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Competitiveness Project*

The Legal Foundation for a Private Mongolian Credit Information Bureau

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ABBREVIATIONS AND ACRONYMS

BOM	Bank of Mongolia
CIB	Credit Information Bureau
EPRC	Economic Policy Reform and Competitiveness Project
MBA	Mongolian Bankers Association
NBFI	Non-bank financial institution
SMEs	Small and medium-sized enterprises
USAID	United States Agency for International Development

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EXECUTIVE SUMMARY

Since the mid-1990s, Mongolia's credit information bureau (CIB) has operated out of the central bank, the Bank of Mongolia (BoM). Its usage by commercial banks and non-bank financial institutions is growing rapidly. However, user complaints about the reliability and timeliness of borrower data in the CIB have also risen,

Members of the Mongolian Bankers Association have signed a Memorandum of Understanding and created a Working Group for the purpose of creating the conditions for a private sector CIB. The option of privatizing the state-owned CIB was rejected as too time-consuming and legally uncertain.

Since the critical success factor behind CIBs is an appropriate legal and regulatory environment, EPRC and the Working Group sought a legal advisor to draft a law on CIBs and to amend existing laws to remove contradiction and ambiguities relative to the new law. This report is the result of the legal advisor's efforts.

The primary results of this segment of the CIB project are:

- a) The creation of a private CIB is important for Mongolia because it will help reduce "fault lines" in the financial system, such as a weak institutional capacity for credit risk assessment, and it will stimulate lending, investment, growth, jobs, and incomes.
- b) The timing is optimal for the creation of a CIB because there are few legal barriers, there is rising support among creditors for action, and foreign technical assistance is available.
- c) Key principles and best practices of credit bureau operations as formulated by the World Bank have been incorporated into the Draft Law for Mongolia, such as the voluntary nature of membership in the CIB, reciprocity in information exchange between data providers and data processors (the CIB), the consent of legal and physical persons before their confidential information is sent to a CIB, and permitting the subjects of credit histories to examine and correct the financial information in their files at the CIB.
- d) As is common practice, the central bank (BoM) will be the licensor and regulator of any CIB. We suggest amending the Law on Central Bank to that effect.
- e) As the driver behind recent progress with a CIB, the Working Group of the Bankers Association must take the responsibility for ensuring follow through with the numerous steps recommended in this report.

As part of educating the local financial community on the benefits of a CIB and the need for a proper legal framework, the Consultant made two presentations of his findings—one to the Working Group of the Mongolian Bankers Association and one to the Financial Regulatory Commission. The presentation is annexed to this report.

SECTION I: BACKGROUND

A. Genesis of this consultancy

As part of EPRC's mandate to increase competitiveness, the Project has undertaken initiatives to increase the flow of needed financial services to private businesses through a variety of approaches and structures. Two separate EPRC projects in 2005, one on the credit needs of SMEs in Mongolia and the other on housing finance, reported that there was a need for a working credit information bureau (CIB).

Mongolia currently has a credit information bureau operated by the central bank, the Bank of Mongolia (BoM). It only collects information from, and shares information with, banks and larger financial non-bank financial institutions. International best practices indicate that public credit registries operated by a central bank do not provide optimal results, partially because they are limited in their scope.

The existing CIB is seen by commercial banks as deficient in many respects. The bankers complained that the CIB was not meeting their needs because, among other things,

- The information the banks received from the BoM was not timely and the template required to fill out borrower information was cumbersome and irrelevant in parts
- There is a different frequency of providing inputs and updating the CIB data base
- Banks provide data to the CIB in inconsistent format, complicating BoM's task of creating a data history on credit subjects
- Online data flows from rural areas are not timely
- Information from the Savings and Credit Cooperatives and some leasing companies is not sent to the CIB data base

The overall result is that the data at the CIB are often incomplete, inconsistent and outdated. Realizing this, BoM asked EPRC to organize a public forum where all the issues surrounding the credit information bureau could be aired. The forum was held in November 2005 and was well attended by over 80 representatives of banks, non-bank financial institutions, four public utilities companies, the Mongolian Bankers Association, and Bank of Mongolia.

At the meeting the BoM publicly declared its willingness to transfer the CIB to the private sector. At the request of the BoM and the private sector, EPRC undertook to provide assistance to conduct a feasibility analysis and provide options for consideration. The feasibility study report was issued in August 2006 and among other recommendations, urged convening a working group of stakeholders to discuss and decide on the critical issues facing a private credit information bureau.

The rapid expansion of credit has now given new credence to these recommendations for action to mitigate banks' lending risk; a consensus appears to be emerging to improve credit information services. Through the MBA and the establishment of a working group, banks have now decided to take action and the Project is assisting them in this endeavor. The working group has requested Project assistance to improve the legal environment to facilitate a private credit bureau.

The 2006 feasibility study identified several existing laws that need to be amended and, in fact, recommended the introduction of a separate Credit Information Bureau Law. There is mixed opinion about whether it is easier and faster to amend a number of laws in Mongolia than it is to get a new one passed. Hence, the Project undertook to do both simultaneously, drafting a new Law on CIBs that meets best international practice and proposing changes to existing

laws to remove ambiguities and contradictions among laws. The timing is right for the presentation of these to Parliament.

B. Rationale for a new law

A number of factors argue strongly for the passage of a separate Law on Credit Information Bureaus. The timing is optimal and support is building for such a law among banks and non-bank financial institutions since the 2006 EPRC Report.

B1. Conditions in the Mongolian banking sector

The Mongolian banking sector suffers from a number of weaknesses that an efficient, privately owned and operated CIB will mitigate. These weaknesses include:

1. High levels of explicit and implicit bad debts
2. High lending risks where borrowers rely on excessive leverage and where collateral is often double-pledged
3. A lack of audited accounts and a lack of financial sector transparency
4. A weak culture for honoring debt and for punishing defaulters
5. Weak institutional capacity for credit risk and project analysis
6. Gaps in the regulatory framework and an element of moral hazard

B2. Experience in other countries

Years of experience with CIBs in dozens of other countries have provided several significant conclusions relevant to the creation of a private CIB in Mongolia:

- a) Private CIBs distinguish good versus bad borrowers at the SME and micro level better than a public sector CIB, which targets the macro level
- b) A private CIB catches errors and fraud better than a public CIB
- c) A profit-oriented CIB has the incentive to continually improve its processes and services while a state CIB depends on public funding and other priorities which hampers innovation and good service provision
- d) A private CIB will help lenders improve and accelerate their credit decisions, which will stimulate lending, investment, growth, jobs, and incomes. Conversely, the goal of a public CIB is more narrowly banking sector safety and stability.

B3. No formidable barriers

In many countries strict rules on the sharing of confidential information exist that create difficult legal roadblocks to creating a private CIB. Another barrier is often the unwillingness of major banks to share their data on good customers with a CIB, worrying they might lose these profitable borrowers to other banks. In Mongolia neither of these is a significant barrier. Thus, in practical terms it should be easier to generate and sustain a consensus on a CIB and to provide in a separate CIB law for the exchange, with safeguards, of confidential financial information.

The existence of an appropriate and facilitating legal environment is the key to success for any new CIB. That said, there are many areas of legal ambiguity and interpretation in current Mongolian laws that can best be solved with the passage of a separate Law on Credit Information Bureaus and the amendment of a number of others.

B4. The timing is right

In terms of the evolution of the Mongolian financial sector and the build up of support for a CIB among key stakeholders, it appears quite advantageous to proceed now. Here are the supporting factors:

1. Dissatisfaction among creditors with the current CIB in the BoM
2. The creation of a working group within the Mongolian Bankers Association aimed at laying the legal and financial and technical foundations for a private CIB
3. A unique identifier for all individuals and companies
4. Foreign technical assistance available
5. The Bank of Mongolia, as an important stakeholder, is not overtly opposed to the creation of a private CIB
6. The Government itself is seeking ways to mitigate credit risk in the system
7. Basle II's looming requirements that banks enhance their methods of credit assessment
8. Growing retail demand for mortgages and credit cards which will require more careful scrutiny of borrower.

SECTION II: DRAFT LAW ON CREDIT INFORMATION BUREAUS

The main deliverable of this assignment was to write a draft law on credit information bureaus for Mongolia that met best practice standards in comparable settings internationally and one that emphasized the voluntary and commercial nature of the enterprise.

What follows is the Draft Law as presented to the Working Group of the Mongolian Bankers Association for their review and comment. It is based on a tested framework and language used in the credit bureau laws of Kazakhstan, Kyrgyzstan and Georgia, and it has been modified for the Mongolian context. The Draft Law was the subject of the two presentations made by the consultant.

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CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose of the Law

1. The purpose of this Law is to
 - a) lower credit risks in the Mongolian financial system;
 - b) enact rules regarding the establishment and activities of Credit Information Bureaus (hereinafter “CIBs”);
 - c) enumerate the principles of their interaction with suppliers of credit information, with the subjects of credit histories, and with state organs; and
 - d) define the meaning and composition of a credit history and the process of forming, storing, and using credit histories.

Article 2. Basic Terms Used in This Law

The terms used in this Law shall have the following meanings:

Authorized Body – The Bank of Mongolia that issues licenses on credit history maintenance and regulates the credit information industry.

Authorized Recipient of a Credit Report – either a data provider that has signed a data delivery contract with the Credit Information Bureau or a credit subject; therefore, one that is allowed to receive a credit report in compliance with this Law.

Credit History – the collected credit information available on a credit subject, whether legal entity or individual, that specifies the subject’s fulfillment or non-fulfillment of obligations entered into with creditors.

Credit History Archive – collected credit histories of credit subjects that have been placed in a CIB.

Credit Information Bureau – an organization established in accordance with Article 4 of this Law which compiles, maintains and provides credit histories in the manner stipulated by this Law.

Credit Report – a report on a credit subject maintained at a CIB based on information available in the credit history archive.

Credit Subject – a legal entity or physical person who is a debtor according to credit-related agreements and whose credit history is being maintained in a CIB.

Data Delivery Contract – a legal agreement signed between data providers and the CIB that forms the basis for the transfer of credit-related data from data providers to the CIB.

Data Provider – a creditor (physical person or legal entity) who submits information to a CIB on the payment performance of a credit subject (debtor).

License to Process Credit History – the right granted to a CIB on the basis of an administrative act by the Bank of Mongolia to gather and process credit histories for an indefinite term according to the provisions of this law.

Maintenance of Credit History – the collection, analysis, systematization, recording, processing, correction, replacement, reconciliation, and updating of the credit information submitted to a CIB by data providers, as well as maintenance of the database.

Negative Information – information on a debtor that shows violation of a loan agreement, usually by late payment or non-payment of the obligation.

Positive Information – information on a debtor that shows compliance with a loan agreement, especially in terms of making the necessary payments of interest and principal in a timely manner.

Supply of Credit Report – the issuance by a CIB of information contained in the credit history of a credit subject.

Article 3. Mongolian Laws on Credit Information Bureaus

The formation of a CIB and the processing and distribution of credit histories shall be based on this Law, the Civil Code, the Law on Banking, the Law on Central Bank, and other laws and regulations which are consistent with them.

CHAPTER II. ACTIVITIES OF A CREDIT INFORMATION BUREAU

Article 4. The Creation of a Credit Information Bureau

1. A CIB may be created in the form of a legal entity established voluntarily by financial institutions, with a view to assisting the repayment of credits (loans) by means of the exchange of information on their clients or credit subjects.
2. A CIB shall be established and operated as a commercial limited liability or joint stock company in accordance with the laws of Mongolia.
3. A CIB is licensed by and regulated by the Bank of Mongolia as the authorized body. The competence of CIBs shall be determined in compliance with this Law and with any applicable regulations of the authorized body. A CIB is deemed not to be a non-bank financial institution.

Article 5. The Activities of Credit Information Bureaus

1. The principal activities of a CIB shall be the gathering of credit-related information, the creation of a data base, the supply of such credit-related records to authorized recipients, and the secure maintenance of credit histories.
2. As a commercial entity, a CIB may charge fees for its services and products.
3. As a central clearinghouse and supplier of data to subscribers, a CIB makes no credit decisions on its own. Data providers will use their own lending criteria and make their own lending decisions.

Article 6. The Creation of a Credit History

1. A credit history shall be created through the transfer of information to the CIB by the data providers as stipulated by this Law.
2. The basis for transferring credit data to the CIB shall be the data delivery contract, signed between data providers and the CIB for a time period to be mutually determined and to be renewable or not.
3. Credit histories shall be created under the following principles:
 - a) completeness, comprehensiveness, preciseness and objectivity of information;
 - b) equality of all subjects of credit histories in protection of their lawful rights and interests;
 - c) systematic character, regularity and uninterrupted input of information;
 - d) use of information for its intended purpose;
 - e) non-interference into the private life of citizens and statutorily protected interests of legal entities and the State;

- f) confidentiality of information; and
 - g) legality and state regulation.
4. A Credit history shall not include data about nationality, religious denomination, racial and ethnic origin, membership in political parties or professional unions and other public associations, or the state of health of a subject of credit history.

Article 7. Rights and Obligations of a Credit Information Bureau

1. A CIB is hereby authorized to:
- a) receive any credit-related information specified by this Law or by agreement of the parties in a data delivery contract;
 - b) demand reliable, true, precise and objective information from the data provider in order to maintain credit histories;
 - c) verify information contained in the credit histories by contacting the data provider and/or the credit subject;
 - d) issue credit reports or records to authorized entities as defined by this Law;
 - e) sign contracts on the provision of credit reports and on the rendering of other types of services with legal entities and individuals not indicated in this Law; provided that information contained in the credit reports is used in accordance with the purposes of this Law; and
 - f) exercise other rights stipulated by legislation and lawful contracts.
2. A CIB shall be obligated to:
- a) sign data delivery contracts with data providers;
 - b) create and maintain credit histories of credit subjects, both legal and physical persons, as defined by this Law;
 - c) systemize, record and file information defined by this Law;
 - d) ensure confidentiality and authorized use of information contained in credit histories;
 - e) issue credit history information and credit reports only to persons authorized to obtain it in accordance with the procedures set out by this Law;
 - f) keep records and reports concerning its activity in accordance with this Law;
 - g) have its financial accounts audited annually by an internationally recognized accounting firm, which accounts will comprise balance sheet, profit and loss statement, cash flow statement, footnotes, and clarifications; and
 - h) ensure the security and confidentiality of its operations and of the credit histories in its archives, thereby preventing disclosure of information to unauthorized persons;
3. The CIB when providing a credit report shall indicate the names of all data providers that have supplied credit information and the dates of receipt of this information by the CIB.
4. The CIB shall have no right to include into a credit report data concerning non-performance of obligations or improper performance of obligations by a subject of a credit history starting five years after the event of non-performance.
5. The financial data on debtors gathered and disbursed by the CIB are not deemed to be a “state secret” as defined in Article 16 of the Constitution of Mongolia.

Article 8. Payment for Services Related to Credit Information Bureau Activities

The CIB shall have the right to charge a fee for services related to the processing, archiving and delivery of credit reports, the amount of fee being determined by its management, by its

by-laws, and by supply and demand in the market for its products and services. Fees may not be determined by government authorities.

CHAPTER III. RIGHTS AND OBLIGATIONS OF DATA PROVIDERS AND DATA RECIPIENTS

Article 9. Data Providers

A provider of data to a CIB may be:

1. Any physical person or legal entity providing loans or credit, or any other type of service provider, who is a party to an agreement on the providing of credit history as provided for by this Law.
2. The Bank of Mongolia, the Bank Debt Recovery Agency, the Legal Entity Registration Office, the Civil Registration Agency and any other public registrar, the Property Rights Registration Agency, the tax authority, and any state body carrying out bankruptcy procedures within the limits stipulated by the Law; and
3. Other legal and physical persons, such as, but not limited to, insurance companies, savings and credit cooperatives, telecommunications companies, and utility companies, all of which must conclude a data delivery contract with a CIB.
4. The principle of reciprocity will be adhered to: only those supplying data to the CIB under contract are allowed access to the CIB data base via request.

Article 10. Data Supplied to the Credit Information Bureau by the Provider

1. The credit history of a *physical person* shall include, but not be limited to, the following:
 - a) name and surname of the subject of the credit history;
 - b) identification number of the person as a tax payer;
 - c) personal ID number;
 - d) residential address;
 - e) marital status and number of family numbers;
 - f) evidence in writing that the credit subject has consented to the secure transmission of his or her credit-related information;
 - g) the total amount of indebtedness of the credit subject;
 - h) the nature, amount, current value, and ownership of the security or collateral of the credit subject as indicated in the agreement, including shares on the Mongolian Stock Exchange;
 - i) the date of issue and date of repayment of loans and contingent obligations;
 - j) the total contingent liabilities of the credit subject, including guarantees;
 - k) the nature and amount of any outstanding liens and the name of the lien holder;
 - l) any unpaid taxes;
 - m) any insolvency, bankruptcy or liquidation suits filed against the person;
 - n) a record of the additions and amendments to the credit history;
 - o) information on the actual repayment performance of the credit subject with respect to the person's direct and contingent liabilities as defined by the agreement between the credit subject and the bank or other creditors;
 - p) both positive information (where scheduled payments to the creditor were met according to a loan agreement) and negative information (where scheduled payments to the creditor were not met either on time or in full, which constitutes a violation of a loan agreement);

- q) the name of the data provider; and
 - r) any additional credit information on the physical person provided by the data provider.
2. The credit history of a *legal entity* shall include, but not be limited to, the following:
- a) full and shortened name (in Mongolian and in English);
 - b) the entrepreneurial registry number of the legal entity;
 - c) the identification number of the tax payer;
 - d) evidence in writing that the credit subject has consented to the secure transmission of credit-related information to the CIB;
 - e) the legal address of the legal entity, the factual address of the chief executive officer, the chief accountant, and other persons contributing 5% or more shares to the entity;
 - f) the name and address of any subsidiary or sister enterprises of the subject of credit history;
 - g) the total amount of indebtedness of the credit subject;
 - h) the date of issue and date of repayment of loans and contingent obligations;
 - i) the total contingent liabilities of the credit subject, including guarantees;
 - j) the nature and amount of any outstanding liens and the name of the lien holder;
 - k) any unpaid taxes;
 - l) previous bankruptcies;
 - m) the nature, amount, current value, and ownership of the security or collateral of the credit subject as indicated in the agreement, including shares on the Mongolian Stock Exchange;
 - n) a record of the additions and amendments to the credit history;
 - o) information on the actual repayment performance of the credit subject with respect to the person's direct and contingent liabilities as defined by the agreement between the credit subject and the bank or other creditors;
 - p) both positive information (where scheduled payments to the creditor were met according to a loan agreement) and negative information (where scheduled payments to the creditor were not met either on time or in full, which constitutes a violation of a loan agreement);
 - q) the name of the data provider; and
 - r) any additional credit information on the legal entity provided by the data provider.
3. The data provided to a CIB in 10.1 and 10.2 shall be exempt from the confidentiality restrictions in the Law on Organization Confidentiality.

Article 11. Rights and Obligations of the Data Provider

1. A data provider or creditor has the right to:
- a) request that a CIB supply information on credit subjects that would assist the data provider in complying with contractual obligations;
 - b) supplement and amend previously supplied information.
2. A data provider or creditor is obligated to:
- a) obtain the agreement of the credit subject with regard to the submission of the subject's credit history to a CIB;
 - b) ensure that the data they provide the CIB are accurate;
 - c) sign a data delivery contract with the CIB;
 - d) submit to a CIB complete and true information regarding the credit subject in compliance with the rules stipulated by this Law; and

- e) to make additions to the previously provided information if it is incomplete and correct information if it is inauthentic in the manner stipulated by this Law.
3. There will be no administrative or financial liability ascribed to a data provider who complies with this Law. This Law is intended to override any such stipulations found in the Civil Code, Law on Banking, or Company Law.
4. Moreover, nothing in the Law on Personal Privacy shall prevent an authorized Credit Information Bureau from gathering and processing personal and private financial data and selectively distributing it to authorized users in the private sector, assuming (a) the subject of the credit report has consented to such distribution and (b) adequate data protection safeguards and penalties for their breach as provided in the Law on Credit Information Bureaus.”

Article 12. Processing and Maintenance of Credit Data and Credit History Records

1. Delivery of data to the CIB shall be carried out by the data provider as defined by this Law with particular safeguards to ensure the security of private information.
2. The credit history of a credit subject shall be processed and maintained by a CIB on the basis of the information supplied by the data provider as specified in Article 10 of this Law. Credit histories shall be collected and securely stored in a CIB archive.
3. A CIB will maintain records and develop a credit history on borrowers with details on their direct debt and contingent liabilities. The credit history of a credit subject will include, but not be limited to:
 - a) data on the subject’s total debt acquired through all loans from banks and non-bank organizations;
 - b) data on the subject’s total contingent liabilities, such as guarantees of another party’s obligations;
 - c) a list of the creditors, including banks and non-bank organizations, from whom the subject has acquired obligations;
 - d) the type of loan or debt outstanding and the scheduled dates of repayment;
 - e) a list of the legal entities and individuals that have overdue loans;
 - f) a list of those creditors to which the overdue loans are due and payable;
 - g) all the information listed in Article 10 sections 1 and 2 above; and
 - h) other data agreed between the management of the CIB and other parties.
4. A CIB shall process a credit history with the consent of the subject of credit history.
5. Consent by the subject of the credit history for processing credit history shall be deemed as given if:
 - a) the consent is reflected in an agreement between the subject of the credit history and the data provider, e.g., between borrower and lender;
 - b) the subject of the credit history does not appeal the transfer of information to the CIB within one month following receipt of notification of such pending transfer.
6. Data providers and the CIB shall be exempt from the restrictions on information flows enumerated in the Law on Organization Confidentiality (1995) Article 3.2, assuming the organization as borrower has given its consent.
7. The refusal of the subject of the credit history to allow processing of the subject’s credit data shall be reflected in CIB data.

Article 13. Credit Report Recipients

1. The recipient of credit information reports or records may only be:

- a) a physical or legal person registered with a CIB as a recipient of credit information reports and one who performs credit activities;
 - b) a person registered with a CIB as a recipient of credit information reports who requires credit information in order to perform his work;
 - c) the subject of a credit history who proves identity;
 - d) any physical or legal entity who provides a notarized agreement from the subject of the credit history; and
 - e) law enforcement bodies, upon condition that they have court authorization to receive such information.
2. Credit information reports shall be received from a CIB based solely on an agreement between the recipient and a CIB. The right to receive a credit report may not be transferred or assigned to third parties.
 3. A credit report recipient shall have the right:
 - a) to receive a credit report in the manner provided by this Law;
 - b) to be notified, if a credit subject, of a loan refusal by a financial institution; and
 - c) to appeal, if a credit subject, to the CIB for correction of non-authentic data.
 4. A credit report recipient, if also a data provider, shall be obligated:
 - a) to comply with the agreement of the subject of credit history, except for cases provided by this Law;
 - b) to comply with the provisions of agreements with the CIB, and abide by this Law when submitting an application to receive credit information reports;
 - c) to make necessary changes to the credit-related data contained therein, such as changes in the credit subject's residence, income and reported liabilities, and to report the changes back to the CIB;
 - d) to maintain the confidentiality of the credit report and not to disclose information contained therein to third parties;
 - e) to inform the subject of the credit history, if requested, of the content of the report to verify information contained therein; and
 - f) to bear other responsibilities stipulated by this Law.
 5. Credit information reports may be received either in electronic or written format and should be certified by the signature of an authorized representative of a CIB.

Article 14. Transfer of Credit History to the Recipient

1. The CIB shall be authorized to process credit histories only in compliance with rules set out by this Law and to disclose information only to persons who are entered into an agreement on the receipt of information with the CIB as well as other persons stipulated by this Law.
2. A recipient of credit information shall be required, and otherwise held liable, to use the credit history obtained from a CIB only for the following purposes:
 - a) to carry out responsibilities specified by this Law;
 - b) to meet obligations taken under the contractual agreement among those participating in the CIB system, and
 - c) to keep confidential the information obtained thereto.

Article 15. Rules for Receiving Credit Information Reports

1. Credit information reports may be provided to any registered information recipient upon request or to any subject of credit history upon written request.

2. A CIB may refuse to provide any information if it is requested by a non-authorized subject.
3. A CIB shall maintain records of requests for information and deliveries of information.
4. An information request shall be submitted by an authorized legal or physical person whose identification data are recorded in a CIB's register or by other rules defined by this Law.
5. Credit information shall be issued to the credit subject based on his written request if the person is registered at a CIB as a recipient of credit information, or if the person requests information regarding himself or herself personally.

Article 16. The Need to Indicate the Source of Information Contained in Credit Information Bureau Reports

1. A CIB while providing credit information reports shall specify the names of all data suppliers and the dates when the data were received by a CIB.
2. A CIB while providing credit information reports shall indicate the name of all physical or legal persons that have been recipients of the credit subject's credit records.

Article 17. Rights and Responsibilities of Credit History Subjects

1. The subject of a credit history is allowed to:
 - a) demand information regarding himself/herself/itself at any time and to receive it free of charge once a year; and
 - b) demand change and additions to the credit history and credit records in cases of inaccuracy or incompleteness of information.
2. Within thirty calendar days following the requirement in clause b) of this Article, a CIB is obligated to inspect the credit history of the subject and provide the subject with the results in writing. A refusal by a CIB to correct or amend the credit history may result in monetary or administrative penalties according to Mongolian law.

CHAPTER IV. MAINTAINING THE SECURITY OF CREDIT HISTORIES

Article 18. Rules on Storing, Processing, Abolishing and Archiving Credit Records

1. All credit histories developed by a CIB are the property of the CIB.
2. A CIB shall provide storing in an archive of credit histories for a period of ten years from the date of first entry.
3. The rules for storing, processing, abolishing and archiving credit records, as well as the requirements for information systems that store, process, record, renew and protect credit information from unsanctioned disclosure are regulated by this Law.
4. The extraction of documents from the credit history archive is allowed solely on the basis of a court order, except for cases that may be provided by this Law.

Article 19. Responsibilities of Credit Information Bureau System Participants and Officers

1. In case of violation of the requirements in CIB contracts with data providers for the delivery of a credit history or the deliberate submission of inaccurate information to a CIB, the data provider shall be liable for damages, administrative and/or monetary, in accordance with Mongolian legislation.

2. Employees of a CIB and providers of credit information reports shall be liable for damages in accordance with Mongolian legislation for purposefully or negligently supplying incorrect information to credit report recipients.
3. Employees of a CIB as well as providers and recipients of credit information reports shall keep the credit information confidential. Violations will be dealt with in accordance with Mongolian law.

Article 20. Dispute Resolution

1. Disputes related to provisions of credit reports shall be considered through pre-trial legal proceedings in accordance with Mongolian legal precedents. Any costs associated with a pre-trial settlement of disputes shall be born by the CIB. Any differences concerning the costs of pretrial settlement of disputes shall be considered judicially.
2. Within thirty working days from the date of the receipt of a claim, the CIB shall consider the claim and send a responsive, written reply to the demands of the claimant.
3. When identifying the validity of a claimant's demands, a CIB official shall have the right to verify the information with the data providers in the manner prescribed by this Law.
4. If the claimant's demand took place because of system errors or operational errors on the part of employees of the CIB, the latter shall be obliged to make corrections and provide a recipient with a revised credit report.
5. If a claimant's demand is groundless, the CIB shall send the claimant a written explanation of its refusal to satisfy his claim within the period indicated in paragraph 2 of this Article.
6. In cases when distortion of information contained in a credit report is caused by inaccuracy and/or incompleteness of information used in the creation of the credit history that has been received from the data providers, the latter shall be involved in settlement of a dispute in the manner prescribed by legislation

CHAPTER V. REORGANIZATION AND LIQUIDATION OF CREDIT INFORMATION BUREAUS

Article 21. Reorganization and Liquidation of Credit Information Bureaus

1. The reorganization and liquidation of a CIB will be regulated by the Civil Code and the Company Law of Mongolia.
2. In case of CIB reorganization, credit histories contained in its database shall be transferred to its legal successor if the successor has been duly licensed by the Bank of Mongolia for processing credit histories. In such case, the legal successor shall be obliged to publicly inform data providers regarding the reorganization.
3. If there is no licensed successor, the Bank of Mongolia as the authorized body shall have the right to acquire and maintain the credit histories of the CIB until a licensed successor is determined. A licensed successor may purchase the credit histories from the BoM.
4. In case of a CIB's voluntary liquidation, the CIB or its trustee may negotiate the disposition of the CIB's assets, including the credit history archive. In the case of an involuntary liquidation, the CIB's assets, including the credit history archive, may be auctioned according to provisions in the Civil Code.

5. The amount received with regard to the sale of the assets of a liquidated CIB shall be distributed to creditors and shareholders of the CIB according to provisions in the Civil Code of Mongolia.
6. In the case where the license of the CIB is revoked by the Authorized Body, the CIB has the right to correct the reasons for revocation and to reapply for a license. If the Authorized Body refuses to re-grant the license, then the CIB will have the status of involuntary liquidation according to the Civil Code and laws of Mongolia.

Article 22. Transitional Provisions

1. Within sixty (60) days following the enactment of this Law, a credit data provider shall inform its retail and wholesale clients that the data provider has entered into an agreement with a CIB and that it will provide the CIB with credit information about the clients.
2. If a credit subject provides no written refusal within sixty (60) more days following publication of such an announcement, this non-response by a credit subject shall be considered consent for the data provider to make available to the CIB information on the credit subject, and a CIB shall then be entitled to receive and process a credit history on the subject.

Article 23. Effective Date of the Law

This Law shall go into effect 1 January 2008.

SECTION III: AMENDMENTS TO EXISTING LAWS

Even with the passage of a new Law on Credit Information Bureaus, there will remain contradictions in existing laws that need to be addressed so that the commercial passage to a new CIB is easier and less open to court challenge. This section lists all the laws that the Project examined in order to find areas of conflict with the Draft Law on CIBs. A number of laws needed the addition of new language to conform to the Draft Law on CIBs.

A. The **Banking Law of Mongolia**, Article 7 paragraph 2 permits a bank to release a customer's financial information to others with the consent of the customer. All that banks and non-bank financial institution (NBFIs) have to do so, in order not to be in violation of this confidentiality provision, is to get the customer's consent prior to issuing a credit. In fact, banks as a matter of common practice should have such consent clauses as part of their loan agreements.

However, paragraph 3 in the Banking Law may present a potential problem from the standpoint of legal information flow, and it should be amended. Paragraph 3 reads: "Inter-bank exchange of information on loans disbursed shall not [be] included in a category of Confidential information specified in paragraph 2 of this article."

There are two points here.

1. The paragraph speaks of "loans disbursed" and does not mention potential loans under consideration, which is when the credit data in the CIB will be most helpful to creditors.
2. Banks are allowed to share loan information with other banks but the language implies *only with other banks*. Our amendment to this paragraph should explicitly (a) permit the sharing of loan information with a Credit Information Bureau and (b) permit the sharing of loan information in the CIB data base with authorized users of the CIB.

Thus, Paragraph 3 should be amended to read as follows:

"Inter-bank exchange of information on loans under consideration or on loans already disbursed shall not be included in a category of confidential information specified in Paragraph 2 of this article. Also excluded from the confidentiality provisions of Paragraph 2 are:

- a) banks, NBFIs and other creditors that may share such credit-related customer data with a Credit Information Bureau, and
- b) the Credit Information Bureau which may report such information confidentially to its authorized members upon request."

B. **Law on Central Bank (2001)** lacks language authorizing the licensing and supervision of a CIB. We propose adding several articles to the Law on Central Bank (below), perhaps after Chapter Four titled "Supervision of Banks by Bank of Mongolia."

NEW CHAPTER V. THE CREATION, LICENSING AND SUPERVISION OF A CREDIT INFORMATION BUREAU

Article 1. The Creation of a Credit Information Bureau

1. A Credit Information Bureau may be created in the form of a voluntary association (union) of financial institutions, with a view to assisting the repayment of credits (loans) by means of the exchange of information on their clients or credit subjects.

2. A Credit Information Bureau shall be established and operated as a commercial limited liability or joint stock company in accordance with the laws of Mongolia.
3. A Credit Information Bureau is licensed by and regulated by the Bank of Mongolia as the authorized body. The competence of Credit Information Bureaus shall be determined in compliance with this Law and with any applicable regulations of the authorized body. A Credit Information Bureau is deemed not to be a non-bank financial institution.
4. Banks, utilities, and non-bank financial institutions (such as savings and credit cooperatives, insurance companies, and leasing and factoring companies) that are creditors may be members of a Credit Information Bureau.
5. All members shall be obligated to conclude an agreement with the Credit Information Bureau regarding mutual rights and obligations with respect to the use and distribution of credit information supplied by the members and which is compiled, archived, safeguarded and distributed by the Credit Information Bureau.
6. The name of a Credit Information Bureau shall include the words “Credit Information Bureau”. All other legal entities are prohibited from using the combination of words “Credit Information Bureau” in their trade names.

Article 2. The Licensing of Credit Information Bureaus

1. In order to obtain a license to engage in Credit Information Bureau activities, the following documentation shall be submitted to the Bank of Mongolia:
 - a) an application for issuance of a license, in a form determined by the authorized body;
 - b) a copy of the Founding Agreements or Charter, certified by a notary;
 - c) a copy of the license of state registration as a juridical person;
 - d) a list of the senior management and their functions at the Bureau;
 - e) the names and number of shares of each shareholder;
 - f) evidence that major shareholders and members of the management of the Credit Information Bureau are qualified by dint of education and experience;
 - g) evidence that major shareholders and members of the management of the Credit Information Bureau have no criminal record or legal obligations, including debt due, that have not performed;
 - h) a business plan;
 - i) documents confirming availability of the minimum share capital as determined by the Bank of Mongolia;
 - j) documents that (i) confirm compliance with the requirements to protect and secure the data base of credit histories and (ii) detail the information systems (hardware and software) used;
 - k) a copy of the applicant’s internal policy explaining the conditions for cooperation between the Bureau and the suppliers of credit information, the principles limiting Bureau workers to access credit histories, and the means by which both the suppliers and receivers of credit information will be identified and confirmed; and
 - l) a copy of the applicant’s Code of Conduct which outlines the organization’s internal and external responsibilities and its principles of good corporate behavior.

The Bank of Mongolia, within thirty working days (or six weeks) after receiving the application and all required documents for registration in point 2 of this article, shall determine

whether or not to issue a license to the applicant. Whether a license is granted or refused, the authorized body shall provide a written and public substantiation of the decision.

Article 3. Basis for Refusing to Issue a License on Processing Credit History

1. The Bank of Mongolia shall not issue a license on processing credit histories if:
 - a) an application and/or documentation submitted for obtaining a license on processing credit histories does not meet the requirements set forth in Article 5 of this Law;
 - b) the validity of a license on processing credit histories of a Credit Information Bureau has been suspended and the cause or causes for the suspension have not been remedied. A license will remain suspended until the causes are remedied.
2. The Bank of Mongolia may not refuse to issue a license on processing credit histories if the reason for the refusal is merely to limit the number of licenses outstanding.
3. If a license has been revoked or has been refused to be granted, the Bank of Mongolia shall not accept materials on a new application for a license for a period of one year.
4. The transfer of a license on processing credit history to another legal person shall be prohibited.

Article 4. The Bank of Mongolia as the Supervisory Authority

The Bank of Mongolia shall:

1. monitor the implementation of the Credit Information Bureau Law;
2. issue licenses on processing credit history, and renew or suspend such licenses;
3. publish information regarding the issuance of a license on processing credit history, as well as on the suspension, revocation or renewal of the validity of licenses within ten days after the decision has been made;
4. carry out monitoring of the compliance of Credit Information Bureaus with the conditions for the issuance of the license;
5. order the auditing of CIB financial records; and
6. be authorized to require that Credit Information Bureaus correct or delete information on a particular person or legal entity on the basis of an application by that person or legal entity. A Credit Information Bureau is obligated to comply with such demand of the Bank of Mongolia within thirty calendar days.

Article 5. Grounds for Revocation of CIB License

With a view to protect the rights and lawful interests of subjects of credit histories and to ensure effective coordination of all participants in CIB activities, the Authorized Body may

- a) impose sanctions against a CIB and its officials, and
- b) revoke the license of a CIB if the CIB has:
 - (i) violated the laws of Mongolia or the regulations and licensing requirements of the BoM,
 - (ii) declared bankruptcy or insolvency, or
 - (iii) does not correct inauthentic information in its credit histories as required in Article 4.6.

C. **Personal Privacy Law** (1995) contains several articles that may be problematic for a new CIB. This law was passed in the early days of Mongolian independence by a legislature understandably unfamiliar with commercial realities in a non-state-directed environment.

Article 2 of this law defines the concept of privacy (in part) as referring to information or documents of a citizen that are confidential and may damage a person's name, reputation or legitimate interests as a result of disclosure. Article 4.1 states that family privacy is to be protected as well as personal "assets." Such assets are defined in Article 4.2.3 as "information, documents, dates and numbers..." Finally, Article 4.3 provides that a person may classify as "secret" any of these assets, thereby removing them from public disclosure.

It can be argued that a borrower's record of defaulting on loan payments that is sent to or obtained from a CIB could have the effect of damaging his or her reputation. If this individual's CIB data were disclosed only to a qualified member of the CIB, as opposed to the general public, then this provision of the Personal Privacy Law may not apply. In any case, elements of this Law need to be amended or explicitly addressed, preferably in a separate CIB Law.

Article 5 contains more language that needs clarification. It states: "An entity which has acquired personal private information by law or authorization is prohibited from disclosing it to others." This sentence appears to say that even if a CIB under its own law acquires a person's debt-payment records from commercial banks, the CIB cannot disclose them to others such as CIB user/members.

Hence, for the sake of clarification, we suggest the following language to amend the Law on Personal Privacy. The last section of Article 5 should read:

"Nothing in this Law shall prevent an authorized Credit Information Bureau from gathering and processing personal and private financial data and selectively distributing it to authorized users in the private sector, assuming (a) the subject of the credit report has consented to such distribution and (b) adequate data protection safeguards and penalties for their breach as provided in the Law on Credit Information Bureaus."

As "insurance" against delays in adopting this change to Article 5, we have also incorporated this language in the Draft Law on Credit Information Bureaus, Article 11.4, the passage of which may be more assured.

D. Article 454.5 of the **Civil Code** states: "A bank or juristic person authorized to take savings shall maintain the confidentiality of the customer's savings and transactions related to it unless otherwise provided by laws." To remove any doubt about the right of banks to release information to a CIB with respect to their customers' financial data, we should add a sentence to this article, such as "One of the laws that is otherwise provided is the Law on Credit information Bureaus 2008."

However, since the Civil Code is difficult if not impossible to amend, given its importance second only to the Constitution of Mongolia, we should probably be satisfied with the existing language, in particular the circumvention permitted by the words "unless otherwise provided by laws."

E. **Law on Organization Confidentiality** (1995). This law defines an "organization" as any legal entity or any public or private body that is registered. It could be a state-owned entity, a commercial body, a religious group, a political party, or an educational institution, to name a few. Any new CIB would need to be registered and would fall under the ambit of this law. Article 3.2 of this law will require some clarifying language with respect to a CIB. The article states that information that an organization deems as secret or confidential is protected if disclosure would cause harm to it in the marketplace.

The solution is to add a clause to the Draft Law on CIBs that exempts them and data providers from the restrictions of this Law. The following sentence was therefore added to the Draft Law Article 12.6:

“Data providers and the CIB shall be exempt from the restrictions on information flows enumerated in the Law on Organization Confidentiality (1995) Article 3.2, provided the organization has given its consent.”

F. **The Law on Banking Deposits, Loans and Transactions** (1995). Article 21 of this Law (“Loan Operations”) permits a bank to obtain information about potential borrowers. Thus, we recommend that five words (in italics below) be inserted in Article 21 paragraph 5 to make clear that a Credit Information Bureau is one of the relevant organizations permitted to provide information about the financial capacity of the borrower to repay his obligations.

“The lender, in deciding whether to grant a loan, shall have the right to obtain information from the relevant organizations, *including the Credit Information Bureau*, as to the financial capability of the borrower and any information on any other bank loans the borrower has in its name.”

Article 22 of this Law is titled “The Loan Agreement”. Paragraph 2 lists the kinds of information that should be included in a loan agreement, such as the principal place of residence of the borrower and the purpose and amount of the loan. Since the consent of the borrower must be obtained for the lender to transmit the borrower’s credit-related information to a CIB, we should advise banks and other creditors that they need to specify in the loan agreement that the borrower gives his consent to the lender to submit the borrower’s credit-related data to a credit information bureau.

Article 22.2 should be amended to read:

“A loan agreement between creditor and borrower shall contain, but not be limited to, the following information: the addresses of the principal places of residence of the borrower and the lender, the credit account number, the purpose of the loan, the amount of the loan, the term of the loan, the interest rate, the security and guarantee set out in the loan agreement and conditions for amendment to the terms of the loan agreement or its cancellation.”

G. **Law on Licensing** (2001). Article 15 of this Law lists the types of business activities that require a license. We suggest adding “credit information bureaus” to the list, perhaps as item 15.2.3.

H. **Law on Property Registration**. We should add a sentence to Article 37 of this law as follows: “This agency is authorized to submit any change in collateral registration and any new registered collateral to a credit information bureau and to the Financial Regulatory Commission.

I. **Law on Cooperatives** (1998). We should add two sub paragraphs (in *italics* below) to Article 48⁴.2 of the law which is entitled “Loan Disbursement Committee, its powers and composition.”

⁴48 .2. The Loan Disbursement Committee shall exercise the following powers:

⁴48 .2.1 To examine loan request applications of the members;

⁴48 .2.2 *To submit credit-related information of its members to a credit information bureau;*

⁴48 .2.3 *To request a credit report on the loan applicant from a credit information bureau;*

⁴48 .2.4. To make decisions for loans, to provide loans;

⁴
48 .2.5. To assure repayment of the loan;

⁴
48 .2.6. If considered necessary, to convene the Members' Meeting;

⁴
48 .2.7. Other powers defined by law and charter of the cooperative;

J. Interpretation of Other Laws

The Constitution

The legal team found nothing in the Constitution, Articles 13 through 17, which impacts a CIB negatively. On the contrary, Article 16 provides that Mongolian citizens have the right to seek and receive information which supports the activities of a CIB.

The Civil Code

Article 1.1 of the Civil Code states "the purpose of the Law shall be to regulate relationships with respect to material and non-material wealth arising between legal persons." Thus, it deals with relations between two corporate entities, such as a CIB and a data provider, not with relations between a CIB and a consumer or credit subject, unless the credit subject is a legal entity.

Nonetheless, Article 21 of the Civil Code is titled "Protection of citizens' name, honor, dignity and business reputation." Paragraph 21.4 states that citizens are entitled to some form of compensation if their personal and confidential information is disseminated without their consent. "Consent" is the operative word. Banks and other creditors, for the sake of self-protection, should insert a clause in their loan documents stating that by signing the loan application, the applicant is consenting to the submission of his or her financial and credit-related information to the CIB and thence to other creditors.

Article 456.3 of the Civil Code provides that "Banks, which have released not true and accurate information specified in article 456.2 of this law, shall bear responsibility for damages." In the Draft Law we have provided an exemption for banks from this Article. See Article 11.3 in the Draft Law.

Articles 181-183 of the Civil Code are not relevant for our purposes because it is the responsibility of the creditor to keep track of the status of the collateral supporting his loans. The creditor as the loan originator needs to know when assets supporting a loan, such as immovable property, are no longer under the ownership or management of the debtor. Keeping track of change in ownership of collateral is not the job of a CIB.

The CIB's job is to gather, process, safekeep, and distribute data to creditors based on the data the creditors supply the CIB. It is the responsibility of the data providers (creditors) to ensure that the data they send the CIB are accurate and timely. Financial institutions must update their own records as events happen and then inform the CIB that "Some data on Mr. X have changed and here is the new info you should integrate into Mr. X's file."

Article 188 of the Civil Code deals with obligations of parties to a contract and for our purposes simply says that if one of the parties needs information regarding the content of the contract, then that party has the right to ask for the information from the one who possesses it. A CIB may or may not be a party involved in such a matter, and in any case a CIB does not appear to be liable for any costs associated with the information retrieval.

The Bankruptcy Law

The legal team did not locate any relevant references in the Law to "secrecy," "confidential," "credit" or "information" in this Law. We did not find language that would facilitate or hamper the activities of a CIB.

Law on Consumer Protection (2003 and 2004).

The principles of consumer protection are listed in Article 4. One of these principles (4.1.2) refers to the obligation of producers and sellers to provide “true information” on goods and services in order to protect a consumer’s health, property, life and environment. Any harm done to a consumer’s health or life by goods and services will be redressed and compensated for. The Law is intended to protect consumers from unhealthy, unsafe, defective or poorly-made goods.

The provision of services is included in the language of Article 4, and CIB commercial activities are clearly a service to the financial markets. However, it seems clear that the intent of the Law was not to include in this context the provision of true information on a consumer’s poor performance in financial contracts, which will be reflected in the archives and reports of a CIB.

There are no references in this Law to “secrecy,” “confidentiality,” or “privacy.” There is nothing in the Law directly or indirectly prohibiting the sharing and distribution of a consumer’s financial information, and therefore a CIB is not to be held liable if such information results in the loss of a consumer’s property or ability to obtain credits in the future. Of course, if there are errors in the CIB archive or reports, then the original data provider is obligated to correct the errors, and the consumer, or credit subject, has the right to appeal to the CIB for redress. If a consumer’s call for redress proves to be groundless, then the “seller” of the service (meaning the CIB) is not to be held liable for the costs incurred in the appeal (Article 6.5).

Finally, Article 11.1 of the Law on Consumer Protection states that “consumers, producers and contractors may conclude contracts of sale or supply of goods, or performance of work or services in writing or orally.” This clause permits banks and other creditors to get either oral agreement to the submission of their financial data to a CIB or written agreement in a loan agreement or contract. Such agreement is essential to the building of a comprehensive and accurate CIB data base.

Personal Loans

During its discussions the legal team asked whether or not the CIB should keep track of loans made by individuals to other individuals. We concluded that person-to-person loans should be excluded from consideration in the Draft Law because neither the banks nor the CIB have a way of verifying these personal loans or the means to keep track of them. Banks and other creditors can ask potential customers for this information on their loan application forms, and the banks may or may not get the truth. Such personal and informal information, if given to a bank, should just be another tool for the bank to help with its due diligence in evaluating client creditworthiness. Banks need to gather all their information about a customer from all sources, including the CIB, and make their own credit decisions. CIBs are not in the business of making loan decisions for banks.

SECTION IV: RECOMMENDATIONS AND WORK PLAN

As mentioned in this report, the timing and conditions are almost optimal for creating a private sector credit bureau. We say “almost” because the political waters in Parliament have not been tested. The financial community is supportive and has taken the lead (with EPRC encouragement) in moving a CIB project forward.

However, Parliamentarians with vested interests such as quiet loans or questionable immovable assets may not want their debt and personal information in the formal system. The parliamentary approval process could be long and the outcome uncertain. In addition, the BoM has taken a neutral stance regarding the private CIB, neither cooperating with the EPRC effort at this stage nor opposing it. The BoM may or may not approve of the amendments to existing laws recommended here, including its own governing legislation, and they may perceive a loss of autonomy and power.

The BoM’s main argument is likely to be: A private CIB will diminish our power to control the money supply and hence the value of the togrog, which is the main responsibility of the BoM. Article 4 of the Law on Central Bank is worded as follows:

- “1. The main objective of the Bank of Mongolia shall be to ensure stability of the togrog.*
- 2. Within its main objective the Bank of Mongolia shall also promote balanced and sustained development of the national economy, through maintaining the stability of money, financial markets and the banking system.”*

The best strategy for moving forward and achieving success with a private CIB is to undertake a wide education program, one that includes all stakeholders—from the general public to the BoM—and focuses on the economic benefits to all parties. Individual participants and the nation as a whole benefit from a deeper and stronger financial system, of which the CIB is a crucial cog since it facilitates credit expansion by helping reduce perceived credit risk and hence interest rate. The education process will not end in just one or two years but will be ongoing as the creditor community expands its portfolio of lending options to mortgages and introduces heretofore untested products.

At this early stage of development, a committed leader or driver behind the project is essential to success. That leader, given its early commitment, must be the Working Group of the Mongolian Bankers Association. EPRC should also commit to continued support.

Hence, we are recommending a number of steps that the Working Group and other principal stakeholders in the CIB should pursue. The activities presented below stretch over the next year or two, but they need to be commenced soon so that the current momentum is not lost and this window of opportunity is not foregone.

- The Working Group of the MBA should continue meeting regularly to review progress and assign tasks to subgroups. Bi-weekly or fortnightly meetings would be the right pace. The types of issues that need to be addressed are shown in the box below. Subcommittees could be made responsible for handling the various legal, technical, membership, business and stakeholder tasks.
- The Working Group should engage a group of local attorneys to review the Draft Law and our suggested amendments and make any necessary changes according to Mongolian practice, while making certain that the fundamental principles of CIBs are not compromised.

Working Group Issues to Discuss

- Who will the shareholders be? The users? The management team?
 - Should an equity stake be offered to international partners?
 - What changes are needed in the legal framework?
 - Developing a business plan for the CIB
 - Types of fees to charge and their size
 - How do we assure best practice in four key areas:
 - timeliness of information
 - ease of access
 - data security
 - completeness of data
 - Privacy concerns—who gets access to the CIB data?
 - Hardware, software and technical issues, e.g., Mongolian or English or both?
 - Technical support – from where and for how long?
-
- When the timing is right and a coalition of support has been assembled, the Draft Law on CIBs and suggested amendments should be submitted to Parliament, perhaps together perhaps separately depending on estimates of success with both approaches. The Working Group should ensure that parliamentary committees are well educated in the concepts and benefits of the Law.
 - The founder/owners of the CIB should sign a “shareholders agreement” that spells out the rights and obligations of each, in particular with regard to information sharing and privacy. This will minimize misunderstandings.
 - The Working Group should take steps to locate a respected international financial partner and technical assistant. The latter would integrate IT systems and interbank computers, install security safeguards and software, and provide training and operational support.
 - The Working Group should seek out international financial institutions, such as the European Bank for Reconstruction and Development, to determine interest in their taking an equity position in the CIB.
 - The Working Group and a small number of potential senior managers of the CIB should undertake to write a formal business plan for the new company that addresses the CIB’s products and services, the market it intends to serve, its goals, its expected revenues and costs, and the capital contribution of each shareholder.
 - The Working Group should send two or three of its members to visit credit bureaus in several countries, e.g., Kazakhstan, Georgia, Kyrgyz Republic, in order to receive first-hand advice and training.
 - A reputable public relations firm should be hired to undertake a public awareness campaign and help build consensus among stakeholders. The public needs to be educated on the nature, role, purposes and benefits of a CIB, using workshops, print media, brochures and information bulletins.
 - Major providers and users of CIB data should sign exchange contracts.

- The CIB should formally incorporate under the Company Law as a commercial entity and appoint senior management.
- At this stage the CIB should start implementing the business plan (renting space, equipping the office, and hiring qualified technical and managerial employees).
- Manuals need to be written for CIB employees and the credit officers at member institutions in order to guide participants in data processing, permissible information flows, and consumer rights.
- It is important throughout this process to continue seminars and public speeches to educate the private sector and government institutions on the role of the CIB and the problems it will solve. Judges and lawyers need to be educated also on the uses of credit information and on consumer rights.

ANNEX A: TERMS OF REFERENCE

ANNEX A: TERMS OF REFERENCE

TERMS OF REFERENCE FOR SHORT-TERM LEGAL CONSULTANCY ON CREDIT BUREAU

Background and justification for the assignment

The goal of credit information bureaus is to ease a fundamental problem to credit markets: asymmetric information between borrowers and lenders. Formal information exchanges help lenders identify good borrowers thus reducing the incidence of adverse selection. The practical consequence of this is better risk management which enables financial institutions to expand their lending to underserved segments of the population such as small and medium size enterprises. The availability of reliable credit history information reduces the time and cost of analyzing risk of lending to individuals and SMEs. The fact that payment information is shared reduces the risk of moral hazard and therefore lowers the cost of loan losses to lenders. Lower transaction costs and lower losses can allow financial institutions to reduce their margins and can thus lead to lower interest rates.

Mongolia currently has a credit information bureau operated by the central bank, Mongol Bank, although it only collects information from, and shares information with, banks and larger financial non bank financial institutions. International best practices indicate that public credit registries operated by the central bank are not the best solution, partially because these are generally limited in their scope. However, not all private credit bureaus are both trustworthy and effective. A bureau's fundamental obligation to generate trust among its members and borrowers that information will not be mishandled or abused, is encouraged by proper regulation, including consumer protection. In addition, the bureau's ownership and governance structure is important.

In November 2005, the project sponsored a focus group meeting involving over 80 representatives of banks, non-bank financial institutions, public utilities, the Mongolian Bankers Association (MBA) and Bank of Mongolia (BoM). The purpose of the meeting was to hear a presentation of BoM on the Credit Information Bureau (CIB) and plans for its development, followed by an open discussion on the future of the bureau. At the meeting the BoM publicly declared its willingness to transfer the CIB to the private sector. At the request of the interested parties, BoM and private sector, EPRC undertook to provide assistance to conduct a feasibility analysis and provide options for consideration. The feasibility study report was issued in August 2006 and amongst other recommendations, urged convening a working group of stakeholders to discuss and decide on the critical issues facing a private credit information bureau.

The rapid expansion of credit has now given new credence to these recommendations for action to mitigate banks' lending risk and a consensus appears to be emerging to improve credit information services. Through the MBA and the establishment of a working group, banks have now decided to take action and the project is assisting them in this endeavor. The working group has requested project assistance to improve the legal environment to facilitate a private credit bureau and expand its user base to include other interested parties such as public utilities and mobile telephone operators.

The feasibility study identified several existing laws that need to be amended and, in fact, recommended the introduction of a separate Credit Information Bureau Law. However, the consensus among a number of authorities and CIB stakeholders is that it is easier and faster to amend a number of laws in Mongolia than it is to get a new one passed. Draft amendments to

the law on banks and the law on the central bank are currently circulating prior to presentation to the government and parliament. It is expedient at this time to introduce amendments that would facilitate the operation of a private CIB.

Purpose and objectives of the consultancy

The purpose of this consultancy is to assist MBA, the financial sector, and project efforts to develop an appropriate legal and regulatory framework for the launch and operations of a financially viable and sustainable private sector operated credit information bureau. Objectives of the assignment include:

1. Review Mongolia's existing legal and regulatory framework for the operation of private credit information bureaus compared to best international practice
2. Propose changes as necessary to bring these to international best practice norms.

Indicative activities of the consultancy

Indicative activities of the consultancy include, but are not limited to, the following:

- Review the legal section of the feasibility study and confirm the validity of the recommendations with the CIB stakeholders
- Prepare draft amendments to existing laws and regulations as they relate to credit information sharing and ownership and operation of credit information bureaus to bring them into line with international best practices
- Using Credit Information Bureau Laws introduced in neighboring countries by other USAID-funded projects as a model, prepare a draft Credit Information Bureau Law for introduction in Mongolia, in the near term
- Prepare a draft preliminary report detailing the draft amendments and laws, their purpose and effect
- Prepare and deliver a presentation on the draft initial report to relevant representatives of the financial sector, business community, consumer groups, Mongol Bank and the Government of Mongolia
- Obtain feedback and refine the draft preliminary report into a final report

Deliverables

Expected products of the consultancy include the following:

1. Package of draft amendments to existing laws relevant to operations of a private credit information bureau
2. Draft new law, if required, to enable and facilitate operations of private credit information bureau
3. Presentations of findings and recommendations to relevant stakeholders and decision makers.
4. A final report containing draft amendments and new draft law, as necessary, and incorporating feedback from the presentations.

EPRC will provide local legal expertise as necessary to assist the consultant. All deliverables shall be submitted in both printed and electronic form, and shall be in a format acceptable to EPRC. Electronic versions will be prepared in Microsoft Office applications software. EPRC will supply in-country translation, coordination and transportation logistics for the assignment.

Duration and schedule of the assignment (LOE)

Total duration of the consultancy is estimated at 16 work days, inclusive of one work day prior to travel and 15 work days in Mongolia, exclusive of international travel to and from Ulaanbaatar, Mongolia.

Place of work

The assignment will take place in Mongolia.

Supervision and coordination of assignment

The consultant will work under the supervision of Mr. Tim O'Neill, EPRC Finance Advisor, or his designated alternate.

Technical area of expertise and experience requirements for the consultancy

In addition to relevant technical and professional experience requirements, the project requires a person with acute awareness of political processes and interests of diverse constituencies and demonstrated excellence in communications and relationship management. As summary of these requirements is as follows:

- An advanced degree in law, or equivalent combination of education and work experience in a relevant technical competency area such as credit information regulation
- Minimum 15 years of service in senior advisory positions, project and staff management experience within the field of credit information or regulation or commercial law in developing economies
- Experience in establishing credit information bureaus in developing countries and, in particular experience of drafting and introducing laws and regulations to bring the legal and regulatory environment for the operation of private credit information bureaus to international best practice norms
- Successful track record of effective performance, pragmatic judgment, negotiations, and relationship management in politically sensitive reforms and environments
- Pragmatic and effective communications skills, including the development and delivery of targeted messages, summaries and information on issues to diverse groups, both orally and in writing
- Demonstrated ability to develop and manage relationships with counterparts, multilateral institutions, domestic private sector, foreign investors, and NGO's in developing countries
- Ability to conceptualize issues, outline, perform, and direct research and writing of technical documents (reports, manuals, proposals, assessments) and draft laws and regulations.

**ANNEX B: POWER POINT PRESENTATION: THE LEGAL FRAMEWORK FOR A
MONGOLIAN CIB**

ANNEX C: POWER POINT PRESENTATION: THE LEGAL FRAMEWORK FOR A MONGOLIAN CIB



The Legal Framework for a Mongolian CIB

Roger P. Nye
CIB Legal Advisor

14 May, 2007
Ulaanbaatar, Mongolia



Topics for Today

- I. Credit information bureaus (CIB's) in Transition Countries
- II. EPRC Task
- III. Best Practices and Principles
- IV. Critical Legal Components of CIB Laws
- V. Issues Remaining



CIBs in Transition Countries

- **Armenia:** Private Armenian Credit Reporting Bureau (ACRA) started in 2004; shareholders include Dun & Bradstreet and Schufa (German CIB)
- **Georgia:** Georgian entrepreneur founded private CIB in 2004 after bankers association could not agree on process and membership
- **Kazakhstan:** Private CIB set up 2004; banks are major shareholders



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CIBs in Transition Countries

- **Kyrgyz Republic:** First functioning & profitable CIB in the CIS in 2003; EBRD & USAID provided technical & financial assistance
- **Russia:** Credit histories law (2004), banks must join at least one CIB; 20 CIBs; largest is National Bureau of Credit Histories founded by 12 largest banks with technical partner TransUnion/CRIF
- **Ukraine:** Credit Bureau Law passed in 2005, participation voluntary, 3 CIBs set up in Kyiv but none operational



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Two Types of Private Credit Bureaus

A. Commercial credit bureaus:

- Collect payment info on businesses
- Key focus: supplier finance relationships

B. Consumer credit bureaus:

- Collect payment info on individuals and SMEs
- Depends on regular reporting from lenders (banks and financial institutions) on their portfolios
- Key focus: capturing data from all creditors with exposures to large number of individuals and SMEs

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Task I: Draft a Mongolian CIB Law

Best practice features from the CIB Laws of

- ❖ Kazakhstan
- ❖ Georgia
- ❖ Kyrgyzstan
- ❖ Jordan

...and adjusted for Mongolian context

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Task II: Suggest Amendments to Existing Laws

Based on draft CIB Law, determine which laws need revision and clarification in order to:

- (a) remove contradictions and ambiguities,
- (b) facilitate success of the new legal entity

Thus, the Team reviewed many laws and provided draft amendments. *(see next slide)*

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Laws Reviewed and Amendments Suggested

Law on Banking	Law on Organization
Law on Central Bank	Confidentiality
Civil Code	Law on Banking: Deposits, Loans and Transactions
Law on NBFIs	Law on Licensing
Law on Cooperatives	Law on Bankruptcy
Insurance Law	Law on Financial Regulatory Commission
Company Law	Law on Consumer Rights Protection
Personal Privacy Law	

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A Key World Bank Legal Principle:

Legislation should promote, not prevent, credit bureau activities.

“The legal environment should not impede, and ideally should provide the framework for, the creation and operation of effective credit information systems.”



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Ideal Credit Bureau according to the World Bank

- Collects information from lenders, and from other businesses, such as retailers, telecommunications companies, and utilities
- Obtains information on all loans made within a market
- Includes both individuals and legal entities in its database
- Compiles both negative and positive information
- Provides credit subjects access to their credit histories, and permits correction of errors
- Preserves data for at least five years

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Key Principles of a Private CIB (I)

- Participation and cooperation in a CIB are voluntary.
- CIB makes no credit decisions; it's only a central clearinghouse and supplier of data to subscribers
- Subscribers (creditors) use their own lending criteria and make their own lending decisions



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Key Principles of a Private CIB (II)

- Reciprocity – only those supplying data are allowed access to data base
- CIB survival depends on integrity, trust-worthiness, confidentiality and security of data
- CIB acts independently from government, creditors, debtors and shareholders...but all are stakeholders

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Constraints to Creating a Private CIB

- 1) Large banks reluctant to share information among themselves
- 2) Secrecy or confidentiality laws restrict the sharing of private information
- 3) Low level of public trust in the private sector or banking system
- 4) No single unique identification number for individuals or legal entities
- 5) Politicians fear what a CIB might expose their shady loans

Do these constraints exist in Mongolia?

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After Establishment, Why do CIBs Fail?

- Lack of appropriate laws and regulations for data collection, management and usage
- Lack of proper international technical assistance
- Lack of definition as to who has access to CIB data
- Lack of clarity with respect to privacy and confidentiality of information

ALL Legal Reasons!



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The Legal Environment

Best Practice Principles Followed by CIBs:

- Limits on Data Collection (*only credit-related data*)
- Limits on Data Retention (*5-7 years*)
- Limits on Data Use (*authorized users only*)
- Safeguards for Data Security (*state of the art systems*)
- Access to Data & Correction Capability (*to ensure accuracy*)
- Dispute Resolution, Grievance Redress (*to retain market confidence*)



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CIB Law Must Address Legitimate Needs of All Stakeholders

- *Data providers* (creditors)
- *Data managers* (CIB)
- *Data users* (creditors + other authorized members)
- *Owners* (shareholders and founders of CIB)
- *Regulatory authorities* (Bank of Mongolia)
- *The public-at-large* (physical & legal persons)

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International Best Practice: Key Legal Elements (I)

- Providing membership beyond financial institutions, e.g., retailers, utility companies (greater coverage → better data base)
- Collecting credit information on both legal and physical persons.
- Including both positive and negative information in data base
- Storing information for period of 6-7 years
- Maintaining information on defaults in the system even after debt has been repaid
- Guaranteeing individuals the right to check their own information

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International Best Practice: Key Legal Elements (II)

- A license from the central bank to operate.
- Listing of specific types of data that are relevant to a person's creditworthiness.
- Banks and all other creditors in the country may supply lawfully obtained credit information to the CIB.
- Ensuring a mechanism for correcting wrong info in CIB
- Penalties for inadequate safety measures at CIB

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International Best Practice: Key Legal Elements (III)

- Consent of the data subject required for both inclusion in the CIB data base and for issuing of reports from the CIB.
- The CIB must collect information from “reliable sources” and members only.
- Creditors seeking information from the CIB must show lawful and specific reasons, a legitimate need to know.
- Fines are imposed for those violating the privacy and rights of credit subject

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Assuming proper laws, how do we ensure success of our Mongolian CIB?

- ✓ The largest lenders and data-providers are involved
- ✓ A solid business plan is developed and followed
- ✓ Key government officials are kept informed, but state agencies may not be members of the CIB (*they may be data providers*)
- ✓ Proper regulation and codes of conduct to ensure consumer protection, thereby generating trust
- ✓ The database is kept current and accurate
- ✓ An experienced turnkey solution provider is used

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Timing is Now Right for a Private CIB

1. No major barriers or laws stand in the way
2. Retail demand for loans & credit cards is growing → greater need for customer payment data
3. Commercial bankers and NBFIs eager to get involved
4. Foreign TA available (EPRC, IFC)
5. Foreign investors will need data from the CIB on reliable local partners
6. Basle II will soon require banks to manage credit risk better

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What Should the Next Steps Be?

1. Working Group needs to review the Draft Law on CIBs and the suggested amendments to existing laws
2. Get agreement of all stakeholders on goals, roles, objectives
3. Write and sign a shareholders' agreement
4. Submit the draft CIB Law and amendments to Parliament



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Next Steps (continued)

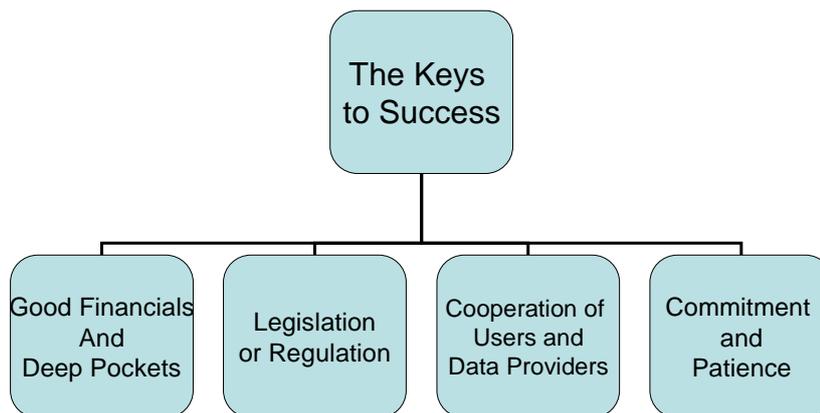
- 5. Write a business plan
- 6. Find a respected international technical partner
- 7. Start staff training
- 8. Start stakeholder education
- 9. Accept that the project will take time and commitment



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Making a CIB Succeed



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Balance Competing Interests



Only through discussion among stakeholders can differing interests be reconciled and a CIB be created that is **sustainable over time.**

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THANK YOU FOR YOUR PARTICIPATION



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