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MONGOLIA

TAKEN HOSTAGE BY
BANK OWNERS

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MONGOLIA TAKEN HOSTAGE BY BANK OWNERS

The most recent trending topic on social media was about the rumors that the International Monetary Fund (IMF) is conducting a financial investigation in Mongolia and will share private information of our people with foreign entities. In reality, it is nothing more than an exaggerated attempt of brainwashing spread to protect the interests of a small number of individuals who own commercial banks in Mongolia.

What is happening is that, unless it is determined how commercial banks have increased their equity capital and what financial sources were used, Mongolia is currently at risk of being added to the Grey list of the Financial Action Task Force (FATF, an intergovernmental organization that combats money laundering), which will potentially lead to suspending the IMF program to restore our economy.

RE-ENTERING THE GREY LIST

Mongolia joined the FATF's Asia/Pacific Group (APG) on money laundering and terrorism financing in 2004. The FATF develops policy recommendations for its member countries, provides regular oversight, and cooperates with relevant international organizations.

As per our APG commitments, Mongolia passed a law on combating money laundering and terrorism financing in 2006. With the enactment of this law, Mongolia established an authority of financial information adjacent to Mongolbank and started overseeing and recording international financial transactions.

However, Mongolia hasn't been doing a good enough job in implementing these laws and upholding accountability. There has been a total of 4,345 cases of potential money laundering in Mongolia since 2011, but only 46 of them have been investigated. Only 20 of those cases were prosecuted, and only 2 cases were given harsh sentences in the preliminary court proceedings. However, the higher level court deemed the law clauses

If Mongolia is added to the grey list by the end of this year, international banks will freeze the checking account at Mongolian commercial banks, which means Mongolians won't be able to use their credit cards abroad. If this happens, people will have no choice but to carry cash when traveling. When the demand for cash suddenly increases, it will significantly depreciate the MNT. This will lead to the exchange rate exceeding 7,000 MNT for 1 USD.

On top of that, if the IMF program stops, the Mongolian government will be unable to repay its debt of 3 billion USD starting from 2021 and will have no choice but to declare default on debt. It will then make international currencies even scarcer and USD will become as expensive as 20,000 MNT. As a result, our economy will lose its footing and fall off a cliff.

were inadequately used and rendered both cases invalid. One of these cases was connected to three MIAT (Mongolian Airlines) senior executives embezzling 7.2 million USD when getting an aircraft insured. The other case involved four officers from the Civil Aviation Authority who allegedly embezzled 492,000 USD during a tender. The culprits had made a large number of international transactions via several banks.

In 2013, Mongolia re-entered the grey list, but was able to be removed from the list with specific conditions, because we were able to meet some of the requirements and made specific commitments.

In 2016, the FATF provided Mongolia with strong recommendations to enforce the laws. The recommendations included enhancing economic transparency, improving oversight on the financial market, and holding those who break laws accountable. In April 2017, the government established a National Council to Combat Money Laundering and Terrorism. ►►

▶ **To date, these actions haven't produced the desired outcomes, which is why Mongolia is currently under strong scrutiny from the FATF. It is going to be decided in October this year whether Mongolia will be added back to the grey list. As of 2018, this includes countries such as Serbia, Tunisia, Iraq, Syria, Yemen, Ethiopia, and Sri Lanka, while the black list includes Iran and North Korea.**

CONSEQUENCES OF SECRET CASES THAT ARE SUPPOSEDLY MADE TRANSPARENT

Mongolia passed a law on pardons related to taxes in 2007. The law regulates a potential one-off pardoning of some individuals from tax or social insurance debts and repayments, administrative punishments, and criminal sentences.

Another law on pardoning was passed on 7 August 2015, under the name of 'law on supporting economic transparency'. Using this law, the government made a promise to let businesses and individuals off from punishments and sentences if they voluntarily declared and paid their taxes in full within seven months. In addition to repayments related to taxes and social insurance, the law also included fixed and non-fixed assets, in contrast to the 2007 legislation. With the introduction of this transparency law, a total of 33.3 trillion MNT was revealed from 8,794 citizens and 25,000 businesses who didn't previously declare their assets

and taxes. Given this amount was bigger than Mongolia's economy, this discovery generated a lot of attention from foreign and domestic experts and created a degree of allegations and frustrations among the public. Only a few months ago, when stepping down from the position of Head of the Independent Agency Against Corruption (IAAC), Kh. Enkhjargal claimed that this transparency law allowed the then authorities to walk away without being held accountable for wasting a large amount of funds raised by issuing international bonds.

In any case, international organizations now view that some of the capital, sources of which were kept undisclosed by law, might be connected to money laundering. Therefore, they are looking into all potential scenarios.

ABOUT HOW SOME COMMERCIAL BANKS INCREASED THEIR EQUITY CAPITAL

When Mongolia became unable to repay its debts, Ch. Saikhanbileg's government sought help from the IMF in 2015. In order to revive the economy, the IMF required Mongolia to reduce its budget deficit and decrease the amount of bad loans at commercial banks. As a result of a quality assessment made on liabilities of commercial banks in late 2018, the IMF required the charter funds of commercial banks to be increased by 511 billion MNT. Mongolbank eventually declared that all banks have increased their equity capitals, but the IMF is currently requiring the sources of the additional capital checked.

Certain commercial banks have sent a formal notice to Mongolbank, stating that they won't disclose the source of the additional capital that increased their equity capital. These banks have also seen a drastic increase in their bad loans since the beginning of this year. The public and the international community are suspecting that the increase in equity capitals may have been made possible with the money from senior government officials who were let off by the law on pardons. D.Erdenebileg, the owner of the Trade and Development Bank, must have given a statement about this, when he was detained for a month.

In any case, whether Mongolia is added into the FATF's grey list and whether the IMF program will be suspended are now both dependent on the owners of these few commercial banks. The public is demanding the government, Mongolbank, and legal agencies to meet the requirements from international organizations and conduct an inquiry into the capital used to increase the equity capitals of these banks. It is also demanded that the government stops its lavish spending and retrieve the capital from those officials who stole from the public funds in the form of bonds.

If they didn't take money from secret sources or from the pardoned capital, it remains unclear why these commercial banks are refraining from disclosing its sources of financing. Just because some individuals are extremely wealthy and hold senior government posts, Mongolia cannot follow Venezuela's path. Banks can take capital hostage, but it is a crime for them to take the country hostage.

2019.06.26 ■

**ARTICLE**

Dr. Uyanga Delger, attorney-at-law

Harmonising International and DOMESTIC TRADEMARK PROTECTIONS

Well-known international businesses such as Nike, Coca-Cola, and Facebook—or even local ones like Narantuul, the major wholesale and retail market in Ulaanbaatar—enjoy in Mongolia trademark-law protection without first requiring domestic registration. Unfortunately, the level of trademark protection in Mongolia does not reach the minimum standards set by the international law. That needs to change.

Current Mongolian Law

Mongolia's current *Trademark Law* stipulates that a trademark shall not be registered if it is identical or similar to a well-known trademark in a way that it could cause confusion amongst consumers (see Art. 3.1.13 & Art. 5.2.8). Moreover, the owner of a well-known trademark may request the invalidation of another trademark that is in conflict with his/her own trademark (Art. 32.1.2). Such an invalidation request is accepted in Mongolia if

it was filed within one year from the date on which the registration of the conflicting trademark was published by the Intellectual Property Office (Art. 32.3). However, Art. 5.5 states that well-known trademarks should be registered and Art. 32.1.4 grants the so-called Dispute Resolution Committee (DRC) with the authority to decide whether or not a trademark is “well-known”¹.

Harmonising with International Law

Mongolia is a signatory of both the *Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and the *Paris Convention for the Protection of Industrial Property* (Paris Convention). But major reforms are needed in Mongolia in order for the current Trademark Law to comply with international law, three of which are outlined below.

Firstly, the Paris Convention and TRIPS Agreement stipulate that well-known marks should enjoy protection based on their reputation without requiring a prior registration or use in Mongolia (Art.6^{bis} I Paris Convention and Art. 16 II TRIPS Agreement). Since Mongolia's current Trademark Law provides for recognition of a mark as “well-known” based on a decision by the DRC, the law needs to clarify that official domestic recognition is not a precondition for protection of a well-known mark. The

DRC should not have to issue an initial “well-known” ruling on behalf of Nike's trademarks before Nike can enjoy trademark protection within Mongolia. Furthermore, the filing of a trademark opposition or invalidation request to the DRC, or the submission of an injunction and damage claim to civil court by the owner of a well-known mark, should not be rejected on the grounds that the mark was not first recognised officially as “well-known” by the DRC.

¹ *Draft amendments to the Trademark Law have proposed adding fees to such ruling requests.*

Secondly, the owner of a well-known mark should be entitled to request the invalidation of a registration of a mark which is in conflict with the well-known mark. And the right to file an invalidation request should be granted to the owner of a well-known mark for at least five years from the date on which the fact of registration of the conflicting mark was published by the Intellectual Property Office of Mongolia (Art. 6^{bis} II Paris Convention). A one-year limit is just too short.

Thirdly, the right to request the invalidation of the conflicting mark and the civil law remedies of injunction and damages should be granted to the owner of a well-known mark without any time limit if the conflicting mark was registered or used in bad faith (Art. 6^{bis} III Paris Convention). As it stands now, the Trademark Law of Mongolia does not provide for invalidation of registration of a mark in bad faith (*The Defacto Gazette No. 7 (96)*). Introducing provisions and procedures for prevention and cancellation of trademark registration in bad faith is additionally required in order to harmonise the Mongolian law with the international law.

Actually, there is protection ... but not for everyone

In case of a dispute, foreign owners of well-known marks will not be left empty-handed in Mongolia, since the international law of Mongolia is part of our domestic law and thus the provisions of the Paris Convention and TRIPS Agreement should be considered as directly applicable². However, the international law is primarily applicable to foreign businesses: for example, Mark Zuckerberg and his Facebook Inc. may assert their rights in Mongolia if a local webpage or social network with the name “Нүүрном” was in operation, even though the Mongolian word “Нүүрном³” is not a registered trademark.

Unfortunately, domestic firms are not as lucky. Mongolia's own Narantuul LLC, having established a well-known brand name through hard work and diligence, might face difficulties appealing against a trademark registration that intends to free-ride on the reputation of its brand name “Narantuul”, especially if the Trademark

Law's one-year deadline to submit an invalidation request was missed.

The Paris Convention and TRIPS Agreement are drafted for the protection of international parties with the expectation that no national legislature would allow the disadvantage of its citizens and businesses against foreigners within its territory. There should be harmonisation of protection coverage between international and domestic law. As things stand now, Mongolian voters would likely be displeased to learn that within Mongolia Mr. Zuckerberg actually has more trademark rights than a homegrown Mongolian business, especially one that contributes to the national economy by employing its people and paying taxes here. Mongolia's lawmakers would do well to begin that harmonisation process now.

June 2019

² The Supreme Court of Mongolia ruled that the international law is directly applicable if the national law does not comply with it (Order No. 9 of 2008); Bodenhausen, *Guide to the application of the Paris Convention*, p. 89 and 90.

³ Literally “facebook”: нүүр (face) + ном (book)

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MONGOLIA'S POTENTIAL INCLUSION IN FATF GREY LIST

Given that we have been encompassed in an IMF emergency relief program for six times in the last 30 or so years raises questions as to the financial management capacity of our politicians and bureaucrats. One of the preconditions for the last program was a healthier banking system in Mongolia. This entailed an asset quality report of all banks which the Mongol Bank claims was carried out with no major issues arising from them. According to the report, all commercial banks, six in particular had to increase their equity capital which has purportedly been done. IMF's second condition was for the source of those funds to be consistent with international best practices and national regulations.

Pursuant to this, 5 billion USD of the 5.5 billion USD package pledged to Mongolia been delayed until the conditions are met. There are some commercial banks that have raised their share capital but are reluctant to divulge the source of their financing. Mongolia enacted a Tax Forgiveness Legislation in 2007 and 2015. It holds for entities and individuals to pay taxes on their reported income without their income becoming public information. 8794 individuals, 25,000 companies, 448 stateless individuals took advantage of this provision. A total of 33 trillion MNT came into the economy which is more than the current economy.

The equity capital of commercial banks however should not consist of funds the origins of which are

not clear. However, the Tax Forgiveness Legislation is relied on as a mechanism through which the banks refuse to divulge the source of their funds. This has led to the FATF placing Mongolia under their watch list for money laundering and terrorism financing. Unless the source of the funds is divulged prior to October, Mongolia will most likely be placed in its grey list. This would result in credit cards issued by Mongolian Banks to not be accepted internationally. Secondly, all banks that correspond with Mongolian banks will freeze their accounts.

This would in return stimulate a steep increase in the demand of USD as individuals will need to take cash during their travels. There is a chance that the MNT will significantly depreciate in value as a result of this. It may come a time where all Mongolians will have to pay the price for a few bank owners refusing to divulge the source of their funding. It is worth noting that Mongolia was a part of this grey list in 2013 and were removed in 2014 under certain conditions which have not been fully fulfilled. Corruption cases continue to not result in appropriate penalties which leads to Mongolia still being classified as a corrupt country. The two cases that went to court involving MIAT and officials of the Civil Aviation Authority resulted in severe punishments but the decision would ultimately be overturned by the Supreme Court. Unless the government takes drastic measures, Mongolia will most likely enter the grey list again.

In a statement on the state of Mongolian economy issued by IMF representatives, Mongolian buffers were determined to not be sufficient to negate external shocks. Fighting corruption, retrieving public money beginning with the lands of Ulaanbaatar and surrounding valleys are the only way to strengthen those buffers. Utilizing mining revenue to establish conditions through which the economy can diversify is also essential.

THE PRESIDENT OF MONGOLIA SUSPENDS JUDICIAL POWER

President Kh. Battulga relieved 17 judges at various levels from their duties to mixed reactions. It is clear that our judicial system is limping with many criminal cases gradually fading into obscurity. Even more concerning is the fact that a significant amount of corruption cases passes their statute of limitations without any judicial action taking place. There is a dire need for reform of the judicial system and it is our hope that these suspensions are a step in the right direction.

One thing of note is that those suspensions were made under the directive of the Supreme Court who acted on the advice of the National Security Council. This prerogative was given to the National Security Council as a result of amendments in March of this year. In this instance however, the suspensions seem to be backed with solid facts with 7 of them being connected to Salkhit deposit license dispute which is a very convoluted case marred by judicial incompetence and wrongdoing at every step. The other judges are also involved in controversial decisions.

A further 8 judges will be reviewed by the National Security Council on the advice of 5 Parliament Members. Those judges are allegedly connected with the torture of suspects in the S. Zorig murder case. There is no denying the dire need for reform of the judiciary but there also does not seem to be



any guarantee that the National Security Council will eventually target honest judges doing good work. There are already concerns raised that the 7 judges allegedly connected to the Salkhit case were not involved in it at all. However, the Independent Authority Against Corruption is investigating those judges and they need to keep the public informed on the progress of their investigation.

Regarding the 8 judges to be reviewed in connection to the S. Zorig murder case, if it comes out that the judiciary was complicit in the torture of the suspects, it would constitute a return to the 30's where 30 - 40 thousand Mongolians were tortured for false confessions. It turned out that the three tortured individuals were not connected to the S. Zorig murder and the Mongolian public should seriously watch what happens to those individuals. If Mongolia had capital punishment, those individuals could already have been killed.

THE MONGOLIAN NON-PROFIT LEGAL ENTITIES ACT COULD CHANGE THE LANDSCAPE OF NGOS

No legislation in any democratic society should restrict the freedom of individuals to engage in activities not expressly prohibited by law. The first law on NGO's was enacted in 1997 and potential amendments are now being discussed. Legislators are pointing at a need to distinguish Non-Profit Organizations and Non-Governmental Organizations as justification for the amendment. They also want to look at the financing of NGO's. We have over 20,000 registered NGO's out of whom only 8,500 are active. 30% of them are government watchdogs that keep the actions of the government in check, a substantial aspect of democracy.

There are legitimate concerns that religious and political activities are being carried out under the banner of NGO's but it is the responsibility of the State Registration Agency to address those issues. The proposed amendments are concerning given that the operations of civil society were severely hindered in countries like Poland, Hungary and Russia under the same justification. As Mongolian NGO's are not financed by the government (outside of tenders), 70% of them rely on funding from abroad. While state funding may be looked at, excessive involvement of the state in the operations of NGO's is detrimental to the conduct of democracy.

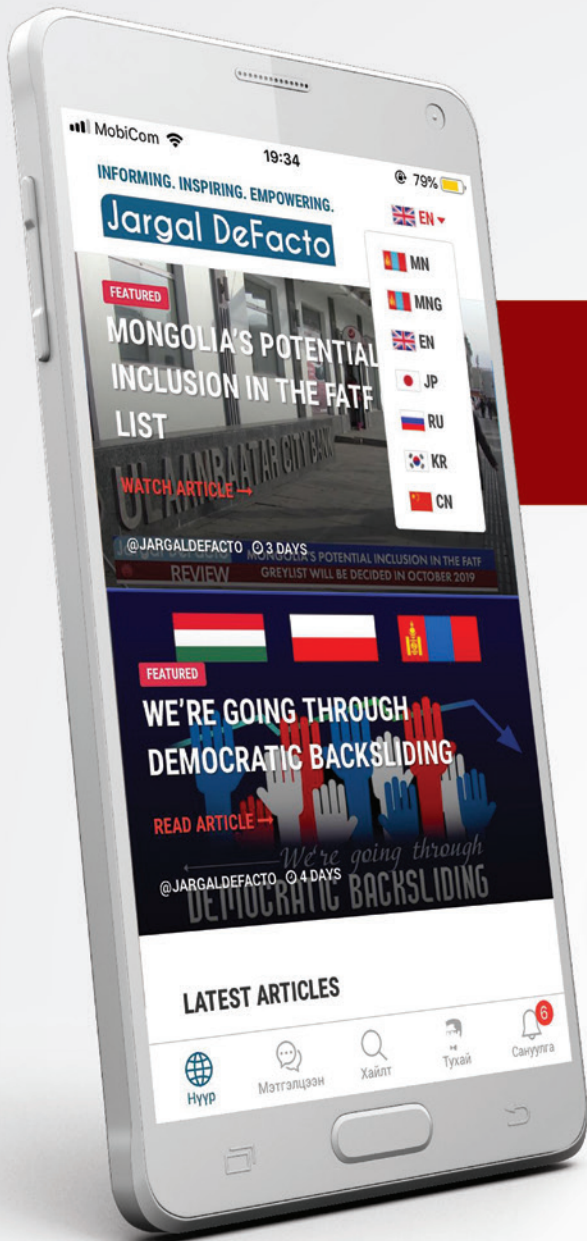
It is expected that legislators will most likely pass the amendments when it reaches the floor. It is worth remembering that there are numerous Parliament Members and officials who operate NGO's. There needs to be a disclosure of all owners



of NGO's and measures need to be put in place whereby public officials are barred from operating NGO's. This is why the Mongolian public is devoting a significant amount of attention to this law. Over the last two weeks, NGO's got together to discuss the potential impact of this legislation on their operations.

It is possible for the government to finance a certain number of NGO's but this funding should not be leveraged to gain influence over their operations. The development and presence of a vibrant civil society is the basis for a sound, solid democracy. This is what sets us apart from our neighbors and other former socialist countries so we have to continue to develop our civil society through which Mongolians can keep the government in check, especially in areas such as mining licenses, state owned enterprises and so on.

This review has been edited here for space and clarity. You can watch the full 30-minute review on the Defacto website [\[HERE\]](#).



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