



3rd Follow-Up Report

Mutual Evaluation of Mongolia

August 2020





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MONGOLIA: 3RD ENHANCED FOLLOW-UP REPORT 2020

I. INTRODUCTION

1. The mutual evaluation report (MER) of Mongolia was adopted in September 2017. This FUR analyses the progress of Mongolia in addressing the technical compliance deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: Recommendation 15.
2. This report does not analyse any progress Mongolia has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.
3. The assessment of Mongolia's request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:
 - *Dhira Gulista Sudjaja, PPATK, Indonesia*
 - *Anna Liza R. Guevarra, Bangko Sentral ng Pilipinas (BSP)*
4. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating Mongolia's current technical compliance ratings.

II. RATINGS IN THE MER & PREVIOUS FUR

5. Mongolia's original technical compliance ratings in the MER and current ratings based on progress recognised in previous FURs are as follows¹:

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	(PC) LC	LC	LC	LC	(PC) LC	(NC) LC	PC	LC	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	LC	PC	LC	LC	(NC) LC	LC	(PC) LC	LC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
(PC) C	(NC) LC	(NC) LC	(PC) LC	(PC) LC	(PC) LC	LC	(NC) PC	(PC) C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	(PC) LC	(PC) LC	(PC) LC	PC	C	C	LC	LC	LC

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Low	Moderate	Low	Low	Low	Low	Low	Moderate	Low	Low	Low

6. Given these results, Mongolia was placed on enhanced follow-up.

¹ There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. In keeping with the APG Mutual Evaluation Procedures, this FUR considers progress made up until 1 February 2020. This section summarises the progress made by Mongolia to improve its technical compliance by:

- a) addressing the technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

3.1. Progress to address technical compliance deficiencies identified in the MER

8. Mongolia requested re-ratings of the following Recommendations: 1, 8, 14, 28 and 35 (which were rated PC). Mongolia supplied information in relation to parts of R.15 that have been changed under updates to the FATF Methodology.

9. The APG welcomes the steps that Mongolia has taken to improve its technical compliance with Recommendations 1, 8, 14, 28 and 35. As a result of this progress, Mongolia has been re-rated to largely compliant on Recommendations 28 and 35 and to compliant on Recommendation 14. However, insufficient progress has been made to justify a re-rating of 1 and 8. In light of the additional requirements placed in R.15, Mongolia is re-rated partially compliant with R.15.

Recommendation 1 (Originally rated PC)

10. Mongolia was rated PC in the MER for R1. The deficiencies identified were: (i) TF risks assessment has limited consideration on the TF risks faced by NPOs, (ii) risk assessment for legal persons do not assess the risks associated with the type of legal persons themselves, (iii) risk assessment had not been conducted on sectors such as real estate, accountants, insurance, dealers in precious metals (DPMS), securities, remittance, legal persons and the NPO sector, (iv) limited outreach on risk had been undertaken for accountants, lawyers and notaries, (v) limited allocation of resources based on risk, and (vi) application of simplified due diligence is not risk-based.

11. The sectoral risk assessments conducted on NBFIs, SCCs, insurance, securities, real estate, DPMS, and other DNFBPs are considered positive developments as they build on and address some of the gaps in the coverage of the 2016 NRA. The TF risk assessment included some risk assessment of the TF risks of NPO, however a comprehensive understanding of NGO/NPO sectors and their associated risk was not yet conducted. There is still no assessment of the risk associated with legal persons, and the sectoral risks associated with remittances and accountants have not yet been identified. The risk assessment for remittances focuses on payment service providers only, while, risk assessment for accountants focuses on the individual risk, rather than the sector, as a whole. Nonetheless, the commencement of supervision on accountants, notaries, and legal professionals is a positive development to contribute to understanding of risks in those sectors.

12. Assessment of several sectors (banks, NBFIs, SCCs, insurance, securities, dealers of precious metals, real estate) has been conducted but the assessments do not test the extent to which the sectors and their products were exposed to ML threats. Likewise, the overall vulnerability of ML/TF across these sectors was also not consistently considered. Therefore, gaps remain with identifying and assessing the ML/TF risks for Mongolia.

13. Mongolia has taken several steps in line with the 2017-2019 National Strategy for AML/CFT which include: (a) increasing the resources of several law enforcement agencies and supervising authorities; (b) adopting risk-based examination; (c) signing of memorandum of agreements between supervising entities, LEAs and FIUs to improve surveillance and supervision; and (d) conducting training to increase awareness of all stakeholders, among others. The recommendation and directive to investigate and prosecute predicate crimes that are high risk to ML/TF risk is also a positive development. However, implementation of the preventive measures is at an early stage.

14. Mongolia has allowed the application of simplified due diligence as per Article 5.5 of the AML/CFT law, however there is no specific written requirement that this provision shall only be utilised when there is an identified lower risk of ML/TF consistent with Mongolia's national assessment of ML/TF risk. Meanwhile, Chapter 5 of the Preventive Measures Regulation (PMR) requires REs to apply simplified due diligence to a customer that is (a) a central or local government organizations or (b) public company listed on stock exchange and subject to disclosure requirements of shareholders and beneficial owners or reporting entities with same level of preventive measures requirements when dealing with each other. Mongolia has not provided evidence to demonstrate that these categories were identified as a lower risk.

15. Mongolia is commended for several positive developments in relation to its understanding of risk including the risk assessments of several sectors. However, the methodology used and the factors considered in the sectoral risk assessment of banks, NBFIs and DNFBPs remain inadequate, hence the ML risk, in particular the vulnerabilities, have not been fully identified and assessed. Moreover, risk assessment for accountants, remittances, legal persons, and NPO sectors and their associated risks are still incomplete. Meanwhile, the provision for the application of simplified due diligence is not based on the identification of lower risk. Nonetheless, based on the current understanding of their risk, Mongolia has applied a risk-based approach to allocating resources to a large extent, as laid down in its National AML/CFT Strategy.

16. **Mongolia remains partially compliant with Recommendation 1.**

Recommendation 8 (Originally rated PC)

17. Mongolia was rated PC with R.8 in its MER. The deficiencies identified were: (i) the NRA did not adequately assess the threats and risks associated with NPOs, (ii) Mongolia had not (a) encouraged or undertaken outreach to raise awareness among at-risk NPO, (b) worked with at-risk NPOs to develop best practice, and (c) encouraged NPOs to conduct transactions via regulated financial channels, (iii) the level of monitoring and supervision of NPOs was unclear, (iv) sanctions under the NPO Law were not proportionate and dissuasive, and (v) there was limited expertise and capability of the General Intelligence Agency (GIA) to examine NPOs suspected of TF abuse; and no evidence was provided of previous TF investigation relating to NPOs.

18. Mongolia is still in the process of collecting data and intelligence for its NPO risk assessment. Thus, the subset of organisations that would fall within the FATF definition of NPO, and the features and types of NPOs which, by virtue of activities or characteristics, are likely to be at risk of TF abuse, are still unknown. However, we note the inclusion of a discussion on NPOs in the TF risk assessment. Meanwhile, the law requiring the Civil Society Development Council to conduct biennial sectoral AML/CFT risk assessments of NPOs, and take preventive measures addressing risks identified during the risk assessment in cooperation with relevant organizations, is still under development.

19. Mongolia undertook an outreach program to 180 NPO representatives. However, it is not clear if these represent NPOs that are considered at-risk. While Mongolia has taken steps to build awareness of TF and TFS issues amongst NPOs, it has not initiated any outreach activities to the donor community on the potential vulnerabilities of NPOs to TF abuse, and authorities have not demonstrated evidence of work with the NPO sector to develop and refine best practices to address TF risks and vulnerabilities. It has also not undertaken any measures to encourage NPOs to conduct transactions via regulated financial channels.

20. The level of monitoring and supervision of NPOs remains unclear. Mongolia provides a common procedure in the monitoring and supervision of NPOs, however, this is not risk-based and is not backed by formal guidelines. Moreover, the basis upon which the Tax Generation Authority is empowered to monitor and supervise NPOs for AML/CFT purposes was not provided.

21. The expertise and capability of GIA to examine NPOs suspected of TF abuse cannot be assessed due to lack of evidence relating to previous TF investigations involving NPOs. Nonetheless, the capacity building program introduced by Mongolia is commended.

22. The subset of NPOs at risk of TF abuse is not yet identified which means the outreach program to prioritise NPOs that are considered high risk has not been undertaken. Authorities have not yet conducted outreach to donor communities. Also, the level of monitoring and supervision for NPOs remains unclear due to lack of data to support the progress made. The capacity and expertise of GIA to investigate NPOs suspected for TF is still developing.

23. **Mongolia remains partially compliant with Recommendation 8.**

Recommendation 14 (Originally rated PC)

24. Mongolia was rated PC in its MER for R.14. The major deficiencies in the MER included: (i) the non-identification and sanctioning of unlicensed or unregistered money or value transfer service (MVTS) operators; and (ii) sanctions available did not seem to be proportionate or dissuasive.

25. Mongolia's 2019 FUR found that the deficiencies related to c.14.4 and c.14.5 are addressed under Article 12.19 of the PMR. That is MVTS providers are required to maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate and MVTS providers that use agents are required to include them in their AML/CFT programmes and monitor them for compliance with these programmes. However the 2019 FUR noted that gaps remained with a framework to identify and sanction unlicensed MVTS providers.

26. Mongolia has developed a framework with a view to identify and sanction unlicensed MVTS. The framework includes: (i) regular updates to the list of Financial Regulatory Commission (FRC) licensed entities, (ii) issuance of warning to customers to deal with licensed entities only; (iii) exchange of information between FRC, licensed entities (i.e. Mongolian Bankers Association and Commercial Banks), law enforcement (i.e. National Police Agency), and other supervising entities (i.e. Bank of Mongolia); and (iv) establishment of AML/CFT unit that would monitor unlicensed entities via social media and other mass media. These actions are important steps toward identifying unlicensed or unregistered MVTS.

27. Moreover, Mongolia has updated its framework in applying sanctions to unregistered MVTS under Article 11.6 of the Law of Infringements. This includes the confiscation of illegally earned assets

or income, and imposition of penalty amounting to 4 million, and 40 million tugriks, for individuals and legal entities, respectively. These sanctions are considered proportionate and dissuasive and have been applied to an unregistered MVTS.

28. Mongolia has recently adopted a framework to be able to identify and take action against unregistered MVTS. While the implementation is at an early stage, these actions are important steps towards identifying and sanctioning illegal MVTS. The updates to the sanctions for non-compliance are considered proportionate and dissuasive, and Mongolia has applied sanctions to unregistered MVTS.

29. **Mongolia is re-rated to Compliant with Recommendation 14.**

Recommendation 28 (Originally rated PC)

30. Mongolia was re-rated partially compliant with R.28 in the 2nd Follow-up report (FUR). In responding to overcome the deficiencies in the 2019 FUR, Mongolia has undertaken several measures to improve their R.28 deficiencies which were: (i) provisions to prevent criminals from being professionally accredited are limited to notaries and lawyers; and (ii) there has been neither implementation nor supervision of DNFBPs' compliance with the AML/CFT Law or PMR.

31. Mongolia has partly addressed their deficiency in regards to the lack of provision to prevent criminals from being professionally accredited, in relation to notaries and lawyers, by amending the AML/CFT Law. Mongolia has also expanded the number of reporting entities by adding real estate agents (REAs) and DPMS. Further, under article 19.1 AML/CFT Law the FRC is authorised to supervise and regulate REAs and DPMS. Mongolia also has enacted the AML/CFT Law that authorises the FRC to issue fit and proper regulations overall, for REAs and DPMS Mongolia has shown major improvement to prevent criminals from entering these professions.

32. Mongolia also adopted requirements for accountants under article 19.3 Auditing Law that relate to fit and proper requirements. However, the requirements for establishment of an accountancy firm under article 19.3 do not include any measures to prevent professional accreditation of criminals. The emphasis is on capability and knowledge rather than preventing criminals from being professionally accredited.

33. Article 19.1 AML/CFT designates agencies as supervisors for DNFBPs: namely FRC for REAs and DPMPs and SRBs for notaries, lawyers and accountants. FRC has shown a risk-based approach to supervision. This can be inferred from the application of risk ratings, number of risk-based supervisions conducted, and sanctions imposed. Similarly, MONICPA has developed a risk matrix for accountants and undertaken supervisory activities in line with identified risks. Compared to FRC, the supervision of notaries and lawyers is in early stages of implementing a risk-based approach. SRBs have circulated information-gathering questionnaires and assessed risks on the basis of data collected. This analysis of risk forms that basis of the supervision framework employed by SRBs for the supervision of notaries and lawyers. The FIU has provided an examination manual for the supervision of DNFBPs to SRBs. Although specific evidence of the risk basis of the supervision of lawyers and notaries is outstanding, and the materiality of the sector being unclear, the ongoing supervision planned for June/July and continuous efforts to reassess risk indicate this is a minor deficiency.

34. Mongolia made progress by expanding the number of reporting entities to include REAs and DPMPs, by issuing a fit and proper regulation for entities under FRC supervision, and by appointing supervisors and regulators for REAs, DPMS, accountants, notaries and lawyers under the AML/CFT Law. Additionally, some risk based supervision has been conducted by the FRC (REAs and DPMS) in

line with this authority and the SRB responsible for accountants has also developed a risk matrix and begun conducting offsite and onsite supervision accordingly. Mongolia has also provided the SRBs with an examination manual for the supervision of DNFBPs. However, specific evidence of the risk basis of the supervision of lawyers and notaries, though identified as a low risk sector, is outstanding and there are still no fit and proper requirements preventing criminals becoming accountants.

35. Mongolia is re-rated to Largely Compliant with Recommendation 28.

Recommendation 35 (Originally rated PC)

36. Mongolia was re-rated partially compliant with R.35 on its 2nd FUR.

37. Mongolia has included criminal sanctions for persons and reporting entities for violations of some elements of AML/CFT, ATL and PMR law in its Criminal Code. Where criminal intent cannot be satisfied, administrative sanctions under the Infringement Law will apply. Mongolia has identified article 18.6 on Criminal Code which sanctions ML violations of AML/CFT Law only. The administrative sanctions in the Infringement Law apply more broadly, and can be assessed as being dissuasive and proportionate.

38. Mongolia has increased fines applicable under Article 5.10 Infringement law in relation to violations of the Law on Countering Weapons of Mass Destruction Proliferation and Terrorism (LCTP) which are proportionate and dissuasive and address the identified deficiency for penalties previous contained in the ATL. These penalties are understandably higher than those available for breaches of the AML/CFT Law.

39. The amendments of the Infringement Law, specifically Articles 5.10.2, 5.10.4, 5.10.5 and 11.29.9, yield a range of sanctions that are proportionate and dissuasive, adequately fulfilling the requirements under R.6.

40. The amendments to the AML/CFT Law have added REA, DPMS, lawyers and notaries as reporting entities. As reporting entities, those parties are required to comply with AML/CFT requirements. Therefore the scope deficiency identified in MER has been addressed.

41. In relation to sanctions for breaching AML/CFT Law for NPOs, the provisions under the Infringement Law do not fully address the requirements of R.8. While the sanctions available under Article 11.29 are proportionate and dissuasive for reporting entities the current sanctions available under Article 11.7 for NPOs are not dissuasive or proportionate and do not sufficiently deal with failures of legal and natural persons to comply the requirements of R.8. However, this is considered a minor deficiency.

42. In general the improvements made by Mongolia in overcoming Rec 35 deficiencies on the previous FUR finding were quite significant, including raising the amount of Article 5.10 fines for violations of LCTP and resolving the scope deficiencies of DNFBPs subject to AML/CFT requirements with the exception of the TCSP sector. The remaining deficiency is the lack of dissuasive and proportionate sanctions for NPOs to ensure compliance with the requirement of R.8.

43. Mongolia is re-rated to Largely Compliant for Recommendation 35.

3.2. Progress on Recommendations which have changed since adoption of the MER

Recommendation 15 (Originally rated LC)

44. Since the adoption of Mongolia's MER, Rec. 15 has been amended to extend a range of AML/CFT requirements related to virtual assets (VAs) and virtual asset service providers (VASPs).

45. Mongolia prohibits VASPs from operating within its jurisdiction. Mongolia also has indicated that a preliminary risk assessment to determine risk level of VASP has been conducted, but the findings were not provided.

46. VA though not explicitly prohibited as assets by law, are not formally accepted as legal forms of payment, and are considered as high-risk products by the relevant authorities. However, reviewers have not had access to the methodology or assessment process that has led Mongolia to conclude VA pose a high risk.

47. Mongolia has established a task force to deepen its understanding of risks related to VA and VASP in the upcoming year, and proposes measures to mitigate identified risks. However, at present, Mongolia did not demonstrate that it is undertaking mitigation efforts in responding to their conclusion that VA are a high risk product.

48. Mongolian authorities have identified two entities that are currently operating as crypto currency exchange providers. Since VASP activities are considered illegal, Mongolia has noted an intention to take measures through competent authorities under the Law on Infringement.

49. Mongolia has a high level of compliance with international cooperation requirements under Recommendations 37-40. Mongolia has conducted MLAT with other jurisdictions, under CCM it has powers to seize and confiscate, as well as an extradition process under CPC. There is no limitation on similar cooperation being possible under existing laws including MLA in relation to VA and VASP.

50. **Mongolia is re-rated as Partially Compliant for Recommendation 15.**

IV. CONCLUSION

51. Overall, Mongolia has made significant progress towards overcoming deficiencies on technical compliance under R14, R.28 and R.35 since its 2nd FUR, and some progress on parts of R.15 to meet the updated FATF standards on VA and VASPs.

52. In relation to R.14, Mongolia has adopted a framework to be able to identify and take action against unregistered MVTS, and has amended the Law on Infringements to make the sanctions for unregistered entities proportionate and dissuasive. In relation to R.28, there are actions taken by Mongolia in addressing some of its deficiencies by expanding the scope of reporting entities to include all DNFBPs and conducting some risk-based supervision, although some gaps remain. In relation to R.35, Mongolia has a range of proportionate and dissuasive sanctions including criminal and administrative which apply to natural and legal persons. It has addressed some deficiencies regarding dissuasive and proportionate sanctions and the scope of DNFBPs, however sanctions for NPOs remain neither proportionate nor dissuasive. In relation to R.15, the planned actions of the Taskforce on VASPs are yet to take place and Mongolia no longer meets the requirements to be rated LC. As a result, Recommendations 1 and 8 remain PC, while 15 is re-rated PC, 28 and 35 are re-rated LC and 14 re-rated C.

53. Overall, in light of the progress made by Mongolia since its MER was adopted, its technical compliance with the FATF Recommendations as follows as of the reporting date (February 2020):

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	LC	LC	LC	LC	LC	PC	LC	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	LC	(PC) <i>C</i>	(LC) <i>PC</i>	LC	LC	LC	LC	LC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	LC	LC	LC	LC	(PC) <i>LC</i>	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	LC	LC	LC	(PC) <i>LC</i>	C	C	LC	LC	LC

54. The Mongolia FUR was adopted out-of-session by the APG membership in July 2020. While Mongolia has made significant progress on technical compliance since its MER was adopted, based on the effectiveness ratings in the MER Mongolia will remain in enhanced follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.