REs have foreign branches and subsidiaries. The MER noted that while Article 14 of the AML/CFT Law requires REs to develop and implement an internal monitoring program to combat ML/TF, there was no legislative requirement for REs to; (i) maintain an independent audit function to test compliance of the internal monitoring programs, (ii) establish on-going AML/CFT training for all employees, and (iii) put in place screening procedures when hiring employees.

195. *Criterion 18.1* - Article 14 of the AML/CFT Law requires REs to implement internal monitoring programs to combat ML/TF. The requirements under Article 14 are strengthened by additional requirements under Article 3.6 of the PMR such as; (i) compliance management arrangements including appointment of a compliance officer at a senior staff level, (ii) a limited requirement for employee screening that prohibits REs from employing people with conflict of interest or have been committed and sentenced for fraudulent crimes or other similar criminal activities; (iii) AML/CFT training programme for staff, and (iv) an independent audit function to ensure that the compliance officer and staff are performing their duties in accordance with the AML/CFT internal policies, procedures, systems and controls. However, screening procedures for employees are limited to persons with a conflict of interest or who have been committed and sentenced for fraudulent or related crimes only.

196. *Criterion 18.2* - In relation to financial groups, Article 3.4 of the PMR requires internal policies, procedures and controls to be applicable to all domestic and foreign branches and majority owned subsidiaries. Further Article 3.5.6 of the PMR provides for the compliance officer to have access to all documents and information from the subsidiaries, units and branches in relation to customer account and transactions. However, there is no clear requirement for ML/TF group-wide programmes such as sharing of information for ML/TF risk management, the provision of group level compliance and audit as well as the adequate safeguards on confidentiality and use of such information exchanged.

197. *Criterion 18.3* - While Mongolia does not have any foreign branches of banks or NBFIs, Article 12.1 of the PMR requires REs foreign branches and majority owned subsidiaries to implement AML/CFT measures that are consistent with the AML/CFT laws in Mongolia to the extent that the host country laws and regulations permit. Where the host country prevents the implementation of these AML/CFT obligations, REs must report to its supervisors and apply appropriate measures to manage the ML/TF risks.

Weighting and Conclusion

198. Mongolia has minor shortcomings in its legislation; particularly; (i) concerning screening procedure for employees, and (ii) the implementation framework for financial group-wide programmes which does not fully comply with the FATF Standards. **Recommendation 18 is rated largely compliant.**

Recommendation 19 – Higher-risk countries

199. In 2007, Mongolia was rated as partially compliant with former R.21. The MER noted that while BoM is authorised under the AML/CFT law to prepare the list of high risks countries, it had not done so. In addition, the counter measures to be applied for high risks countries were unclear and REs were not required to keep records of information obtained under the special monitoring.

200. *Criterion 19.1* - Articles 6.1.4 and 6.2 of the AML/CFT Law require REs to obtain additional information or explanation and examine the background, source of funds and purpose of business relationships for transactions from countries that are strategically deficient in ML/TF as defined by international organizations responsible for ML/TF. Although the provision does not explicitly mention countries called for by the FATF, this may be implied. However the AML/CFT Law does not address the requirement for enhanced due diligence to be applied proportionate to the risks identified of the countries.

201. *Criterion 19.2* - Apart from the enhanced due diligence measures, Mongolia has not prescribed via legislation or regulation, the application of countermeasures proportionate to the risks, when called for by the FATF or independently of any call by the FATF.

202. *Criterion 19.3* - Article 19.2.3 of the AML/CFT Law provides a mechanism for BoM, FRC and FIU to issue instructions, regulations, guidelines and recommendations to REs. In October 2014, the FIU had advised banks of the FATF's updated lists of jurisdictions with weak AML/CFT regimes and high risk and non-cooperative jurisdictions. However, the FIU did not advise the other REs.

Weighting and Conclusion

203. Mongolia has yet to fully implement the requirements of R.19. While Mongolia has a requirement for REs to apply enhanced due diligence for customers from higher risk countries, its moderate shortcomings include; (i) the AML/CFT law does not specifically reference countries called for by the FATF, and (ii) there is no requirement for enhanced due diligence and counter-measures to be applied proportionate to the risk. **Recommendation 19 is rated partially compliant.**

Recommendation 20 – Reporting of suspicious transactions

204. In 2007, Mongolia was rated as non-compliant with former R.13 and SR.IV. The MER noted that there were serious deficiencies in STR reporting in relation to ML and TF. The obligation to report ML transactions was provided only in narrow circumstances and fell well short of the international standard. There was also no obligation to report STRs related to TF. In Mongolia's 2014 follow-up report, with the introduction of the AML/CFT Law, former R.13 and SR.IV were considered to be at a level essentially equivalent to largely compliant.

205. *Criterion 20.1* - Article 7.2 of the AML/CFT Law requires REs that suspects or knows that an asset or transaction is related to ML/TF or proceeds of crime to report to FIU within 24 hours. Article 7.2 is supported by; (i) Chapter 14 of the PMR, and (ii) the Regulation on Reporting Information to FIU, which is limited to banks. The definition of "proceeds of crime" is provided under Article 1.2.6 of the PMR as "any direct or indirect funds, profits or income obtained from crime and illegal activity in Mongolia and in foreign country". Nonetheless the definition of "proceeds of crime" under the PMR is limited, to some extent, to only monetary proceeds and does not extend to "property" as defined under the FATF Standards, which shall include real estate property, gold or precious stones, etc.

206. *Criterion 20.2* - Pursuant to Article 7.2 of the AML/CFT Law, there is no limitation on the transaction amount for STRs, and STRs are required to be submitted on attempted transactions.

Weighting and Conclusion

207. While REs are required to file STRs on transactions related to ML/TF including transactions related to proceeds of crime; there is a minor deficiency on the definition of “proceeds of crime” as it is limited to only monetary proceeds and does not extend to ‘property’. **Recommendation 20 is rated largely compliant.**

Recommendation 21 – Tipping-off and confidentiality

208. In 2007, Mongolia was rated as partially compliant with former R.14. The MER noted that it was not clear whether directors, officers and employees of REs are adequately protected from criminal and civil liability, if they report STR in good faith.

209. *Criterion 21.1* - Article 12.1 of the AML/CFT Law provides that REs that report STRs to the FIU shall not be in breach of banking and professional confidentiality. Article 12.2 of the AML/CFT Law provides that regardless of whether the STR establishes ML/TF, REs will not be held accountable. Read together, the AML/CFT Law does accord REs protection from breaches of disclosure of information relating to STRs. However, (i) protection from civil and criminal liability is not explicitly provided for under the AML/CFT Law, and (ii) the said articles do not apply to individual directors, officers and employees of REs.

210. *Criterion 21.2* - Article 13.1 of the AML/CFT Law on confidentiality of reports prohibits REs and the FIU from disclosing information on customer transactions other than to LEAs. Articles 2.5 and 5.9 of the Regulation on Reporting Information to FIU, which has limited application to only banks, provides prohibition for bank management and officers from disclosing any information on STR, CTR, FSTR and other information filed with the FIU. Article 6.2 of the same regulation also prohibits bank officers responsible for providing reports on suspicious transactions and bank officers acquainted with such reports, to disclose information on the transmission, preparation or attempts to send a STR, CTR, and FSTR with the FIU. Hence, while REs and bank’s directors, officers and employees are prohibited from disclosing the fact that an STR is being filed with the FIU, there is no prohibition on directors, officers and employees of REs other than banks.

Weighting and Conclusion

211. Mongolia has moderate shortcoming in its compliance with R.21 in that; (i) the AML/CFT Law does not explicitly provide for protection from civil and criminal liability for lodging an STR, (ii) Articles 12.1 and 12.2 of the AML/CFT Law only applies to REs and does not extend to its directors, officers and employees, and (iii) the provision against tipping off has limited application to only REs and bank’s directors, officers and employees. There is no prohibition by law on directors, officers and employees of REs other than banks. **Recommendation 21 is rated partially compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

Preamble

212. As discussed in Chapter 1, Mongolia has scope deficiencies with regard to DNFBPs. DNFBPs in Mongolia include real estate agents/entities, dealers of precious metals and stones, accountants, lawyers, notaries and company service providers. Real estate agents and notaries are the only DNFBPs included in Mongolia's AML/CFT regime. As discussed in Chapter 1 and in R.35, the AML/CFT Law is not enforceable on real estate agents. Therefore, notaries are the only DNFBPs required to comply with AML/CFT requirements.

213. Casinos are prohibited under Article 1 of the Law on Prohibition of Establishment and Operation of Casinos⁷⁹.

214. As discussed in Chapter 1, there are 3,475 entities registered with the GAIPSR that conduct real estate based activities (details of activities were not provided to the assessment team) and eight real estate intermediaries in Mongolia covered under the AML/CFT Law (it is unclear on what basis some entities that provide real estate services are not covered in the AML/CFT Law). There are 3,941 accountants licensed by the Institute of Certified Accountants of Mongolia in accordance with the Accounting Law. There are 5,507 lawyers licensed to practice by the Bar Association in accordance with the Lawyers Law. There are an unknown number of entities licensed to undertake activities of dealers in precious metals and stones under the Ministry of Mining and in accordance with the Law of Mongolia on Licensing. There are 304 legal entities providing notary services with an unknown number of individual notaries.

215. As discussed in Chapter 1 and R.25, express trusts cannot be formed under Mongolian law, and the assessment team found no evidence to suggest that formation and operation of foreign trusts within Mongolia is common practice. With regard to company service providers, there are businesses that provide limited formation services mainly notaries; however, the assessment team found no evidence to suggest that persons or businesses provide company services such as acting as directors or secretary of the company etc.; providing registered office or addresses etc.; or acting as a nominee shareholder.

216. In its 2007 MER, Mongolia was rated non-compliant with former R.12. The report highlights that besides trust service providers, DNFBPs are not included in Mongolia's AML/CFT regime.

217. *Criterion 22.1* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with CDD requirements set out in R.10. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of CDD requirements as set out in R.10.

218. *Criterion 22.2* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with record-keeping requirements set out in R.11. Under Article 27 of the Notary Law, notaries are required to maintain all records; however, there is no minimum time included in the law. Mongolia provided no other evidence that DNFBPs' primary legislation contains elements of record-keeping requirements as set out in R.11.

219. *Criterion 22.3* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with PEPs requirements set out in R.12. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of PEPs requirements as set out in R.12.

220. *Criterion 22.4* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with new technologies requirements set out in R.15. Mongolia provided no

⁷⁹ However, a draft law, which will allow casinos to be established in Mongolia, is listed in the 2017 agenda of the State Great Khural

evidence that DNFBPs' primary legislation contains elements of new technologies requirements set out in R.15.

221. *Criterion 22.5* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with reliance on third-parties requirements set out in R.17. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of reliance on third-parties requirements set out in R.17.

Weighting and Conclusion

222. The AML/CFT Law has scope deficiencies with notaries being the only DNFBPs required to comply with AML/CFT requirements. There are also cascade deficiencies from R.12, R.15 and R.17. **Recommendation 22 is rated non-compliant.**

Recommendation 23 – DNFBPs: Other measures

223. In its 2007 MER, Mongolia was rated non-compliant with former R.16. The report highlights that DNFBPs are not yet been included in Mongolia's AML/CFT regime and are not obligated to report STRs.

224. *Criterion 23.1* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with STR requirements set out in R.20. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of STR requirements set out in R.20.

225. *Criterion 23.2* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with internal controls requirements set out in R.18. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of internal controls requirements set out in R.18.

226. *Criterion 23.3* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with higher-risk countries requirements set out in R.19. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of higher-risk countries requirements set out in R.19.

227. *Criterion 23.4* - As discussed, the AML/CFT Law has scope deficiencies with only notaries required to comply with tipping-off and confidentiality requirements set out in R.21. Mongolia provided no evidence that DNFBPs' primary legislation contains elements of tipping-off and confidentiality requirements set out in R.21.

Weighting and Conclusion

228. The AML/CFT Law has scope deficiencies with notaries being the only DNFBPs required to comply with AML/CFT requirements. There are cascade deficiencies from R.18, R.19, R.20, and R.21. **Recommendation 23 is rated non-compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

229. In 2007 Mongolia was rated partially compliant with former R.33. The report indicated that details of persons directing or controlling companies or other legal persons were not publicly available; there were no requirements for companies to record the beneficial ownership of

shareholders or to make beneficial ownership information available in a timely fashion and that there were no effective penalty provisions to ensure prompt reporting of any changes of information on the charter or activities by companies.

230. *Criterion 24.1* - Article 33 of the CvC describes the types of legal persons that can be established in Mongolia: partnerships and companies as subtypes of profitable legal persons; and associations, foundations and cooperatives as subtypes of non-profitable legal persons. Articles 34 to 38 of the same law provide for some basic characteristics for each type of legal persons identified in Article 33.

231. Article 35 of the CvC describes the basic features of partnerships, which are legal persons with unlimited liability.

232. Companies are regulated by the Company Law, which describe their types and basic features in Article 3 to 5. Public companies (Article 4) and limited liability companies (Article 5) are the types of companies that can be incorporated in Mongolia.

233. Associations and foundations have their concept defined in Article 36 of the CvC of Mongolia and Cooperatives are defined in Article 36 of the CvC. These non-profit legal persons are regulated by specific laws as described in R.8.

234. The specific legislation, identified above, sets out the basic features of each type of legal persons, the process for their creation and the information necessary to be contained in their incorporation charters.

235. In compliance with article 4.4 of the Law on State Registration all legal persons must be registered with the GAIPSR.

236. *Criterion 24.2* - Mongolia has not assessed, including in the NRA, the ML/TF risk associated with all types of legal persons created in Mongolia.

237. *Criterion 24.3* - Article 5.4 of the State Registration Law and Articles 8 and 11 of the State Registration of Legal Persons Law describe the required elements to register legal persons – all relevant types of legal persons - in a way that address the requirements of this criterion. The GAIPSR is the government agency responsible to maintain in a database both in physical and electronic format the information related to each legal person registered in Mongolia. Key competent authorities have direct access to the GAIPSR's database, and the public can obtain information contained in the GAIPSR's database via an in-person application.

238. *Criterion 24.4* - Article 16 of the Company Law addresses the requirements of this criterion. Article 5.4.7. of the State Registration Law require that any amendments to foundation documents of a legal entity must be registered with the GAIPSR while article 11.3. of the State Registration of Legal persons determine that those changes must be submitted to the GAIPSR within 15 working days of its occurrence. Article 97 of the Company Law determines that all information required by this criterion not subject to registration with the GAIPSR must be held by the company at his main office available at all time to shareholders and any competent authorities.

239. *Criterion 24.5* - When a new legal entity is registered or any amendments are made to existing legal entity's information the database of GAIPSR is updated. Article 13.1 of State Registration of Legal Persons Law determines that the GAIPSR will decide whether to register foreign invested legal persons or not within 10 days from receiving the application, while other legal entities will be registered within 2 working days after reception of the complete documentation as

required by article 17.1-17.3 of the same law. There are no mechanisms in place to check or verify the authenticity of information filed with the GAIPSR.

240. *Criterion 24.6* - Obligations on FIs and certain DNFBPs to conduct CDD are set out Article 5.2.4. of the AML/CFT Law and Article 5 of the PMR require REs to obtain BO information on their customers. Such CDD information is available to competent authorities on request. Such CDD obligations do not extend to persons or professionals who may be conducting company services. However, the obligations set out on article 97 of the Company Law concerning the information that companies must hold regarding their shareholders covers the gaps identified above satisfying the *c.24.6(a)*. Article 10 of the NPO Law and articles 6 and 9 of the SCC Law establish the requirements respectively for the associations, foundations and cooperatives.

241. *Criterion 24.7* - Article 5.5 of the PMR determines that reporting entities must retain basic and BO information throughout the business relationship while Article 5.6 states that such information must reviewed frequently and kept up to date. Article 97 of the Company Law concerning the information that companies must hold regarding their shareholders covers the gaps identified relating to the scope of CDD obligations by DNFBPs. Article 10 of the NPO Law and articles 6 and 9 of the SCC Law establish the requirements respectively for the associations, foundations and cooperatives.

242. *Criterion 24.8* - Basic information and any available beneficial ownership information held by companies is available to LEAs and competent authorities through the GAIPSR and by access to the information held by the companies themselves. In addition, Article 97 of the Company Law determines what information must be maintained by a company and where such information must be held in terms that satisfy this criterion.

243. *Criterion 24.9* - Article 97.4 of the Company Law requires the company to keep for five years all company documents required under the Company Law period after which it must transfer those documents to an archive. Under Article 8.1 of the AML/CFT Law, REs are required to retain all information and records of transactions, accounts and information of customers obtained, both domestically and internationally for at least five years after the date of transaction and the closure of the account. GAIPSR as a central registry has a duty to maintain its records indefinitely as determined by The Director of the State Registration Authority (former name of the GAIPSR) and the Director of the General Archives Authority through joint Decree number 714/A-91 in 2014.

244. *Criterion 24.10* - Basic information held by companies is available to LEAs and competent authorities through the GAIPSR and by access to the information held by the companies themselves. BO information is available to LEAs through the information kept by the companies themselves and REs as part of CDD obligations. Article 11.5.9 of the Law on State Registration specifically determines the obligation of the State Register to make available legal persons information to LEAs and judicial authorities.

245. *Criterion 24.11* - Article 3.7 and 4.2 of the Company Law determines the registration of bearer shares issued by open public companies in a securities trading organization before their trading in open market. Any transfer of shares made through other means than the securities trading organization must be immediately registered with it. This mechanism satisfies *sub-criterion 24.11(c)* of this criterion.

246. *Criterion 24.12* - Mongolia does not allow for companies to issue nominee shares or appoint nominee directors. Any exercise of social rights associated with shares in a company is constructed

under article 46 of the Securities Law as a securities' custody operation. These operations can only be carried out by commercial banks, their controlled or subsidiary companies and/or securities central depository organizations. This activity is regulated by the FRC and the BoM through a custodian special license and activities regulation, which was approved by the joint resolution of Central Bank of Mongolia and FRC number 85A/106.

247. *Criterion 24.13* - There are sanctions for breaching requirements but these sanctions are not proportionate or dissuasive. Article 21 of the State Registration Law admits the possibility of application of some sanctions for breaching of obligations under that law. However, the only known penalties for breaching the duties of registration and updating the registered information with the GAIPSR is a one off fine of 1 to 3 times minimum salaries (~125 USD to ~USD375 USD).

248. The Company Law determines in Article 100.1.2 that the breach of the company's obligation under Article 97.1 of the same law (Duty of a company to keep documents) makes the company liable to a fine of 20 to 30 minimum wages (~2,500 USD to ~3,750 USD) while the individuals charged to fulfil those duties will be liable to a fine of 5 to 10 minimum salaries (~625 USD to ~1,250 USD).

249. *Criterion 24.14* - Article 9.1.7 and Article 11. 5.9 of the State Registration Law address this criterion.

250. *Criterion 24.15* - Mongolian authorities do not have any mechanisms in place to monitor the quality of assistance they receive from other countries in response to requests for basic or BO information.

Weighting and Conclusion

251. Mongolia has a central registration mechanism of basic information of all types of legal persons. However, there is no explicit obligation of registration of BO information neither is there any process of verification of BO information. BO information kept by companies and collected by REs are part of CDD obligations and this information is available to LEAs. Mongolia has not assessed the risks associated with the different types of legal persons created in the country and the sanctions for non-compliance with obligations under R.24 are not dissuasive. Mongolia does not have a mechanism to monitor the quality of assistance it receives in response to requests for basic or BO information. **Recommendation 24 is rated partially compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

252. In the 2007 MER, Mongolia was rated a partially compliant with former R.34. The report highlighted that trusts operating in Mongolia were “trust contracts” between settlor and NBFIs as the trustee. However, NBFIs were not required to ensure access to BO information.

253. As discussed in Chapter 1, express trusts or other legal arrangements with similar structures or functions cannot be formed under Mongolian law. Under Article 406 CvC Mongolian has a legal framework for statutory trusts under the form of a “trust contract”. The adoption in 2008 of the Regulation on Non-Bank Financial Trust Services clarified the structures or functions of the “trust contract”. Based on this, the assessment team has concluded this arrangement is not an express trust or other legal arrangement with similar structures or functions.

254. *Sub-Criterion 25.1(a)-(b)* - Mongolian law does not allow for express trusts or other legal arrangements with similar structures or functions.

255. *Sub-Criterion 25.1(c)* - Under the AML/CFT Law and PMR, if a notary acts as a professional trustee, the notary is required to conduct CDD in accordance with R.10, which, under Articles 5.1 and 5.4 of the PMR, includes identification and taking reasonable measures to verify the information of person who owns, controls or has a beneficial interest in the property (the settlor), persons with the authority to hold or deal in the property (the trustees), and persons entitled to receive the benefit of the property (the beneficiaries). Furthermore, notaries are required to “identify and verify” the beneficial interest in the assets of the customer or who, in the case of a legal person or arrangement, owns, controls or has a beneficial interest in its property. Where layered ownership structures are used, REs are required to identify and verify the components of each layer until the ultimate beneficial owner or controller is identified. Under Article 8.1 of the AML/CFT Law notaries are required to maintain this information for five years.

256. Mongolia provided no evidence that primarily legislation of other DNFBPs requires them to obtain or hold information on the settlor, trustees, protector beneficiaries and any other natural person exercising control for five years.

257. *Criterion 25.2* - Under the PMR if a notary acts as a professional trustee, the notary is required to; (i) conduct on-going due diligence including scrutinizing the customer transactions to ensure that transactions are consistent with the REs knowledge of the customer and customer risk profile (Article 3.1.4 of the PMR), and (ii) ensure documents, data and information collected under the CDD process are reviewed and updated frequently (Article 5.6 of the PMR).

258. Mongolia provided no evidence that primarily legislation of other DNFBPs requires information held to be accurate and as up-to-date as possible, and is updated on a timely basis.

259. *Criterion 25.3* - There is no requirement for trustees to disclose their status to FIs or DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.

260. *Criterion 25.4* - Trustees of foreign trusts are not prevented from providing competent authorities with information relating to trusts, or from providing FIs and DNFBPs, upon request, information on BO and the assets of the trust during CDD process.

261. *Criterion 25.5* - LEAs have powers, under the CPC, to ensure timely access to CDD information from REs. This extends to any trustee (professional or not) that may be a customer or conducting an occasional transaction with a RE. There are scope deficiencies regarding coverage of DNFBPs and the AML/CFT Law is not enforceable on real estate agents. Therefore, notaries are the only DNFBPs required to comply with AML/CFT requirements.

262. *Criterion 25.6* - Mongolia is able to provide international cooperation in relation to CDD information obtained by FIs. This can be done via MLA including via the principal reciprocity and Mongolia’s MLA treaties, agency to agency MoUs and MoUs with foreign competent authorities, as described in R.40.

263. *Criterion 25.7* - There is no legal liability and/or sanctions for foreign trustees operating in Mongolia that fail to disclose their status as a trustee.

264. *Criterion 25.8* - As discussed in R.35, criminal sanctions in Mongolia are only available in the CCM, which does not include provisions to criminalize breaches of the AML/CFT Law or PMR. For

notaries, there are limited and neither proportionate nor dissuasive sanctions included in the Notary Law (Chapter 12) that can be applied to breaches of the AML/CFT Law and PMR when a notary is acting as a professional trustee.

Weighting and Conclusion

265. Mongolian law does not recognise or allow for the formation of express trusts or other legal arrangements with similar structures or functions. As such, aspects of R.25 are not applicable in the Mongolian context. However, R.25 places some requirements on all countries, irrespective of whether the country recognises trust law. There are scope deficiencies regarding coverage of DNFBPs with AML/CFT Law and PMR obligations on CDD of legal arrangements and record keeping only enforceable on notaries when acting as professional trustees - sanctions for breaching these obligations are neither proportionate nor dissuasive. Mongolia does not require trustees of foreign trusts to disclose their status to FIs or DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold. **Recommendation 25 is rated partially compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

266. Mongolia was rated partly compliant with former R.23 in the 2007 MER. It concluded that NBFIs had not yet undergone AML/CFT supervision and the FRC lacked resources to implement its supervisory role. R.26 now contains requirements relating to shell banks, which was previously covered by former R.18. The 2012 ME follow-up report recognized that Mongolia had made significant progress, which could bring former R.23 up to a level equivalent to largely compliant or compliant.

267. *Criterion 26.1* - Under the Article 19.1 of the AML/CFT Law, the BoM is responsible for AML/CFT supervising and regulating banks, and the FRC and the FIU is responsible for AML/CFT supervising and regulating of other FIs including NBFIs, insurance companies, investment funds, licensed securities market entities, savings and credit cooperatives.

268. *Criterion 26.2* - Under the Article 6 of the Banking Law, banks, their subsidiaries and affiliate companies are required to be licensed by the BoM and FRC depending on the types of banking activities, and under Article 18.2, banks and their branches should get an approval of establishment from the BoM. Other FIs including securities; insurers; insurance intermediaries, insurance brokers, and assessors are required to be licensed by the FRC under the Article 22.1 of the FRC Law. MVTs and Currency exchange units are included in the non-bank financial activities, and should be licensed by the FRC according to the Article 6.1 of the NBFI Activities Law.

269. Shell banks are not explicitly precluded from establishment in Mongolia. There are, however, sufficient licensing requirements in the Banking Law and in the Regulation on Banking License of Commercial Banks in Mongolia to ensure that meaningful operations and management are in place within banks

270. *Criterion 26.3* - For banks, under Article 32.1.2 Banking Law, members of the board of directors must have no criminal record in anti-state and economic crimes. In addition, under Article 2.2.5 and Article 2.2.7 of the Regulation on Banking License, bank founders and shareholders, members of the Board of Directors, Head of Auditing Committee and Executive are required to submit a criminal records check from the General Police Department showing whether they have ever been engaged in any type criminal offenses. However, Mongolia provided no legal or regulatory

measures, or any evidence that it can prevent criminal associates from holding (or being the beneficial owner) of a significant or controlling interest in Banks.

271. For NBFIs licensed by the FRC, under Article 13.5.2 of the NBFIs Activities Law, the chairman, members of the Board of Directors and the executive director of the NBFIs shall not have a criminal record. Similar to above, Mongolia provided no evidence that it can prevent criminal associates from holding (or being the beneficial owner of) a significant or controlling interest in NBFIs.

272. Under 3.1.5 of the Securities Market Registration Regulation, Shareholders (owner of more than 5 percent of shares in case of listed companies), Chairman and members of the Board, executive director, officer of internal monitoring and other staff should have no criminal records. However, similar to above, criminal associates cannot be prevented from holding or being the beneficial owner of a significant or controlling interest in FIs.

273. According to Insurance Law (Article 20) and Investment Fund Law (Article 14), whether a founder is fit and proper is considered before granting an insurance/investment fund license. However, it is unclear if criminal record checks is a necessary process before granting the license.

274. Fit-and-proper requirements including no criminal record, no delinquent loan, no conflict within positions, and no experience on managing a bankrupted legal entity, are considered by the board of directors and executive directors, according to Article 34.3 and 39.6 of the SCC Law. However, criminal associates cannot be prevented from holding or being the beneficial owner of a significant or controlling interest in FIs.

275. *Criterion 26.4* - For core principle FIs, Mongolia's legislation does not provide direct reference to adherence to the Core Principles; however, the requirements imposed by the AML/CFT Law and the PMR go some way to meet the Principles, such as Article 14 of the AML/CFT Law on internal control and Article 5 on CDD. Insurance companies and securities are not subject to supervision on a risk-sensitive basis. All other FIs including MVTs and currency exchanges are supervised and regulated under the AML/CFT Law. However, the supervision or monitoring is not based on the ML/TF risks. No information was provided on the application of consolidated group supervision for AML/CFT purposes.

276. *Criterion 26.5* - For banks, on-site supervision, the examination period, frequency, scope and assessment indicators are based on risks identified during the off-site supervision process (see Article 1.2 of the Regulation of On-site Supervision of the Banks on Anti-Money Laundering and Combating Financing Of Terrorism, and Article 1.2.2 of the Regulation of Off-site Supervision of the Banks on Anti-Money Laundering And Combating Financing Of Terrorism). Off-site supervision includes examination of the bank's structure, products and services, delivery methods and information activity including the bank's Risk Assessment Matrix of AML/CFT activities, Monitoring and Compliance Questionnaire and associated documents (see Article 2.1 Bank off-site Supervision).

277. For all other FIs, AML/CFT supervision is not based on ML/TF risks, policies, internal controls and procedures associated with the institution or group; ML/TF risk in the country; and characteristics of the financial institution.

278. *Criterion 26.6* - There is no explicit requirement to review ML/TF risk assessments when there are major events/developments in the management and operations of FIs. According to the onsite supervision regulation on banks, supervisors should review the risk assessment of the banks, and changes of information on bank stakeholders, management, capital, and licenses when

conducting an onsite examination. The off-site supervision assessment of bank's AML/CFT activities are required to be conducted on an on-going basis and "Data Collection Sheet" and "AML/CFT Questionnaire" which could reflect some of the Bank's AML/CFT risks are to be submitted on a six-monthly basis. Banks are required to update the ML/FT risk assessment using a risk assessment matrix; however, the frequency of the update is not explicitly regulated. There is no related requirement for non-bank institutions.

Weighting and Conclusion

279. Mongolia has moderate shortcoming in regards to R.26. Mongolia has limited legal or regulatory measures to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in FI, and did not provide any direct reference in the legislation or regulations to adherence to the Core Principles. In addition, the frequency and intensity of supervision is not determined on the basis of Mongolia's ML/TF risks, and the degree of discretion allowed to FIs under the RBA. Moreover, there is no specific requirement to review ML/TF risk assessments when there are major events/developments in the management and operations of FIs. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

280. Mongolia was rated largely compliant with former R.29 in the 2007 MER. It concluded that the BoM, the FIU, and the FRC had adequate monitoring powers and inspection authority under the laws, but the FRC has not effectively implemented those powers.

281. *Criterion 27.1* - Article 24 and 25 of the BoM Law, Article 24 and 25 of the FRC Law and Article 19 of the AML/CFT Law provides the BoM, FIU and FRC, respectively, with adequate powers to supervise or monitor and ensure compliance with AML/CFT requirements by FIs.

282. *Criterion 27.2* - Under Article 24 and 25 of the BoM Law, BoM supervisors have the authority to conduct inspections including on-site and off-site inspections of the banks including AML/CFT related activities under 19.1 of the AML/CFT Law and regulations relating to on-site and off-site supervision. Under Article 24 and 25 of the FRC Law, the FRC has the authority to conduct inspections of entities under its supervisory ambit including for AML/CFT purposes under Article 19.1 of the AML/CFT Law. In addition, under Article 16.7 of the AML/CFT Law authorizes the head of the FIU to be the senior state inspector, and supervisor and analyst of the FIU to be state inspectors of financial information, and under Article 19.1 the FIU has the authority to conduct joint inspections of NBFIs, SCC Investment Fund, Securities Market Entities and Insurance Companies with the FRC. Mongolia claims that authorities could inspect without notice if any breaches or suspected offences are found.

283. *Criterion 27.3* - Article 25 of the BoM Law gives BoM supervisors the power to require preparation of explanations and information and to have questions answered on a bank's accounts and books, and to receive free of charge from a bank's customers, including individuals and business entities, banks and other financial institutions, copies of evidence and documentation that is required. While, regulations on on-site and off-site supervision of banks on AML/CFT empower supervisors to access and collect various kind of information.

284. Under Article 25 of FRC Law, the FRC has the power to request free of charge any necessary reports, explanations, and other documents from the relevant organization. Article 27 of the same

law authorizes the FRC to request in writing certain or specific types of information, financial and other documents from a license holder, and to require the financial report of the corporation, or any other entity that is under this corporation if a license holder is a member of any business corporation. Evidence shows that supervisors have powers to obtain access for supervisory purposes without taking court action.

285. *Criterion 27.4* - Under Article 25 of the BoM Law, bank supervisors have the power to impose administrative sanctions on persons or entities that violate the banking legislation including the AML/CFT Law. As identified in R.35 a range of disciplinary and financial sanctions including restrict, cease and/or suspend, all or part of banking activities and revoke banking license can be imposed on breaches of AML/CFT requirements. In addition, Under Article 28 of the BoM Law, the Governor of BoM has the power to cancel the license of any bank, which is in breach of the banking legislation or the decisions of the Bank of Mongolia.

286. Under Article 6.1.3 of the FRC Law, the FRC has the power to suspend, revoke, and terminate licenses. Under Article 25 of the same Law, the FRC has the power to impose duties to eliminate violations found during the inspection, to suspend temporary in whole or in part the activity of a license holder until the violation is fixed, to impose administrative sanctions in compliance with the relevant legislation, to submit a proposal to the Committee to revoke license if a license holder who has seriously and/or repeatedly violated the legislation. However, no administrative sanction has been imposed on FIs yet, and sanctions on AML/CFT breaches are not clearly specified according to specific laws and regulations. Under the Article 18.2 of the AML/CFT Law, supervisors of the FIU have the power to require rectification of any breaches of the AML/CFT Law by entities or to make recommendations to the competent authorities for further action including the cancellation of special licenses. Mongolia claims that under State Inspectors' Law, inspectors of the FIU have the power to impose sanctions; however, this law had not come into force by the end of the on-site visit.

Weighting and Conclusion

287. The relevant legislation allows for the BoM, FRC and FIU to supervise and conduct inspections of FI in relations to AML/CFT requirements. Minor shortcomings are from the unclear specified sanctions and lack of serious sanctions on FIs. **Recommendation 27 is rated largely compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

288. Mongolia was rated non-compliant with former R.24 in the 2007 MER. The MER concluded that the powers for the FIU to supervise and monitor AML/CFT implementation had not been extended to the DNFBPs, as AML/CFT controls had not been extended to the DNFBPs.

289. *Criterion 28.1* - Casinos are prohibited under the article 1 of the Law on Prohibition of Establishment and Operation of Casinos.

290. *Criterion 28.2* - As discussed in R.22 and R.23, the AML/CFT Law has scope deficiencies with notaries being the only DNFBP required to comply with AML/CFT requirements. Under Article 19.1 of the AML/CFT Law, the FRC and FIU are designated authorities for supervising compliance of real estate agents. While notaries are included in the AML/CFT Law as REs, there is no designated AML/CFT supervisor for this sector.

291. *Criterion 28.3* - Mongolia did not provide any system to monitor AML/CFT compliance by other categories of DNFBPs.

292. *Criterion 28.4* - According to the Article 18.2 and 18.3 of the AML/CFT Law, Mongolia FIU has the power to examine the compliance of real estate agents and notaries with the AML/CFT Law and to monitor how these sectors fulfil their obligations.

293. Article 15 of the Notary Law and Article 19 of the Lawyers Law contains limited provisions to prevent criminals from being professionally accredited.

294. As discussed in R.35, there are limited and neither proportionate nor dissuasive sanctions included in the Notary Law (Article 44), and it is unclear if the FIU would be able to apply these sanctions for breaches of the AML/CFT Law and the PMR. The obligation to freeze under the ATL and TFS Regulation, in the assessment team's view is not enforceable. The AML/CFT Law and PMR are not enforceable on real estate agents due to a lack of sanctions.

295. *Criterion 28.5* - There has been neither implementation nor supervision of DNFBPs' compliance with the AML/CFT Law, PMR, ATL or ATL Regulation.

Weighting and Conclusion

296. Major shortcomings exist for monitoring and ensuring compliance with AML/CFT requirements for DNFBPs, including the absence of a designated supervisor(s) except for the real estate sector and the absence of supervision for AML/CFT purposes to ensure implementation.

Recommendation 28 is rated non-compliant.

Recommendation 29 - Financial intelligence units

297. Mongolia was rated non-compliant with former R. 26. The 2007 MER noted that FIU had not begun to receive STRs, a lack of clarity of the FIU's authority to disseminate information to investigative agencies, and a lack of guidance to REs on identifying suspicious transactions and reporting STRs to the FIU. In Mongolia's 2011 follow-up report, former R.26 was considered to be at a level essentially equivalent to largely compliant.

298. *Criterion 29.1* - Mongolia established its FIU, on November 29, 2006 under the 2006 AML/CFT Law. This law was superseded by the 2013 AML/CFT Law, which provides for the FIU, within the structure of the BoM, under Article 16. The powers and functions of the FIU are stated in the same law and include receipt and analysis of STRs, CTRs and other reports or information and dissemination to competent LEAs upon suspicion of ML or TF.

299. *Criterion 29.2* - The FIU is empowered under AML/CFT Law to receive STRs, CTRs and other reports or information. Article 7.2 of the AML/CFT Law mandates REs to submit an STR to the FIU upon suspicion or knowledge that an asset or transaction or attempted transaction is related to ML/TF or the proceeds of crime within 24 hours. Under Article 7.1, cash and foreign transactions above 20 million MNT (~9,700 USD) are required to be submitted to the FIU by the REs within five working days. In addition, under Article 15.2 of the AML/CFT Law, GCA is required to provide consolidated cash declarations forms to the FIU monthly. To clarify these requirements for banks, Mongolia has issued the Regulation on Reporting Information to the FIU.

300. *Sub-criterion 29.3 (a)* - Article 4 of the Regulation on Reporting Information to FIU, enables the FIU to make requests of and obtain additional information from banks as needed to conduct STR

analysis. This regulation is applicable to only banks, and the AML/CFT Law does not contain a general provision allowing the FIU to obtain and use additional information from REs.

301. *Sub-criterion 29.3(b)* - Article 18.5 of the AML/CFT Law prescribes that the FIU has the power to obtain information from state registration, property registration, social insurance registration, border crossing registration, investment registration, and records of transactions made between banks from corresponding competent authorities for the purposes of properly undertaking its functions prescribed in the law. Further, the Guideline on Conducting Suspicious Transaction Analysis (Guidelines for STR Analysis) allows the FIU to collect open source information for STR analysis, and other information from either competent authorities or non-government organizations within the framework of established MoUs, legal acts or other information exchange agreements. At the ME on-site visit, the FIU had MoUs with GPA, GIA, IAAC, GCA and GPO.

302. *Criterion 29.4* - Article 18.1.1 and 18.1.2 of the AML/CFT Law provides the legal basis for the FIU to conduct analyses, of information received from RE and maintained in its database, and disseminate its analysis to LEAs. There is no explicit requirement for the FIU to conduct operational and strategic analysis. In the period under review, the FIU has conducted and disseminated its operational analysis; however, the FIU has not conducted strategic analysis. To support its operational analysis, the FIU issued Guideline for STR Analysis in 2011. The FIU has recently produced an internal guideline for conducting strategic analysis.

303. *Criterion 29.5* - Under Article 18.1.2 of the AML/CFT Law, the FIU can disseminate information and the results of its analysis spontaneously to competent LEAs. Under Article 4.5 of the Procedures for Receiving, Transferring and Analysing Financial Transaction Reports (PRTAR) the FIU can provide information, related to ML/TF to competent authorities upon their request. The Secrecy Procedure of the Financial Information Unit (FIU Secrecy Procedures) establishes SOPs to protect the secrecy of the FIU information including reporting and dissemination information to LEAs via hand delivery under Chapter 4.

304. *Sub-criterion 29.6(a)* - Article 13.2 of the AML/CFT Law prohibits the FIU from disclosing information on customer's transactions unless for authorised purposes. Chapter 2 of the Regulations on the Security of the FIU (FIU Security Regulation) contains general rules regarding the handling, storage, protection and access of FIU IT information.

305. *Sub-criterion 29.6(b)* - All staff members of the FIU are public servants. The FIU has procedures to ensure their staff have the necessary security clearance levels by requiring staff to pass security and conflict of interest clearances, police criminal record database checks, and IAAC checks before being hired. Further, Article 2.1 and 6.6 of the FIU Secrecy Procedure, all FIU staff members must understand their responsibilities in handling and disseminating sensitive and confidential information.

306. *Sub-criterion 29.6(c)* - The FIU Security Regulation provides procedures to be followed by the FIU staff members for ensuring there is limited access to its facilities and information, such as protection and security of FIU property, as well as protection and security of information technology. All FIU staff and other IT staff from BoM must follow this regulation in duties including reviewing, developing, repairing and managing the computers, devices and software that are used to store, transmit, use and organize data and information for the use of the FIU.

307. *Sub-criterion 29.7(a)* - Article 16.1 of the AML/CFT Law states that the FIU is an autonomous and independent agency with the function to receive information from REs, analyse it

and disseminate it to the competent LEAs. Under article 4.2 of the PRTAR, the FIU director approves the dissemination of information to LEAs.

308. *Sub-criterion 29.7(b)* - Under Article 18.1.2 of the AML/CFT Law, the FIU is able to disseminate information to competent law enforcement authorities and anti-terrorism agencies if sufficient grounds exist to suspect transactions found that relate to money laundering, terrorism financing, and other criminal activities. In addition, under Article 19.2.4 of the AML/CFT Law permits the FIU to monitor compliance by cooperating with and exchanging information with other competent authorities and provide assistance in investigations, prosecutions, or proceedings related to ML/TF. In addition, the FIU had MoUs with GPA, GIA, IAAC, GCA and GPO.

309. In relation to foreign counterparts, the AML/CFT Law allows the FIU to cooperate (Article 21.1) and provide information at the request of foreign institutions and agencies (Article 21.2).

310. *Sub-criterion 29.7(c)* - In accordance with the article 16.2 of the AML/CFT Law, the FIU is established within the BoM with distinct FIU functions set out in article 10, 11, and 18 and 21 of the AML/CFT Law.

311. *Sub-criterion 29.7(d)* As discussed above, under the AML/CFT Law, the FIU is established within the BoM with distinct FIU functions. The FIU's annual budget is approved by the Governor of BOM based on an NCC endorsed proposal by the Head of the FIU. The FIU is subject to BoM's administrative protocols, policies and procedures including financial reporting. While the FIU is administratively dependent on the BoM, the technical functions of the FIU are independent of the BoM with the Head of the FIU given full discretion over the expenditure of the FIU annual budget and is able to operate independently as per the AML/CFT Law.

312. *Criterion 29.8* - The FIU became of member of the Egmont Group in 2009.

Weighting and Conclusion

313. While Mongolia has established the building blocks of an FIU and the FIU is conducting operational analysis, the major shortcoming is the FIU has not conducted strategic analysis.

Recommendation 29 is rated partially compliant.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

314. In the 2007 MER, Mongolia was rated as partially compliant with former R.27. The MER noted that law enforcement authorities were not designated to investigate TF as the TF offence was not established.

315. *Criterion 30.1* - The GPA, GIA and IAAC are LEAs designated to investigate ML in line with their predicate offence jurisdiction under the CPC and Decree Number A/67 Year 2015 of the General Prosecutor Office of Mongolia. Once a criminal investigation is established, the GPO oversees the criminal investigation process and allocates ML investigations to the appropriate LEA based on Decree Number A/67 of 2016 as follows:

- *IAAC* - ML cases involving public officials are investigated by the IAAC.
- *GIA* - ML cases where the predicate offence relates to public security or border crimes are investigated by the GIA.

- GPA - ML cases involving all other predicate offences are investigated by the Anti-Money Laundering Unit of the Economic Crime Division of the State Investigation Department of the GPA.

316. Under the CPC, the GIA is the designated law enforcement authority responsible for the investigation of Mongolia's TF offence under Article 178² of the CCM.

317. *Criterion 30.2* - Under Article 193.1.2 of the CPC, the supervising prosecutor can initiate a case and transfer the inquiry or investigation to the appropriate agency upon the discovery of the signs of a crime.

318. *Criterion 30.3* - Under Article 28.2.10 of the CPC the inquiry officer or investigator have the power to identify, trace and freeze⁸⁰ and seize property. The rules for execution are under Chapter 18 of the CPC with; (i) Article 133.2 providing for an expeditious mechanism to conduct searches and seizures of property, and (ii) Article 134.1 providing for a mechanism for freezing of property if there is sufficient grounds to suspect that the property is the proceeds of crime.

319. Article 11 of the AML/CFT Law gives the Head of the FIU the power to suspend transactions, up to 3 working days (court shall extend the period if required), if there are grounds to suspect that a transaction is used for the purposes of ML/TF.

320. *Criterion 30.4* - The Border Intelligence Service is the designated competent authority, under Article 26.1 of the CPC, to carry out inquiry of border related offences in the CCM⁸¹ and can exercise the functions of inquiry officers under R.30.

321. *Criterion 30.5* - The IAAC is the designated inquiry officer and investigator of ML cases involving public officials. IAAC inquiry officer and investigators can exercise the functions of any other inquiry officers and investigator as stated above. Article 24 of the Anti-corruption Law gives the rights to the officers of the IAAC to inspect and temporarily freeze, without special permit, bank accounts and transactions of citizens, business entities or organisations.

Weighting and Conclusion

322. **Recommendation 30 is rated compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

323. Mongolia was rated as compliant in the 2007 MER with former R.28.

324. *Criterion 31.1* - The CPC provides for the investigation of ML/TF and predicate crimes by LEAs. Under Article 28 of the CPC inquiry officers and investigators have the power to take all necessary measures to ascertain the commission of a crime and identify the offender through:

325. *Collection of evidence* (Article 28.2.11 of CPC): Under Article 79 of the CPC evidence includes; (i) documents and facts with Article 28 with compelling all organisation, officials and citizens to make documents available, and (ii) testimonies of a witness.

326. *Search and seizure* (Article 28.2.10 of CPC): Chapter 18 provides the general rules for execution of search and seizures with Article 135 specifically applying to search of persons.

⁸⁰ The translation of the CPC provided to the assessment team uses the term "sealing" or "frozen" interchangeably

⁸¹ CCM; Articles 89 (Illegal crossing of border of Mongolia), 90 (Violation of the State border regime), 175 (Illegal passage of items through border of Mongolia)

327. In addition, Article 7.2 of the Banking Law provides for the disclosure of any information at request of LEAs through the GPO.

328. *Criterion 31.2* - Under oversight of the GPO (Article 23.3 of the Law of Mongolia on Intelligence Operation), Mongolia LEAs under Article 9 of Law of Mongolia on Intelligence Operation, have the right to conduct a wide array of special investigative techniques in terms that satisfy this criterion.

329. *Criterion 31.3* - Article 10.1 of AML/CFT Law states that if there are grounds to suspect that an account of a customer is used for ML or TF purposes, the FIU may monitor that account. In terms of the Article 7.2.3 of the Banking Law, banks can provide information to competent authorities without prior notice to the owner. Further, in any instances, no law requires the LEAs to inform owners of the accounts or assets prior to any actions taken during an investigation.

330. *Criterion 31.4* - GPA may request the FIU to provide the bank transactions of the particular suspect's account. Head of Criminal Police Agency and Head of FIU have signed a MoU to share and exchange information between them. During the investigation of corruption and related ML offences, IAAC is able to get necessary information from the FIU in accordance with the MoU for cooperation and exchange of information between the FIU and IAAC.

Weighting and Conclusion

331. **Recommendation 31 is rated compliant.**

Recommendation 32 – Cash Couriers

332. In its 2007 MER, Mongolia was rated partially compliant with former SR.IX. The deficiencies identified were related to inadequate coverage of bearer negotiable instruments (BNI) in the declaration system; (i) no mechanism to ascertain origin of currency and its intended use, (ii) no procedures to ensure that the FIU was notified of suspicious cross-border transport of currency, and (iii) inadequate sanctions for false declarations.

333. *Criterion 32.1* - Mongolia has a mixed declaration and disclosure system, as follows:

334. *Declaration system* - under Article 15 of the AML/CFT Law, travellers carrying currency, BNIs or e-money above the threshold of 15 million MNT (~7,500 USD) or equivalent foreign currency shall declare faithfully in a declaration form.

335. *Disclosure system* - Article 6.4.5 of the Customs Procedure of Transportation Passengers' Personal Luggage Regulation (Customs Regulation) pursuant to Article 231 of the Customs Law provides a disclosure system for all travellers (any person entering or exiting Mongolia, Article 228 of the Customs Law) in relation to cash or cheques of 5 million MNT (~2,500 USD) or above and equivalent foreign currency. The disclosure system does not cover BNIs.

336. Both systems are implemented at Mongolia's only international airport (Chinggis Khaan International Airport) in Ulaanbaatar. However, at the time of the ME on-site visits, information signs on the disclosure system at Chinggis Khaan International Airport were only in Mongolian. The assessment team assumes that the disclosure system is implemented in Mongolia's other border crossings. Under Article 24.1.4 of the Law of Mongolia on Post, both foreign and local currencies are prohibited to be sent by cargo and post; however, a copy of the law was not provided to the assessment team.

337. *Criterion 32.2* - Article 15.1 of the AML/CFT Law requires travellers carrying more than 15 million MNT (~7,500 USD) or equivalent amount of foreign currency, BNI or e-money across the Mongolian border to declare faithfully in a declaration form. The disclosure system does not cover BNIs.

338. *Criterion 32.3* - Under the Customs Law, Customs officials may undertake a number of measures to ensure enforcement and compliance with customs legislation (Customs Control) including requiring travellers to make a verbal declaration (Article 244 of the Customs Law) in relation to Mongolia's disclosure system. There is no explicit requirement for the declaration to be truthful. The disclosure system does not cover BNIs.

339. *Criterion 32.4* - Under Article 243 of the Customs Law, Customs officials may request additional information and documents for the purpose of verifying information in customs declarations and other documents.

340. *Criterion 32.5* - Travellers that make a false disclosure or declaration are subject to; (i) criminal sanctions of smuggling (Offence under Article 175 of the CCM), which at the minimum incurs a fine of 100 to 250 the minimum salary and incarceration of three to six months, and (ii) confiscation (Article 295 of the Customs Law) of goods (or fine of equal value) and a fine for natural persons of 10,000 to 30,000 MNT (~4.00 USD to ~12.30 USD) or for legal persons of 50,000 – 100,000 MNT (~20.00 USD to ~41.00 USD). Persons who make a false declaration are subject to both criminal sanctions (Smuggling) and fines; these sanctions are not proportionate or dissuasive.

341. *Criterion 32.6* - Article 15.2 of the AML/CFT Law requires Mongolian Customs to consolidate cash declarations and transmit these to the FIU every month. According to the revised Regulation on Cooperation of General Customs Agency and BoM, foreign trade and currency flow information is exchanged and information on cash transportation through the border is submitted to the FIU on a daily basis including cases of suspicious cross-border transportation of cash that are immediately sent to the FIU. However, this regulation was not provided to the assessment team.

342. *Criterion 32.7* - Mongolia informed the assessment team that it has in place a Border Unified Management Programme. This program includes a task force for cooperation involving border control and law enforcement agencies.

343. There is a MoU between the GCA, GPA, GIA and the Court Decision Implementation Department wherein these authorities have legal responsibility to cooperate and work with the GCA.

344. *Criterion 32.8* - Article 253 of the Customs Law, contains a broad provision for detaining goods including local and foreign currency and securities for purposes that can include suspicion of ML/TF or false disclosure. It is unclear if Customs can detain falsely declared currency or BNI.

345. *Criterion 32.9* - Article 273.1.4 of the Customs Law allows for international agreements that Mongolia can enter into related to customs matters, which ensures the commitment of Mongolia to meet any requests received regarding its disclosure/declaration system.

346. *Criterion 32.10* - The Customs Law includes a provision requiring Customs officials to keep organisational secrets (Article 276.2.1) and not to abuse position when conducting Customs control measures and customs clearance.

347. *Criterion 32.11* - Confiscation of local or foreign currency and securities under Mongolia's disclosure system is under Article 295 of the Customs Law.

Weighting and Conclusion

348. Mongolia has a mixed declaration and disclosure system with the declaration system covering local and foreign currency and BNIs but only implemented in Mongolia's single international airport. Mongolia's disclosure system is implemented in all other border crossings but it does not cover BNI. The Customs Law generally provides for the requirements of R.32. **Recommendation 32 is rated partially compliant.**

Recommendation 33 - Statistics

349. In the 2007 MER of Mongolia, Mongolia was rated non-compliant with former R. 32. The MER noted that there are no comprehensive statistics on effectiveness or efficiency due to recent implementation as well as suspicious transaction reports, cash transaction reports, and cross-border declarations which were not received or disseminated as yet.

350. *Sub-criterion 33.1(a)* - In accordance with Decree of Governor of the Bank of Mongolia No. 364 concerning Procedure on Producing Statistical Reports and Statements of FIU of June 2011, the FIU maintains statistics on STRs, CTRs, FSTRs and Customs Declaration received, and the number of inquiries and the disseminations to LEAs. According to Article 14.4 of the PMR, these statistics are published on the FIU website quarterly.

351. *Sub-criteria 33.1 (b)-(c)* - Mongolia's competent authorities involved in ML/TF maintain statistics, as follows:

- While the GPO informed the assessment team that it uses a case management system that covers the full cycle of the criminal cases, neither enabling legislation or comprehensive statistics was provided to the assessment team.
- While the GPA, IAAC and GIA, as LEAs for investigation on ML/TF and associated predicate crimes, are required, under Joint Order No. 43/182/223/121 (2010) regarding the Procedure on Registry Database Offences, Regulations on Registry of Crime Data (No.701) and the Procedure of Registry on Research and Monitoring of Data (No. 703), to maintain crime statistics including type of crime, investigation details, conviction details, damages, property frozen, seized and confiscated, and information of parties to the crime, enabling legislation was not provided to the assessment team and neither were comprehensive statistics provided.
- The FIU in accordance with the article 3.1.6 of the Procedure on Producing Statistical Reports and Statements of FIU maintains statistics on transactions frozen.

352. *Sub-criteria 33.1(d)* - Statistics as they relate to MLA and other international requests for cooperation are adequate. However, only an overall estimate of timeliness of responses was provided and not a case-by-case time indication.

Weighting and Conclusion

353. Although Mongolia maintains some statistics, particularly the FIU, Mongolia does not maintain comprehensive statistics relevant to effectiveness and efficiency of its AML/CFT system and no enabling legislation is in place for all competent authorities. **Recommendation 33 is rated partially compliant.**

Recommendation 34 – Guidance and feedback

354. Mongolia was rated non-compliant with former R. 25. The 2007 MER concluded that while BoM had issued some guidelines on AML these were not enforceable and no guidance or appropriate feedback has been provided to REs by either the BoM or the FRC on new AML/CFT obligations.

355. *Criterion 34.1* - Under Articles 19.2.3 of the AML/CFT Law, the FIU, BoM and the FRC have the authority to issue instructions, regulations, guidelines, and recommendations to REs for compliance with AML/CFT obligations. Under this provision, Mongolia has issued the following resources to assist REs meet their AML/CFT Obligations:

- PMR.
- Examples of Suspicious Transactions.
- Guidance for Conducting and Filling the STR.
- Guidance for Conducting Strategic Analysis.
- Guidance on Transparency and Beneficial Ownership.
- Guidance on Politically Exposed Persons.
- Regulation on Submitting Information to FIU for the Banks.
- Guidance on Know Your Customer Procedure and Reporting of Cash and Suspicious Transactions.
- Guidance on the On-Site Assessment and Assessment of Savings and Credit Cooperation's Activities.
- Guideline on the Prepare of Documents and Filling of Application Form of Special License, License for Activities of Non-bank Financial Institution.

356. No guidance has been issued to DNFBPs. However, real estate agents; notaries; and accountants and auditors have attended FIU and the BoM workshops and training with other REs including banks; NBFIs; insurance companies; licensed securities market entities; and SCC.

Weighting and Conclusion

357. Mongolia has provided training to all REs; however, guidance has only been provided to non-DNFBP REs. **Recommendation 34 is rated partially compliant.**

Recommendation 35 – Sanctions

358. Mongolia was rated partly compliant with R.17 in its 2007 MER. It was found that the FIU had limited power to apply administrative sanctions to those REs, which had opened an anonymous account, conducted a transaction with insufficient customer information, etc., and the FRC had strong sanctions, but their application was weak and they were unable to sanction unlicensed entities.

359. *Criterion 35.1* - Criminal sanctions in Mongolia are only available in the CCM, which does not include provisions to criminalize breaches of the AML/CFT Law, ATL or PMR. For example, wilful

failure to freeze funds or other assets of designated persons or entities or wilful failure to report an STR or 'tipping off' in relation to ML or TF.

360. The CCM does however include sanctions; (i) for violations of banking legislation (Article 156 of the CCM) with the offence punishable by sanctions ranging from a fine equal to 100 to 200 amounts of minimum salary or imprisonment for a term of up to 2 years to a fine of 51 to 500 amounts of minimum salary with confiscation of property or imprisonment for a term of more than 5 to eight years due to the severity of the crime, and (ii) violation of the securities legislation (Article 158 of the CCM) with the offence punishable by sanctions ranging from a fine equal to 151 to 250 amounts of minimum salary with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to three years, incarceration for a term of more than three to six months or imprisonment for a term of up to two years to imprisonment for a term of up to five years with deprivation of the right to hold specified positions or engage in specified business for a term of five years due to the severity of the crime.

361. There are no sanctions for non-compliance with R.6 with the team concluding that the obligation to freeze, prohibiting making funds available, and requirement for FI and DNFBPS to report assets frozen or actions taken, are not enforceable. As discussed in R.6; (i) ATL or TFS Regulation do not contain sanctions for the relevant sections of the legislation, (ii) the ATL and TFS Regulation contain no cross-reference to indirect/broader sanctions for non-compliance, and (iii) Mongolia provided no evidence that indirect/broader sanctions could be applied to legal or natural persons.

362. Sanctions for R.8 are included under the NPO Law. If breaches of the NPO Law does not constitute a criminal offense, Khurals (Governor and elected officials for administrative functions of provinces) may impose a range of sanctions for; (i) illegal distribution of income - fine of 40,000-60,000 MNT (~16.00 USD to ~25.00 USD) for the executive 100,000-150,000 MNT (~41.00 USD to ~61.00 USD) for the organization, (ii) personal gain from financial or economic activities of an NPO - fine 40,000-60,000 MNT (~16.00 USD to ~25.00 USD) shall be imposed on the guilty executive and the earned income shall be confiscated, (iii) political contributions - fine of 50,000-60,000 MNT for the executive (~20.00 USD to ~25.00 USD) and a fine of 200,000-250,000 MNT (~82.00 USD to ~102.00 USD) on the organization, and (iv) failure to file an annual report - fine of 10,000-20,000 MNT (~4.00 USD to ~8.00 USD) for the executive. These sanctions are considered not proportionate and dissuasive.

363. Where available, sanctions for non-compliance with R.9 to R.23 are included in the primary legislation for FIs and DNFBPs and can be imposed by the supervisor.

364. *BoM* - Under Article 46 of the Banking Law, the BoM can impose proportionate but not dissuasive administrative sanctions on banks that breach laws and regulations and/or decisions made by the BoM, which could include the AML/CFT Law and PMR. Depending on the nature of the breach, sanctions may include; warnings; remedial actions; suspension or bind the Board of Directors to dismiss the Executive Director; cease the salaries, bonuses and compensations to the Board of Directors, executive management, and other competent officials; restrict, cease and/or suspend all or part of banking activities; appoint a controller; revoke the banking license; or impose administrative penalties.

365. The administrative penalty applicable to AML/CFT breaches is a fine of 5-15 times the minimum wage (~USD625 to USD1,875) for employees and bank officials and fine of 50-100 times (~USD6,250 to ~USD12,500) the minimum wage for the bank and their affiliates and subsidiaries

(Article 68.1.5 of the Banking Law). Further, a legal entity that violates the banking legislation otherwise except those specified in Article 68.1.1 until 68.1.12 of Banking Law and fails to comply with requirements imposed by the BOM and its supervisors shall be subject to a fine equivalent to 50-250 times the minimum wage and a bank employee and official a fine 5-25 times the minimum wage.

366. *FRC* - The FRC has limited powers to impose administrative sanctions on FIs it licences and supervises, which overall are not proportionate or dissuasive across these FIs, as follows:

- For NBFIs, under Article 19 of the NBF Activities Law, if a NBFI breaches NBFI legislation, which could include the AML/CFT Law and PMR, the FRC can issue an order to remedy the breach; suspend the license; dismiss the executive director or hold him/her liable; revoke the license; and administrative penalties. Administrative penalties applicable to AML/CFT breaches (Article 20.1.3 of the NBF Activities Law) is a fine of 5-15 times the minimum wage (~USD625 to 1,875) for employees and NBFI officials or fine of 20-40 times (~USD2,500 to ~USD5,000) the minimum wage for the NBFI.
- For Insurance Companies, under Article 67.1 of the Insurance Law, if an insurance company breaches the Insurance Law, insurance regulations or other relevant laws, which could include the AML/CFT Law and PMR, the FRC can suspend licenses; revoke licenses; issue a directive; appoint an examiner or advisor; and impose an administrative penalty. The administrative penalty applicable to AML/CFT breaches (Article 83.1.2 of the Insurance Law) is a fine MNT50,000 (~USD20) to MNT100,000 (~USD40) for employees and a fine of MNT500,000 (~USD200) to MNT1,000,000 (~USD400) for the insurance company.
- For Investment Funds, under Article 56.1 of the Investment Fund Law, if an investment company breaches investment fund legislation or regulations by the FRC, which could include the AML/CFT Law and PMR, the FRC can issue remedial orders. These are the only sanctions applicable to AML/CFT obligations.
- For Security Market Entities, under Article 29 and 30 of the Security Market Law, if a security market entity breaches security market legislation or regulations by the FRC, which could include the AML/CFT Law and PMR, the FRC can suspend a licence and if a licensee fails to remedy actions, the FRC can revoke the license. These are the only sanctions applicable to AML/CFT obligations.
- For SCCs, under Article 56 of the SCC Law, if a credit cooperative breaches laws and legal acts, which could include the AML/CFT Law and PMR, the FRC can impose remedial actions; and suspend and terminate the license. Under Article 57.1.4 the FRC can also impose a fine if the SCC disobeys obligations prescribed by the FRC. Fines for the legal entity is 3 to 5 times the minimum wage (~USD375 to ~USD625), and the fine for the natural person in charge is 3 times the minimum wage (~USD375).

367. As discussed in R.22 Mongolia has scope deficiencies with regard to DNFBPs with real estate agents and notaries the only DNFBPs included in Mongolia's AML/CFT regime. However, the AML/CFT Law and PMR are not enforceable on real estate agents due to a lack of sanctions. For notaries, available sanctions are not proportionate or dissuasive.

368. *Criterion 35.2* - Mongolia can impose some sanctions on directors of banks and NBFIs as outlined above. For all other REs and DNFBPs, sanctions applicable to employees, as identified

above, includes senior management. Nevertheless, these sanctions are not proportionate and dissuasive.

Weighting and Conclusion

369. While some sanctions have been introduced in Mongolia, they are not extensive, dissuasive or proportionate. Criminal sanctions in Mongolia are only available in the CCM, which does not include provisions to criminalize breaches of the AML/CFT Law, ATL or PMR. Overall administrative sanctions are not proportionate or dissuasive for FIs. There are no sanctions for non-compliance with R.6. The AML/CFT Law has scope deficiencies with notaries being the only DNFBP required to comply with AML/CFT requirements. Sanctions for both notaries and NPOs are not proportionate or dissuasive. **Recommendation 35 is rated partially compliant.**

Recommendation 36 – International instruments

370. Mongolia was rated partially compliant with former R.35 and non-compliant with former SR.I in its 2007 MER. The report highlighted that Mongolia; (i) was not yet party to or had not implemented the elements of the Palermo Convention, (ii) had not implemented all terms of the Vienna Convention and the Terrorist Financing Convention, and (iii) not fully implemented UNSCR1267 and 1373. Mongolia's 2014 follow-up report concluded that with recent amendments to the CCM and CPC as well as the issuing of the Regulation 348 addressing the material regime for implementation of SR III, R.35 and SR.V could then be considered to be at a level essentially equivalent to largely compliant.

371. *Criterion 36.1* - Mongolia has ratified all required UN Conventions, as follows:

- Vienna Convention – ratified in 2001.
- Palermo Convention – ratified in 2008.
- UN convention against corruption – ratified in 2003.
- Terrorist Financing convention – ratified in 2003.

372. *Criterion 36.2* - As per the Constitution of Mongolia, international treaties, compatible with the Constitution of Mongolia, to which Mongolia is a party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

Weighting and Conclusion

373. **Recommendation 36 is rated compliant.**

Recommendation 37 - Mutual legal assistance

374. Mongolia was rated largely compliant with former R.36 and partially compliant with former SR.V in its 2007 MER. For former R.36, the report highlighted that Mongolia was unable to provide statistics to show effectiveness. For SR.V, the report highlighted that the absence of a TF offence could limit the possibility of mutual legal assistance related to TF. Mongolia's 2014 follow-up report concluded that with recent amendments to the CCM and CPC as well as the issuing of the Regulation 348 addressing the material regime for implementation of SR III, SR.V could then be considered to be at a level essentially equivalent to largely compliant.

375. *Criterion 37.1* - Chapter 45 of the CPC and Chapter 16 of the Prosecutors Guidance for Complying with the CPC sets out general rules and procedures for Mongolia to provide a wide range of MLA in relation to ML/TF and predicate crimes. Mongolia can also provide MLA on the principle of reciprocity.

376. Mongolia has 28 MLAT with 20 jurisdictions (Bulgaria, Canada, China, Cuba, Czech Republic, DPRK, India, France, Hong Kong, Hungary, Kazakhstan, Kyrgyzstan, Poland, Romania, Russian Federation, Slovakia, South Korea, Turkey, Ukraine, Vietnam,), 15 Extradition Agreements with 15 jurisdictions (five of which are separate agreements while extradition provisions of others are included in general MLATs, for example, China, India, Hong Kong, Kazakhstan and South Korea) and nine Agreements on Transfer of Sentenced Persons (three of which are separate agreements while provisions of other are included in general MLATs, for example, Canada, China and South Korea).

377. *Criterion 37.2* - According to the Article 56 of Constitution of Mongolia, Article 2.1 of the Law on the Prosecutor Office and Chapter 16.2.3 of the Prosecutors Guidance for Complying with the CPC (in case of absence of MLAT or other treaty) the GPO is the central authority for MLA in criminal matters. Moreover, according to Article 398 of CPC, MLA the authorised authority defined in the treaty shall transmit the requests.

378. *Criterion 37.3* - The CPC or other relevant legislation does not place unreasonable or unduly restrictive conditions of MLA. The CPC does however, under Article 401.5, require that the provision of MLA does not contradict the sovereignty and security of Mongolia or to violate Mongolian legislation.

379. *Criterion 37.4* - Besides the reason for refusal identified in c.37.3, if the MLA request contains incomplete information then the authorities can send it back for further clarification but there is no prior history of MLA being refused on the ground of involvement of fiscal matters or on the ground of secrecy or confidentiality requirements.

380. *Criterion 37.5* - Confidentiality of MLA requests is maintained under the CPC. Article 401.1 of the CPC requires that the execution of MLA is conducted in accordance with the CPC. Under Article 189 of CPC, data of an inquiry, investigation may be disclosed to the public only with the permission of a prosecutor⁸² and only to the extent to which he/she deems it possible. In addition, when necessary an inquiry officer, investigator and prosecutor shall warn the witnesses, victim, civil plaintiff, civil defendant, defense counsel, expert, translator, interpreter, witnesses of investigative actions, and other persons presented at investigative actions of the impermissibility of disclosure of the data of the inquiry or investigation.

381. *Criterion 37.6* - Mongolia does not require dual criminality in order to execute MLA in relation to ML/TF and predicates.

382. *Criterion 37.7* - The principal of dual criminality is regulated under the MLA agreements with an individual jurisdiction. Mongolia indicated that four countries that they have agreements with require dual criminality (South Korea, Kazakhstan, China and Slovakia)

383. *Criterion 37.8* - Under Article 401 of the CPC, execution of the MLA shall be carried out by an inquiry officer, investigator, prosecutor and court according to normal rules provided by the CPC including those powers required under R.31.

⁸² The CPC uses the term procurator. Consistent with Mongolia's 2007 MER, the assessment has considered the terms procurator and prosecutor interchangeably.

Weighting and Conclusion

384. **Recommendation 37 is rated compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

385. Mongolia was rated largely compliant with R.38 in its 2007 MER. The report highlighted that Mongolia had not considered establishing an asset forfeiture fund or sharing of confiscated assets with requesting jurisdictions.

386. *Criterion 38.1* - As discussed in R.4, Mongolia has a wide range of powers to execute freezing and confiscation under Chapter Eight of the CPC. Mongolia can take actions in response to requests by foreign jurisdictions based on MLA agreements and Chapter 41 of CPC and Chapter 16 of Prosecutors Guidance for Complying with the CPC.

387. *Criterion 38.2* - Article 49 of CCM provide for confiscation of property only on conviction (official court order). Non-convictional confiscation is not possible in Mongolia due to its inconsistency with the fundamental principles of domestic law (Article 5.2 and 5.3 of Constitution of Mongolia)

388. *Criterion 38.3* - As discussed in c.4.4, Mongolia has only a basic system of managing seized property.

389. *Criterion 38.4* - While sharing of confiscated assets is not prohibited in Mongolia, there is no clear mechanism on how it is executed. To date Mongolia has repatriated assets in two cases.

Weighting and Conclusion

390. While Mongolia has a sound foundation for freezing and confiscation in relation to MLA, minor shortcomings include no clear mechanism/system for managing, co-ordinating and sharing seized property. **Recommendation 38 is rated largely compliant.**

Recommendation 39 – Extradition

391. Mongolia was rated largely compliant with former R.39 in its 2007 MER. The report highlighted that effectiveness of execution of extradition could not be established.

392. *Criterion 39.1* - Extradition is provided for under Chapter 46 and 47 of CPC with ML and TF being extraditable offences in Mongolia. Chapter 16 of the Prosecutors Guidance for Complying with the CPC sets out a clear process for the proper execution of extradition requests.

393. Article 406 of CPC provides grounds for refusal of extradition in the following circumstances, which may affect execution of an extradition request:

- if the criminal has been awarded asylum in Mongolia.
- if the offender has already served the sentence, or the criminal liability has been previously relieved /acquitted.
- if the statute of limitation for the particular crime has been expired according to legislation of Mongolia or there are circumstances based on other grounds excluding initiating of criminal case or sentencing.

394. According to Chapter 16.5.10 of the Prosecutors Guidance for Complying with the CPC if the extradited person is not received by the requested or requesting state within 30 days after the state is notified of transfer, he/she shall be released under the prosecutor's resolution.

395. In addition, extradition with specific jurisdictions is regulated by an extradition treaty (Mongolia has 15 extradition treaties) but it also can occur on the basis of individual bilateral and multilateral agreements (Article 405.1 of CPC).

396. *Criterion 39.2* - Mongolia does not extradite its own citizens (see Article 15.2 of the Constitution of Mongolia). Article 403 of CPC provides grounds to initiate criminal proceeding, at the request of a foreign jurisdiction, against Mongolian citizens who has committed a crime in a foreign jurisdiction.

397. *Criterion 39.3* - Mongolia requires dual criminality for the extraditable offence. To satisfy this criterion the underlying offence conducted should be a crime in Mongolia and in the other country.

398. *Criterion 39.4* - According to Chapter 16.5 of the Prosecutors Guidance for Complying with the CPC sets out the general procedure to handle extradition requests. There is no established mechanism for simplified extradition but GPO can make a decision on extradition on a case-by-case basis without a Mongolian court decision.

Weighting and Conclusion

399. Mongolia has sound extradition procedures and legislation. A minor shortcoming occurs as Article 406 of the CPC provides grounds for extradition refusal which may affect Mongolia fulfilling extradition requests on limited occasions. There is also no established mechanism for simplified extradition. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other forms of international cooperation

400. Mongolia was rated partially compliant with former R.40 in its 2007 MER. The report highlighted that there were no established controls and safeguards to ensure information received by competent authorities was used in an authorised manner and statistics on mutual cooperation were not available. Mongolia's 2012 follow-up report highlighted that Mongolia has established controls and safeguards to ensure that information received by competent authorities was used only in an authorised manner which brought compliance with R.40 to a level essentially equivalent to largely compliant.

401. *Criterion 40.1* - Competent authorities such as GIA, GPA, GCA, GPO, IAAC, FIU, FRC and BoM are able to cooperate with foreign counterparts in relation to ML, TF and associated predicate offences. The exchange of information can be made both spontaneously and upon request.

402. *Criterion 40.2* - LEAs involved in the inquiry, investigation and prosecution of ML/TF and predicate crime offences, have the legal basis for providing co-operation under Chapter 45 of the CPC and Chapter 16 of the Prosecutors Guidance for Complying with the CPC. While all information exchange must comply with information safeguards in the CPC, there are no clear information safeguard processes for individual LEAs and there is no clear process for prioritisation or timely execution of requests.

403. *FIU* - Under Article 18.1.1 and Article 21 of the AML/CFT Law, the FIU has an adequate legal basis for international cooperation. These articles authorize the FIU to cooperate with foreign and international organizations with similar functions and activities allowing the exchange of information with foreign counterpart FIUs and other organisations. The FIU has internal guidelines that cover the protection of information, which are applicable to the exchange of information with foreign counterparts.

404. *Supervisors* - Under Article 33 of the Central Bank Law, the BoM, as designated AML/CFT supervisor of banks, has the lawful basis for providing cooperation - BoM has entered into nine MOUs with foreign counterparts, which would facilitate the transmission and execution of requests. Under Article 16.1.1 of Law on the Legal Status of the FRC, the FRC, as designated AML/CFT supervisor for the non-bank sector has the lawful basis for providing cooperation - FRC has six MOUs with foreign counterparts, which would facilitate the transmission and execution of requests. The Central Bank Law and Legal Status of the FRC both include general information safeguards, which covers any information received. However, the BoM and FRC do not have a clear process for the prioritisation and timely execution of requests and it is unclear if they are authorised to use the most efficient means.

405. *Criterion 40.3* - While there is no requirement for competent authorities to enter bilateral and multilateral agreements; various competent authorities have entered into MOUs with foreign jurisdictions to facilitate sharing of information. The GPO has entered into seven MOUs with counterparts including Turkey, Thailand, Kyrgyz Republic, Uzbekistan, Russia, Austria, and Vietnam. The FIU has 18 MOUs with foreign jurisdictions including key regional partners. The GPA has a number of MOUs/cooperation agreements with regional counterparts including Russia, China and Korea. The General Customs Agency has 16 cooperation and MLA agreements with foreign counterparts including key regional partners of Russia and China. As highlighted in Criterion 40.2, supervisors have entered into 15 MOUs. However, it is unclear if these MOUs were negotiated in a timely manner.

406. In addition, as discussed under c.37.1 Mongolia has 28 MLAT with 20 jurisdictions and 15 Extradition Agreements with 15 jurisdictions.

407. *Criterion 40.4* - While feedback can be provided on a case-by-case basis when requested by foreign competent authorities who have assisted authorities in Mongolia, apart from the very basic statistics provided by the FIU (see c.40.10), Mongolia provided no information on the number of occasions other competent authorities have given feedback to their counterparts.

408. *Criterion 40.5* - The CPC and related procedures and guidance, the AML/CFT Law, Central Bank Law, and the Law on the Legal Status of the FRC do not place unreasonable or restrictive conditions on the exchange of information or assistance. Secrecy provisions do not hinder to exchange of information with foreign authorities by LEAs, the FIU and supervisors as the relevant legislation contains sufficient exceptions to enable the cooperation between the relevant authorities and their foreign counterparts.

409. *Criterion 40.6-7* - Mongolia has some controls over the use of information as outlined in the GPO's guidelines on MLA and in the CPC as part of an inquiry, investigation and prosecution of ML/TF and predicate crimes. The FIU has internal controls and safeguards on FIU information which includes information exchanged with foreign counterparts. While primary legislation of the BoM or FRC does not explicitly includes controls or safeguards relating to foreign information exchange, the

Central Bank Law, and the Law on the Legal Status of the FRC do contain general provisions covering the use of official information.

410. *Criterion 40.8* - The CPC provides for exchange on information with foreign counterparts at the inquiry stage. The FIU also conducts inquiries on behalf of foreign counterparts. While primary legislation of the BoM or FRC does not explicitly cover conducting inquiries on behalf of foreign counterparts, there is a general provision for foreign cooperation in both the Central Bank Law and Law on the Legal Status of the FRC, and supervisors can make inquiries on behalf of their foreign counterparts if this is stated in their MOUs.

Exchange of Information between FIUs

411. *Criterion 40.9* - Mongolian FIU has an adequate legal basis for international cooperation on issues related to ML, associated predicate offences and TF under Article 18.1.1 and Article 21 of the AML/CFT Law. These articles authorize the FIU to cooperate with foreign and international organizations with similar functions and activities allowing the exchange of information with foreign counterpart FIUs and other organisations. The FIU has 18 MOUs with foreign jurisdictions including key regional partners.

412. *Criterion 40.10* - Article 18.1.1 and Article 21 of the AML/CFT Law allow for the FIU to provide feedback. However, only limited data was provided to the assessment team: In 2016, the FIU provided feedback on eight occasions, four occasions in 2015 and two occasions in 2014.

413. *Criterion 40.11* - Articles 21.1 and 21.2 of the AML/CFT Law provide broad powers for the FIU to exchange all information required to be accessible directly or indirectly by the FIU and all other information, which the FIU has the power to obtain.

414. Under Article 21.2, the FIU can provide the required information at the request of foreign and international organizations with similar functions. In this regard, information obtained from REs as well as domestic bodies stated in Article 18.5 of the AML/CFT Law, such as state registration, property registration, social insurance registration, border crossing registration, investment registration and records of transactions between banks from competent authorities, can be exchanged with foreign FIUs.

Exchange of information between supervisors

415. *Criterion 40.12* - BoM is responsible for AML/CFT supervision of banks and the FRC and the FIU is responsible for AML/CFT supervision of all non-bank FIs. Under Article 33 of the Central Bank Law, the BoM has the lawful basis for providing cooperation - BoM has entered into nine MOUs with foreign counterparts, which would facilitate the transmission and execution of requests. Under Article 16.1.1 of Law on the Legal Status of the FRC, the FRC as designated AML/CFT supervisor for the non-bank sector has the lawful basis for providing cooperation - FRC has six MOUs with foreign counterparts, which would facilitate the transmission and execution of requests. However, it is unclear if all MOUs include provisions for the exchange information for AML/CFT purposes (some MOUs only available in Mongolian). As discussed in c.40.9, the FIU, in its capacity as supervisor, has adequate legal basis for international cooperation.

416. *Criterion 40.13* - While primary legislation of the BoM or FRC does not explicitly cover supervisors exchange of all information available to them, there is a general provision for foreign cooperation in both the Central Bank Law and Law on the Legal Status of the FRC, and based on review of a number of MOUs (all other MOUs are only available in Mongolian), supervisors are able

to exchange information, which is available to them domestically with their foreign counterparts. As discussed in c.40.11 the FIU, in its capacity as supervisor, has broad powers to exchange domestic information available to them.

417. *Criterion 40.14* - While primary legislation of the BoM or FRC does not explicitly cover supervisors exchange of regulatory, prudential or AML/CFT information, there is a general provision for foreign cooperation in both the Central Bank Law and Law on the Legal Status of the FRC, and based on review of a number of MOUs (all other MOUs are only available in Mongolian) supervisors are able to exchange regulatory, prudential and AML/CFT information with their foreign counterparts. As discussed in c.40.11 the FIU, in its capacity as supervisor, has an adequate legal basis for international cooperation.

418. *Criterion 40.15* - While primary legislation of the BoM or FRC does not explicitly cover conducting inquiries on behalf of foreign counterparts, there is a general provision for foreign cooperation in both the Central Bank Law and Law on the Legal Status of the FRC, and based on review of a number of MOUs (all other MOUs are only available in Mongolian) supervisors can make inquiries on behalf of their foreign counterparts. The FRC has conducted inquiries on behalf of two foreign counterparts.

419. *Criterion 40.16* - While primary legislation of the BoM or FRC does not explicitly cover this criterion, the Central Bank Law and Law on the Legal Status of the FRC provide general provisions on the use of official information, and terms and conditions on how shared information is to be used and relating to dissemination to third parties is stated in MOUs.

Exchange of information between LEAs

420. *Criterion 40.17* - Chapter 45 of the CPC allows for the exchange of domestically available information with foreign counterparts in relation to ML/TF and predicate crimes. Furthermore, GPO, GPA, GIA, IAAC and Customs have MOUs with key regional partners that allow for exchange of domestically available information.

421. *Criterion 40.18* - Under article 401 of the CPC, execution of the MLA shall be carried out by an inquiry officer, investigator, procurator and court according to normal rules provided by the CPC including those powers required under R.31.

422. *Criterion 40.19* - Chapter 45 of the CPC allows for LEAs to exchange information and cooperate with foreign counterparts with Article 401.3 providing for foreign counterparts to participate in the implementation of an MLA request. In addition, the CPC allows for foreign counterparts to act as experts to in criminal proceedings. Mongolia has undertaken joint investigations with foreign counterparts.

Exchange of Information between non-counterparts

423. *Criterion 40.20* - The FIU can share information with non-counterparts pursuant to Article 21.1 of the AML/CFT law, which provides that the FIU can cooperate with foreign institutions and international organisations. Taken contextually this includes institutions operating as an FIU or AML/CFT supervisor and does not mean “any institutions” of a foreign state.

424. Mongolia has not provided information to allow the assessment team to conclude that any other competent authorities are able to exchange information directly with non-counterparts.

Weighting and Conclusion

425. LEAs, the FIU and supervisors have a broad legal basis for cooperation with foreign counterparts including the signing of MOUs with key regional partners. However, it is unclear if these MOU were negotiated in a timely manner, and primary legislation of supervisors, excluding the FIU, contains general provisions covering information exchange with foreign counterparts – BoM and the FRC have a total of 15 MOUs with foreign counterparts. **Recommendation 40 is rated largely compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	- The NRA is focused on the identification of ML threats. There is limited focus on analysis and understanding with ML threats, ML consequences and ML vulnerabilities not incorporated into a comprehensive assessment of Mongolia's ML risk. - The NRA includes very limited identification and analysis of Mongolia's TF threats and vulnerabilities. - Mongolian authorities have not yet implemented a strategically focussed approach to allocating resources across all government sectors to address the identified risks in NRA. - Mongolia has not utilised the exemptions provided under R.1. - There are cascade deficiencies from R.22, R.23, R.26 and R.28 - REs are required develop and implement and internal monitoring programme to combat ML and TF; however, neither the AML/CFT Law nor PMR explicitly require REs to understand their risks. - REs are required to have internal policies, procedures, internal controls; However, neither the AML/CFT Law nor PMR have a requirement for enhanced measures to manage and mitigate risks - Mongolia does not allow FIs or DNFBPs to undertake simplified measures.
2. National cooperation and coordination	PC	- At the time of the ME on-site visit the draft National Strategy and Action Plan on Combating Money Laundering and Terrorism Financing was not in force and effect. - Mongolia has established the National Cooperation Council, established with responsibility for national AML/CFT policies. Mongolia has established the National Counter Terrorism Coordinative Council (NCTCC) responsible for the implementation of the Anti-Terrorism Law (ATL) TF. The degree to which these bodies are used for operational level cooperation or coordination is limited. - Mongolia does not have a coordination and cooperation mechanism for PF.
3. Money laundering offence	LC	- All the FATF's designated categories of predicate offences are covered with the exception of piracy. - ML offense sanctions of natural persons are not proportionate and dissuasive enough. - ML offense sanctions of legal persons are not proportionate and dissuasive.
4. Confiscation and provisional measures	LC	Mongolia does not have a mechanism for managing and, when necessary, disposing of property frozen, seized or confiscated.
5. Terrorist financing offence	LC	- Mongolia's TF offence does not include specific reference to financing the travel of individuals for the purposes stated criterion 5.2bis. - Criminal sanctions of legal persons are not dissuasiveness.
6. Targeted financial sanctions related to terrorism & TF	PC	- Mongolia's obligation to freeze, prohibit from making funds available and the requirement for FI and DNFBPS to report assets frozen or actions taken are not enforceable. - There is no explicit provision for GIA to operate ex parte - Besides the ATL and TFS Regulation guidance on the obligation

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		to freeze has not been provided to the financial sector or DNFBPs. - Mongolia has not adopted measures to protect the rights of bona fide third parties. - Mongolia has not developed publicly known procedures for de-listing and unfreezing.
7. Targeted financial sanctions related to proliferation	NC	There is no legal framework for implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.
8. Non-profit organisations	PC	- The NRA did not adequately assess the threats and risks associated with NPOs. - Mongolia has not; (i) encouraged or undertaken outreach to raise awareness among at-risk NGO, (ii) worked with at-risk NGOs to develop best practice to address TF risks and vulnerabilities, and (iv) encouraged NPOs to conduct transactions via regulated financial channels. - The sanctions under the NGO Law are not proportionate and dissuasive.
9. Financial institution secrecy laws	LC	FI secrecy laws do not inhibit the implementation of AML/CFT measures; however, it is unclear whether FIs can share information for the purpose of implementing the requirements on correspondent banking, wire transfers and reliance on third parties.
10. Customer due diligence	LC	- The CDD obligation for inter-related transactions made within 24 hours may be limiting, as transactions can occur in a few days and exceed the designated threshold. For transactions where there is suspicion of ML or TF, it does not state that it is regardless of any threshold or exemption, although it is implied. - The AML/CFT Law establishes the requirement for REs to identify and take reasonable steps to verify the identity of the beneficial owner of a legal entity. However, there is no requirement for the identification of the natural person exercising control via other means, or alternatively identification of the natural person holding a senior management position. - Mongolia has no specific CDD or enhanced CDD requirements on the beneficiary of life insurance, notwithstanding the insurance sector is rated as low risk under the NRA.
11. Record keeping	C	
12. Politically exposed persons	LC	- The PMR are applicable to domestic PEPs, and persons who are or have been entrusted with a prominent function by an international organization. However, it does not include provisions covering beneficial owners of the customer or a person holds a prominent function in an international organization. - PEP requirements are applicable to the insurance sector. However, there are no specific requirements for life insurer to inform senior management before a policy pay out, conduct enhanced scrutiny of the whole business relationship or consider making an STR, where higher risks are identified. Considering Mongolia has only 1 life insurance company and insurance is rated as low risk, deficiencies in criterion 12.4 is given less

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		weight.
13. Correspondent banking	LC	PMR prohibits FIs from establishing correspondent relationship with shell bank and financial institution. However, there is no prohibition on the continuing business relations with shell banks.
14. Money or value transfer services	PC	- Mongolia has not provided any evidence that it has proactively identified and sanctioned unlicensed or unregistered MVTS operators and available sanctions do not seem to be proportionate or dissuasive. - It is unclear whether NBFIs that operate MVTS (i) use agents; (ii) if agents are required to be licensed or registered or alternatively NBFIs are required to maintain a list of its agents; and (iii) if agents are included in the AML/CFT programmes and monitored for compliance.
15. New technologies	LC	- Apart from BoM, it is unclear whether FRC identifies and assesses the ML/TF risks associated with new products, business practises and developing technologies. - There is no express requirement for REs to conduct the required risk assessments prior to implementation of such products, practises and technologies.
16. Wire transfers	LC	- The PMR prohibits wire transfers if REs do not comply with criterion 16.1 only; the prohibition of wire transfers does not extend to the requirement of criteria 16.2 - 16.7 - MVTS operating in Mongolia are required to comply with the requirements on wire transfers. However, not all measures under R.16 are fully addressed by the law or other enforceable means. - MVTS operating in Mongolia are required to submit STRs but there is no specific requirement for MVTS that control both the ordering and beneficiary side of a wire transfer to consider the information from both sides in order to determine whether an STR has to be filed or to require the MVTS provider to file an STR in the country affected by the suspicious wire transfer and make available such transaction information to the FIU. - While the ATL and TFS Regulations provides for freezing obligation for FIs processing wire transfer, it is not enforceable. However, the low risks of TF in Mongolia mitigates the impact of the aforesaid weakness,
17. Reliance on third parties	NC	The PMR allow REs to use a third party to undertake KYC procedures on its behalf. However, (i) there is no requirement for the reliance on third parties to be limited to only third party FIs and DNFBPs (ii) that third party reliance is limited to only identification of customer, beneficial owner and understanding the nature of business (iii) for the ultimate responsibility of CDD measures to remain with the RE (iv) in determining which countries the third party is based, regard must be made to the country level risks; and (v) to prescribe for reliance on third parties of REs that are part of the same financial group.
18. Internal controls and foreign branches and subsidiaries	LC	- The screening procedure for employees are limited to persons with conflict of interest or who have been committed and sentenced for fraudulent or related crimes only. - There is no clear requirement for ML/TF group-wide programmes such as sharing of information for ML/TF risk

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		management, the provision of group level compliance and audit as well as the adequate safeguards on confidentiality and use of such information exchanged.
19. Higher-risk countries	PC	Mongolia has a requirement for REs to apply enhanced due diligence for customers from higher risk countries. However; (i) the AML/CFT law does not specifically reference countries called for by the FATF; and (ii) there is no requirement for enhanced due diligence and counter-measures to be applied proportionate to the risk.
20. Reporting of suspicious transaction	LC	There is a minor deficiency on the definition of “proceeds of crime” as it is limited to some extent to only monetary proceeds and does not extend to ‘property’.
21. Tipping-off and confidentiality	PC	- It is unclear whether the definition of “banking and professional confidentiality” includes protection from both civil and criminal liability and Articles 12.1 and 12.2 of the PMR only applies to REs and does not extend to directors, officers and employees of REs. - The Regulation on Reporting Information to FIU has limited application to only banks, its directors, officers and employees, and there is no prohibition by law on directors, officers and employees of REs other than banks.
22. DNFBPs: Customer due diligence	NC	- The AML/CFT Law has scope deficiencies with notaries being the only DNFBP required to comply with AML/CFT requirements. - There are cascade deficiencies from R.12, R.15 and R.17.
23. DNFBPs: Other measures	NC	- The AML/CFT Law has scope deficiencies with notaries being the only DNFBP required to comply with AML/CFT requirements. - There are cascade deficiencies from R.20, R.18, R.19 and R.21.
24. Transparency and beneficial ownership of legal persons	PC	- Mongolia has not assessed the ML/TF risk associated with all types of legal persons created in Mongolia. - The GAIPSR has no mechanisms to check or verify the authenticity of information filed. - Sanctions are not proportionate or dissuasive. - There is no mechanisms to monitor the quality of assistance receive.
25. Transparency and beneficial ownership of legal arrangements	PC	- There is no requirement for trustees to disclose their status to FI or DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold. - LEAs have powers, under the CPC, to ensure timely access to CDD information from REs. However, there are scope deficiencies regarding coverage of DNFBPs. - Mongolia is able to provide international cooperation in relation to CDD information obtained by FIs. However there are cascade deficiencies from R.40. - There is no legal liability and/or sanctions for foreign trustees operating in Mongolia that fail to disclose their status as a trustee.
26. Regulation and supervision of financial institutions	PC	- Shell banks are not explicitly precluded from establishment in Mongolia. - Mongolia has limited legal or regulatory measures to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in FI.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		- Mongolia's legislation does not provide direct reference to adherence to the Core Principles. - Mongolia has no overarching legislation, which establishes the frequency and intensity of AML/CFT supervision based on identified ML/TF risks. - There is no explicit requirement to review ML/TF risk assessments when there are major events/developments in the management and operations of FIs.
27. Powers of supervisors	LC	The relevant legislation allow for the BoM, FRC and FIU to supervise and conduct inspections of FI in relations to AML/CFT requirements. However, sanctions are unclear and there are cascade deficiencies from R.35
28. Regulation and supervision of DNFBPs	NC	- The AML/CFT Law has scope deficiencies with notaries being the only DNFBP required to comply with AML/CFT requirements. - There is no designated supervisor for real estate agents. - There has been neither implementation nor supervision of DNFBPs' compliance with the AML/CFT Law or PMR.
29. Financial intelligence units	PC	- The FIU can only obtain and use additional information from banks and does not have a general provision for other REs. - The FIU has not conducted strategic analysis. - The Head of the FIU has full discretion, with regard to budget spending; however, the structure, strategic plans and the budget of the FIU is required to be approved by the Governor of BOM.
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	C	
32. Cash couriers	PC	Mongolia has a mixed declaration and disclosure system with the declaration system covering local and foreign currency and BNIs but only implemented in Mongolia's single international airport. Mongolia's disclosure system is implemented in all other border crossings but it does not cover BNI.
33. Statistics	PC	- Mongolia does not maintain comprehensive statistics relevant to effectiveness and efficiency of ML/TF investigations and prosecutions and convictions; property frozen, seized and confiscated; and MLA and other international requests. - Enabling legislation is not in place for all competent authorities
34. Guidance and feedback	PC	Guidance has not been provided to DNFBPs
35. Sanctions	PC	- Criminal sanctions in Mongolia are only available in the CCM, which does not include provisions to criminalize breaches of the AML/CFT Law, ATL or PMR. - Overall administrative sanctions are not proportionate or dissuasive for FIs. - There are no sanctions for non-compliance with R.6 - The AML/CFT Law has scope deficiencies with notaries being the only DNFBP required to comply with AML/CFT requirements. Sanction for notaries and NPOs are not proportionate or

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		dissuasive.
36. International instruments	C	
37. Mutual legal assistance	C	
38. Mutual legal assistance: freezing and confiscation	LC	There are cascade deficiencies from R.4 - mechanism/system for managing, co-ordinating and sharing seized property.
39. Extradition	LC	- Mongolia has sound extradition procedures and legislation. A minor shortcoming occurs as Article 406 of the CPC provides grounds for extradition refusal which may affect Mongolia fulfilling extradition requests on limited occasions. - There is no established mechanism for simplified extradition.
40. Other forms of international cooperation	LC	- LEAs, the FIU and supervisors have the legal basis for proving co-operation. However, (i) there are no clear information safeguard processes for individual LEAs and there is no clear process for prioritisation or timely execution of requests, and (ii) BoM and FRC do not have a clear process for the prioritisation and timely execution of requests and it is unclear if they are authorised to use the most efficient means. - It is unclear if all MOUs were negotiated in a timely way. - While feedback can be provided on a case-by-case basis when requested by foreign competent authorities who have assisted authorities in Mongolia, apart from the very basic statistics provided by the FIU (see c.40.10), Mongolia provided no information on the number of occasions other competent authorities have given feedback to their counterparts. - Supervisors only have general safeguards for the use of foreign information. - While the FIU has the legal basis to provide feedback, it has only done so on a few occasions. - Supervisors have the lawful basis for proving cooperation and have entered into 18 MOU; however, primarily legislation only contains general provisions to cover c.40.12 to c.40.16. - The FIU can share information with non-counterparts pursuant; however, taken contextually this includes institutions operating as an FIU or AML/CFT supervisor and does not mean “any institutions” of a foreign state. Mongolia has not provided information to allow the assessment team to conclude that any other competent authorities are able to exchange information directly with non-counterparts.

GLOSSARY

AC Law	Anti-Corruption Law 2006 (amended 2012)
Accounting Law	Law of Mongolia on Accounting 2015
ADB	Asian Development Bank
AML/CFT	anti-money laundering/counter terrorism financing
AML/CFT Law	Law on Combating Money Laundering and Terrorism Financing 2013
ASM	artisanal small-scale miners
ATL	Anti-Terrorism Law 2004 (amended in 2013)
ATL Regulation	Regulation on Designation of Terrorists, Freezing of Assets of Designated Persons and Review of Frozen Assets 2013
BO	beneficial ownership
BoM	Bank of Mongolia (Central Bank)
BoM Law	Law on Central Bank /Mongol bank 1996
CBCTR	cross-border cash transportation report
CCM	Criminal Code of Mongolia 2002
CDD	customer due diligence
CJED	Court Judgement Enforcement Department
Company Law	Company Law 2012
CPC	Criminal Procedures Code 2001
CTR	cash transaction report
Customs Law	Customs Law of Mongolia 2008
Customs Regulation	Customs Procedure of Transportation Passengers' Personal Luggage Regulation
CvC	Civil Code of Mongolia 2002
DNFBP	designated non-financial businesses and professions
DPRK	Democratic Republic of North Korea
EDD	Enhanced due diligence
FDI	foreign direct investment
FI	financial institutions
FIU	financial intelligence unit
FIU Secrecy Procedures	Secrecy Procedure of the Financial Information Unit
FIU Security Regulation	Regulations on the Security of the FIU
FRC	Financial Regulatory Commission
FRC Law	Law of Mongolia on the Legal Status of the Commission on Financial Regulations 2005
FSTR	foreign settlement transaction report
FTF	foreign terrorist fighters
GAIPSR	General Authority for Intellectual Property and State Registration
GCA	General Customs Agency
GDP	gross domestic product
GIA	General Intelligence Agency
GPA	General Police Agency
GPO	General Prosecutor's Office
Guidelines for STR Analysis	Guideline on Conducting Suspicious Transaction Analysis

IAAC	Independent Authority Against Corruption
IMF	International Monetary Fund
Insurance Law	Law of Mongolia on Insurance 2004
Investment Fund Law	Law of Mongolia on Investment Fund
Lawyers Law	Law on Legal Status of Lawyers 2012
LEA	law enforcement agency
LESRL	Legal Entity's State Registration Law 2015
ME	mutual evaluation
MFA	Ministry of Foreign Affairs
ML	money laundering
MLA	mutual legal assistance
MLAT	mutual legal assistance treaty
MNT	Mongolian Togrog
MoJ	Ministry of Justice
MOUs	memorandum of understanding
NBFI	Non-bank financial institution
NBFI Activities Law	Law of Mongolia on Non-Bank Financial Activities 2002
NCC	National Cooperation Council
NCC Regulation	Cooperation Council Regulation 2014
NCTCC	National Counter Terrorism Coordinative Council
NGO	Non-Government Organisation
NRA	national risk assessment
OSCE	Organisation for Security and Cooperation in Europe
PEP	politically exposed persons
PF	proliferation financing
PMR	Preventive Measures Regulation 2016
Privacy Law	Law of Mongolia on Privacy 1995
PRTAR	Procedures for Receiving, Transferring and Analysing Financial Transaction Reports
RBA	risk-based approach
RE	Reporting Entity
SCC	Savings and credit cooperatives
SCC Law	Law on Savings and Loan Cooperative 2011
Securities Law	Law of Mongolia on Securities Market 2014
Securities Regulation	Licensing and Registration Regulation on Regulated Securities Market Activities
STR	suspicious transaction report
TF	terrorism financing
TFS	targeted financial sanctions
UNSCR	United Nations Security Council Resolution
WMD	Weapon of mass destruction



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Anti-money laundering and counter-terrorist financing measures – Mongolia

3rd Round APG Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in Mongolia as at November 2016. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Mongolia's AML/CFT system, and provides recommendations on how the system could be strengthened.