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WEEKLY



DeFacto **ARTICLE**

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“GREY” GOVERNMENT

DeFacto **REVIEW**

➤ OPENING OF PARLIAMENT'S AUTUMN SESSION AND THE PRESIDENT'S VETO

The regular session of Parliament began on Tuesday with the constitutional amendments on the top of the agenda. While the Legislative Standing Committee did not approve the President's veto of the referendum, the government standing committee and 64% of the Parliament members present agreed with the veto.

➤ WHAT IS A “TRUST LOAN”?

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Since 2017, Mongolia has been subject to “intensive monitoring” by the Financial Action Task Force (“FATF”), an inter-governmental organization that combats money laundering and terrorist financing.

Recently, at the FATF's Asia/Pacific Group (APG) meeting held in Bangkok from September 9th to 10th, the government representatives of Mongolia introduced measures that had been implemented with respect to the FATF's recommendation and were rated based on their progress. Apparently, the Mongolian government implemented 15 out of 20 FATF recommendations, but did not make sufficient progress on four out of eleven assessment criteria, and as a result was rated with a ‘C’. Representatives of the main bodies, the Bank of Mongolia, Financial Regulatory Commission, Ministry of Finance, Ministry of Justice and Internal Affairs, Intelligence Agency, and Police Agency went to Thailand and, like in the previous year, returned with a ‘C’ rating. Hence, the citizens have a right to know what the four criteria are, and why Mongolians were not able to tackle those problems.

FOUR UNFULFILLED CRITERIA OF PROGRESS EVALUATION

The FATF Recommendations suggest that the financial sector must function adequately, and that national security must be protected in order to prevent the financial system and economy from money laundering and terrorist financing. However, Mongolia failed to fulfill the following four out of eleven criteria in the evaluation of progress.



1

Article 3 which stipulates that “Financial institutions should be supervised, monitored, and regulated by designated monitoring bodies”, remains unfulfilled in Mongolia. The FATF revealed that a nominal and minimal monitoring, or inspection, of activities of nonbank financial institutions enables money laundering in Mongolia.

2

Article 4 that states “Reporting if the financial institution discovers suspicious transaction ...” has not been implemented yet. The Mongolian government is incapable of controlling the mining, sales, and smuggling of gemstones and precious metals. It can be merely proved by the fact that tons of gold disappear as the tax increases. The gold mining by ninja miners is uncontrolled and in addition, this gold is sold at the site to secretive individuals with “special protections.” The smugglers who transport tons of gemstones across borders have negatively impacted the rating as well.

3

The Mongolian government was not able to enforce Article 7 which provides that “Cases and actions related to money laundering should be investigated, and sanctions should be effective, proportional to the severity of the offense, and be able to deteriorate recidivism.” The government pretends to be combating corruption by arresting the high-ranking government officials, the head of large banks, and corporations from time to time. The public has been witnessing: why any case or any arrested individual does not go entirely through the criminal procedures; why they do not get punished; and what the reason is for release. I am referring to renowned individuals such as the two former Prime Ministers, Minister of Finance, CEO of Erdenes Mongol, owner of Trade and Development Bank of Mongolia, who were arrested, released, and eventually, the cases got dropped.

4

Mongolia keeps infringing Article 11 which states “Individuals or legal entities which have been involved in spreading internationally prohibited weapons must be prevented from receiving, transferring, and using funds.” To illustrate, the Mongolian government is failing to enforce international economic sanctions against North Korea, a country that frightens the world with its experiments on nuclear weapons and that leaves its citizens hungry. Even though the number is gradually decreasing, there are approximately 300 North Korean citizens working in Mongolia and handing their salaries over to the Embassy of North Korea.

The inter-governmental organization has carried out a factual evaluation that exposes the true colors of the Mongolian government. When will the “grey” government in the grey palace stop their actions that might place their country on the “grey list” and make citizens live in the twilight?



If Mongolia is included on the FATF grey list, the exchange rate of the Mongolian Tugrik will fall. Consequently, once again the citizens and ordinary business owners will *suffer* from the harm.

The Mongolian representatives who got regional 'C' ratings are going to receive the final decision regarding inclusion on the FATF grey list at the annual FATF meeting in Paris on October 12th 2019.

2019.10.02 ■



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DeFacto **REVIEW**

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OPENING OF PARLIAMENT'S AUTUMN SESSION AND THE PRESIDENT'S VETO

The regular session of Parliament began on Tuesday with the constitutional amendments on the top of the agenda. While the Legislative Standing Committee did not approve the President's veto of the referendum, the government standing committee and 64% of the Parliament members present agreed with the veto.

Autumn sessions of the Parliament usually discuss the budget for next year but this session shall also involve discussions on the amendments to the constitution along with the Law on Elections. The Law on Elections is interesting in that it is changed by the Parliament prior to every election. It is a peculiar situation where the law can be changed even a day before the election should it be deemed necessary.

There was separate legislation on the election of the President, the Parliament and local governments but they were incorporated into one legislation in December 2015, 6 months prior to the 2016 elections. There are discussions to separate these laws again but a more interesting aspect about the discussions this year is one to make the country into one constituency.

Legislation on political parties is also discussed every year but never resolved given that it will force political parties to disclose their financing. The Supreme Court is responsible for ensuring the transparency of this financing but a failure to carry out their duties leaves us with no understanding of where funding for political parties originates from.

It is clear that amendments to the constitution will be made with overwhelming support from Parliament. However, legislators should not be fooled into believing that the majority of issues facing Mongolia emerge from the constitution when in reality, they should be attributed to non-enforcement of laws. Following the second reading of the amendments, the agreement was reached that the issue will be put to a referendum which the President has vetoed.

This will most likely lead to a third and fourth reading of the amendments but it is not clear whether a referendum will be held at a later time. One path suggested by the ruling party is to have a third and fourth reading in consultation with the President following which a Presidential approval will lead to the amendments being enacted.

The concern with this approach is that the Constitutional Court may one day reach a decision that these amendments are illegal.

Therefore, the most likely course of action is to have a referendum alongside the election next year in June. There is however a lingering question of whether the gap between the President's proposal and Parliament proposal can be bridged prior to then. Moreover,

Mongolians should have a clear understanding of the amendments prior to the referendum being held.

One amendment for example involves raising the minimum political party membership to 1% of the electorate which would currently be 20,000. This raises the question of whether political groups with less members would not be considered a party. The third and fourth readings will undoubtedly create more questions meaning the people need to be involved and engaged.

As the amendments to the constitution would most likely be effective for the next 20 or so years, it is the responsibility of the media and civil society to inform the populace of the amendments. Failure to ensure that the Parliamentary and judiciary systems become more transparent and efficient through these amendments will undoubtedly create new issues.

There is also a significant internal power struggle within the ruling party with its 64 parliament members divided equally into two camps. We are in a position now where Members of Parliament make decisions based on its impact on their future career. For example, the mismanagement of funds by certain Members of Parliament has come to light but the courts don't have any recourse due to their parliamentary immunity.



WHAT IS A “TRUST LOAN”?

Last Wednesday, Members of Parliament submitted a Trust Loan or Credit of Trust legislation on the provision of loans of up to 20 million MNT with low interest or collateral. Proposers of the legislation noted that 90% of people with loans take up to 20 million MNT and that a total of 3 million people (overlapping) will be able to take the loan.

THIS IS A CLEAR INDICATOR OF NEXT YEAR'S ELECTION DRAWING CLOSER. OUR POLITICIANS PROMISE EVERYTHING TO THEIR CONSTITUENTS.

The proposal was put forward by 12 members many of whom were involved with SME fund embezzlement. By their estimate, this new fund would require 200-300 billion MNT. This would mean significant reductions in the social infrastructure budget or other areas.

It is also perplexing why this proposal was brought forward knowing it would not pass. Passage of the bill would mean significant increases to our taxes. Moreover, social protections taxes are increased by 1% every year leading to a third of employee salary being devoted to those taxes. This money would better be utilized by the employer to expand their businesses and invest. The private sector can't afford any more taxes leading to people being let go and low job creation forcing individuals to seek employment in Korea.

The first impact of the legislation would be increased taxes and this will have a detrimental impact on the private sector. On the other hand, this money which has not been created will enter circulation and create inflation. Moreover, most of the money would be utilized abroad as we almost exclusively import products. This will in turn impact the USD – MNT exchange rate and stimulate further increase inflation.

There is also talk of increasing funding for special state funds. However, almost all of these funds operate with a loss and a cursory check of one of them uncovered rampant embezzlement. The legislation on



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laws indicates that thorough research must be conducted prior to the proposal of a law with a clear description of the positive and negative impacts on the economy being formulated. This is disregarded in the current parliament and the overwhelming majority of the ruling party allows them to pay little regard to evidence-based policymaking. I was expecting the new speaker to look more diligently into the research behind proposed legislation but this is clearly not the case.

This disregard for evidence is most likely due to people who are not aware of the consequences of their actions and those who are apathetic to them. It is a dangerous

situation as legislators in particular must have some form of qualification, expertise and English. If they don't possess these capacities, they should turn to the proper institutions that have the relevant expertise in the area. Despite this, the dysfunctional Parliament that Mongolia currently possesses ensures that no one should be surprised if the law is adopted. Particularly prior to an election, the government will attempt to demonstrate a show of force at the cost of the ordinary citizen. Their main concern is their reelection but fortunately, many of them will fail to get reelected next year.

DEFEAT OF THE NATION'S REAL SMALL AND MEDIUM ENTERPRISES

The court case lodged by qualified individuals and organizations who failed to secure SME funding began last week. However, the Supreme Court overruled the decisions of the administrative court in favor of the plaintiffs. If we look at the issue from the beginning, Members of Parliament embezzled significant funds from the SME fund in 2018.

In 2019, the process was changed so that all SME applications that meet the criteria for funding were placed on a roster. Funding for SME's would be appropriated according to the roster with the understanding that companies that failed to procure funding would move to the top of the roster for the next funding opportunity. 54 companies were placed in this bracket and while they failed to receive their funding, two well-known Members of Parliament procured funding from the SME fund.

The ensuing court case was adjudicated in favor of the SME plaintiffs but the regulation on companies who failed to procure funding receiving priority for funding once new funds become available was removed during this judicial process. Therefore, the Supreme Court decided that the SME plaintiffs did not have sufficient legal standing for the case to proceed. This decision was clearly a politically motivated one given that the state would have to compensate the plaintiffs should the court adjudicate in their favor. Mindful of this, the government ensured that the change in regulation would remove the plaintiffs of any legal standing.

In 2019, the regulations surrounding the distribution of SME funds were amended and 270 of 349 proposals for funding from citizens and companies have been selected with 68 billion MNT in loans being distributed to them.

However, my concern is whether this is the right way to support SMEs. They collect taxes from 80,000 companies and distribute them to 300 companies. Simply removing those taxes may prove to be a more effective measure to support SMEs. 44 of the 64 ruling party Members of Parliament were implicated in the SME fund embezzlement. This number would gradually decrease to the current number of 14 members who have been found to have mismanaged the fund.

On the other hand, there is little potential for the reelection of these members as the ruling party will be reluctant to put forward individuals implicated in such large-scale embezzlement as candidates. However, these individuals will most likely not get punished given the immunity that Members of Parliament enjoy.

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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