



Independent Joint Anti-Corruption
Monitoring & Evaluation Committee

BACKGROUND

MEC Asks for Amendments to the New *Anti-Money Laundering Law*

The Council of Ministers approved the new Anti-Money Laundering Law, which has been submitted to the National Assembly

- The draft *Law on the Campaign against Money Laundering and Proceeds of Crime (or Anti-Money Laundering Law)* was approved by the Council of Ministers on May 5, 2014 and was recently submitted to the National Assembly of Afghanistan for consideration and passage.

The law is a condition of the IMF Extended Credit Facility Program for Afghanistan

- The submission of a new *Anti-Money Laundering Law* to the National Assembly was a structural benchmark under the *IMF's Extended Credit Facility Program*.
- The IMF program could be at risk if the benchmark is not met, thereby putting donor funding into jeopardy.

The draft legislation provides mechanisms for investigating, detecting, and seizing assets related to money laundering

- The draft law establishes provisional measures that may be taken, including the confiscation of money and assets, and applies preventive measures for the financial sector and other designated sectors.

MEC proposes clarification of certain articles to avoid ambiguity

- Additional terminology related to anti-money laundering should be added, including definitions for “connected transactions”, “cash transactions”, “shell banks”, “property”, and “cash”, among others.
- The article on reporting entities describes the types of financial and non-financial activities that apply measures for detecting and preventing money laundering. The provision could be strengthened by also listing specific types of businesses that are covered.

MEC also suggests strengthening restrictions on anonymous accounts, customer identification and verification, and risk assessment criteria

- The article on restrictions on anonymous accounts should be extended to cover other means that may enable the, directly or indirectly, hiding of a client's identity, such as savings books or signatory savings books.
- The article on identification and verification of customer identity should be strengthened.
- The article on risk assessment is too narrow and does not encompass important categories of assessment of risk for possibility of misuse for the purposes of money laundering. More detailed criteria for creation of guidelines would significantly strengthen the provision.



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Strengthened recordkeeping requirements by reporting entities and FinTRACA

- The article on recordkeeping requirements is too narrow and does not specify the particular information that must be recorded and the specific content of the recorded data.
- The draft law would greatly benefit from addition of an article on recordkeeping by FinTRACA, specifying additional requirements about operational information as well as details about orders on temporary suspension (freezing) of transactions.

MEC suggests redrafting provisions on reporting over-limit cash transactions and the reporting exemption for lawyers and others

- The article on reporting over-limit cash transactions does not clearly specify the obligations of legal entities carrying out sales of goods or services not to accept cash payments exceeding the limit from their customers or third parties, including when an over-limit payment is made through several linked cash transactions.
- The article on exemption of lawyers and others providing professional services to clients appears to conflict with a provision of the new Criminal Procedure Code that requires citizens to inform authorities whenever they are informed of or witness a crime.
- Moreover, although the article frees such persons from any obligation to provide information to authorities, another article appears to give immunity for any violation of confidentiality if they nevertheless do provide such information. As written, however, it is too narrow and lacks specificity needed to protect against abuse of such an exception.

MEC requests amendments to enhance the level of cooperation among national regulatory and law enforcement agencies

- Lack of coordination between Government authorities and the absence of coordinated policies to fight money laundering hinders to address this problem in Afghanistan.
- FinTRACA should be given explicit authority to establish mechanisms for cooperation with other Government institutions, regulators, supervisors, reporting entities and, law enforcement authorities.

MEC sees the need to expand provisions on international cooperation to enable FinTRACA to exchange information directly with foreign and international authorities

- An article on international cooperation should be included authorizing FinTRACA independently to exchange information with foreign financial-intelligence units, foreign and international law enforcement bodies, prosecutorial and administrative bodies, and international organizations involved in prevention of money laundering and financing of terrorist activities.
- FinTRACA should be allowed to submit a written request to foreign financial intelligence units for temporary postponement (freezing) of certain transactions if there is a suspicion of money laundering or financing of terrorist activities.



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- FinTRACA should be empowered to order a reporting entity to temporarily postpone (freeze) suspicious transactions, upon a written request from a foreign financial intelligence unit, under certain conditions and on the basis of actual reciprocity.

MEC suggests that the law provide an adequate legal basis for the use of a wide range of special investigative techniques

- The draft law omits specific provisions on special investigative techniques that are present in the Anti-Corruption Law currently in force. These existing provisions should not be removed.

The current draft law is not the first attempt to criminalize money laundering in Afghanistan

- In 2004 the President issued two legislative decrees to fight money laundering and terrorist financing, although both decrees are enforceable, they have not received explicit Parliamentary approval.
- A financial intelligence unit, the *Financial Reports and Analysis Centre of Afghanistan (FinTRACA)*, was established in 2004 and became operational in 2006. FinTRACA has led Afghanistan's Anti-Money Laundering/Counter Financing of Terrorism efforts, but additional measures need to be taken to ensure that it can effectively perform the core functions of a financial intelligence unit.

MEC was established to independently monitor national and international efforts to fight corruption in Afghanistan

- MEC develops anti-corruption recommendations and benchmarks, which are monitored to ensure that they are effectively implemented.
- MEC monitors and evaluates national and international anti-corruption efforts.
- MEC is comprised of three national and three international senior anti-corruption experts.
- MEC reports to the public, Parliament, the President and the international community every six months.

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