WHITE BOOK

PROPOSALS FOR IMPROVEMENT OF THE INVESTMENT CLIMATE IN MOLDOVA

2009
Chisinau, Republic of Moldova

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FOREWORD OF THE PRESIDENT

More than 6 years have passed since the establishment of FIA in Moldova, a time that allowed the association to gain 18 members who carry out various businesses in the country. There is a year since both FIA and Moldova are adversely affected by the world financial crisis, a factor which did not allow the extension of the organization, but nevertheless, none of the members ceased the activity in RM, especially in a period of ever-lasting elections and of decision-making process standby.

At this time, the overall conclusion is that most of the previous White Book editions recommendations had not been put through. We have noticed a trend of making promises on behalf of the Moldovan Government and not translating them into reality.

Hopefully, this 3-rd edition of the White Book will be more successful. One of the FIA's most important recommendations is the establishment of visa free circulation in Europe, as it is a vital incentive for the attraction of new investors and investments.

Nevertheless, one of the biggest achievements during the last 6 years was the creation of the Working Group of the National Regulatory Commission, or the Guilliotine, which consolidated a constructive dialogue between the public and private sectors. The activity of this mechanism favors the harmonization of Moldovan legislation according to European standards.

Infrastructure has been another vital issue during the last years. Given that attracting new investors means keeping the existent ones, infrastructure should be open for every business which operates in Moldova. Moreover, FIA totally supports infrastructure development and is ready to share its expertise with the Moldovan authorities.

Although the Government has reformed the VAT and tax system, there is still a lot of difference between the regulations and the reality. The VAT refund process is not working properly and businesses wait very long periods of time for reimbursements. It is not acceptable that few companies are exexpted from VAT, while other companies are not refunded. Collection of VAT and excises at the border creates a situation when the importers finance the state, because it lasts for months until the imported goods are sold to final consumers. Again, the authorities promised that the issue shall be settled, but nothing positive happened in this regard.

FIA hopes that the political situation will be stabilized as soon as possible and wishes the new Government a lot of success in overcoming the crisis and improving the living standard of the Moldovavan population.

I would also like to express my gratitude to those colleagues who worked on our previous and present editions of the White Book, realizing that their efforts were meticulous and beneficial both for the business and the governmental sectors.

Joachim SCHREIBER
President of FIA Board

ECHR	European Court of Human Rights
EEA	European Economic Area
EU	European Union
FIA	Foreign Investors Association
IP	Intellectual Property
JSC	Joint Stock Company
LTD	Limited Liability Company
MAFI	Ministry of Agriculture and Food Industry
MSTI	Main State Tax Inspectorate
MEC	Ministry of Economy and Commerce
NACP	National Agency for Competition Protection
NATO	North Atlantic Treaty Organization
NJI	National Justice Institute
NSC	National Securities Commission
OECD	Organization for Economic Cooperation and Development
RIA	Regulatory Impact Assessment
RM	Republic of Moldova
SAIP	State Agency for Intellectual Property
SM	Securities Market
VAT	Value Added Tax

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ABOUT FIA

The Foreign Investors Association (FIA) is an association of the leading foreign investors in Moldova. It was founded by 8 foreign investors with support from the OECD - Investment Compact for South-East Europe in 2003 in Chişinău, the capital of Moldova. Today, FIA incorporates 18 multinational companies that provide a wide range of goods and services for the economy. Their combined investment exceeds US$750 million, a figure that represents more than 50% of total FDI stock in the country since independence. FIA members employ around 12,000 people throughout the country.

The general objective of FIA is to contribute, together with public authorities, to a better investment environment for foreign and direct investments through an open and informal dialogue among various stakeholders. The aims of the FIA are the following:

- To represent, express and advance the shared opinions of its members, in order to promote a common interests and stimulate foreign direct investment;
- To cooperate with public authorities in Moldova, in order to overcome difficulties and obstacles that may exist in the relations with foreign investors and economic relations with other countries;
- To promote the interests of the international business community in Moldova.

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1. Joachim Schreiber	Tirex Petrol, President of FIA Board
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15. Raiffeisen Leasing	Austria
16. Südzucker Moldova	Germany
17. Tirex Petrol	Germany
18. Union Fenosa	Spain

The White Books are the emblem of FIA's spirit and dynamism. They are what their title says – policy documents in the form of recommendations based on international experience. Hence, these are not reports that focus on what has been done. Rather, the Books reflect an outlook on what still remains to be accomplished. An action plan for FIA to follow.

EXECUTIVE SUMMARY

This is the third edition of the White Book, published by FIA since its formation in september 2003. The slow rythym of reformes, as well as the difficult period which RM crosses, marked by the economic crisis and the prolonged election campaign, determined us to rennounce from establishing an exact periodicity of White Book issuance.

Starting with the last edition of the White Book in march 2007, the Government became more receptive towards FIA recommendations, by taking a more complex approach in regards to business and investment climate improvement. The latter developed into trimestrial periodic meetings with the Prime Minister, the agenda of these meetings containing exclusively FIA priorities. At the same time, following a decision of the Prime Minister, a working group containing public authorities representatives, responsible for areas tackled in the White Book, was established. This group should have formulated an answer to FIA recommendations, but also should have monitored the process of eventual implementations, so that a clear agenda for each subsequent meeting with the Prime Minister could have been established.

The results of these actions, along with the permanent activity of reform promotion, meant to harmonize Moldovan regulations to EU regulations, genuinely constitute the subject of White Book 2009.

Traditionally, this year's White Book is divided in two main parts. The first one gives an evaluation as to how recommendations from the previous Book have been followed in practice. However, this part should be seen as more than a mere revision. Besides highlighting progress in the implementation of FIA proposals and identifying recommendations that remain in force, the evaluation also points out the obstacles related to both proposals in progress, as well as to those already completed. This approach is special and important as it generates a clearer understanding of the dimension and depth of policy implementation. In this chapter, recommendations from the White Books 2005 and 2006 are classified by the following grid:


Done


In progress


No practical results


Worse

The second part consists of ten thematic chapters that present recommendations in addition to those of the previous Book. Yet, it is important that this Book is seen as an integrated document of continuous proposals that yield results complementing each other.

For this reason, the summary given below combines the major new recommendations with the previous remaining in force. In short, it represents the integrated agenda that FIA will henceforth follow in its current activities:

Rule of law	(i)	to ensure independence of courts and of judge selection;
	(i)	to ensure that final rulings are explicated to the parties involved in a trial;
	(ii)	to establish an accountability mechanism for judicial staff.
Infrastructure	(i)	to attract foreign companies in the (re)building and operation of national roads.
National Treatment	(i)	to allow local companies with foreign capital to purchase farm land.
Tax Policy	(i)	to no longer allow the MSTI to issue at its liberty letters of explanation on the application of tax provisions, but to encourage the issuance of individual tax solutions;
	(ii)	to remove the restriction that the loss may be carried forward only in equal parts;
	(iii)	to clarify non-residents' taxation – natural and legal persons;
	(iv)	to align regulations in regards to VAT refund to EU Directive VI;
	(v)	to allow any commercial agent to issue personalized tax invoices, regardless of the value of business operations;
	(vi)	for the purpose of an accompanying document, to replace the tax invoice with a note of expedition that shall not contain the price of merchandise.
Corporate Governance	(i)	to implement the squeeze-out procedure according to EC Directive 2004/25.
Competition	(i)	to adopt a law on competition protection according to european standards.
Labor Relations	(i)	to amend provisions regulating employer/employee relations, including issues like: resignation, dismissal, retirement, extra hours, trial period, annual leaves, compensations for business liquidation, conflict of interest, litigation;
	(ii)	to provide that certain important issues merely be a matter of consultation, and not subject to prior approval by the labor union, including: dismissal, work schedule, remunerations.

Education	(i)	to allow companies to train and issue job competence certificates under a certain state supervision.
Administrative Burden	(i)	to streamline the reporting regime affecting companies;
	(ii)	to streamline the functions of inspection bodies, in order to prevent duplication of check-ups;
	(iii)	to stop issuing the Certificate for Industrial Safety, as it duplicates the Technical Authorization.
Trade Promotion	(i)	to eliminate administrative constraints which lead to commerce monopoly (import-export);
	(ii)	to recognize as locally valid the EU veterinary/health/quality –related certification of imported goods.
Energy Security	(i)	to update The Statistical Waste Qualifier, so as to comply with the European Waste Catalogue;
	(ii)	to adopt technical requirements and National standards for bio-fuels according to EU standards;
	(i)	to facilitate opening and functioning of private customs warehouses.

WHITE BOOK EVALUATION

I. BARRIERS TO FDI

1. RULE OF LAW

According to the Constitution, the RM is a state based on the rule of law in which three branches of state power activate independently, contributing to the common benefit of the country. After the signing of the RM-EU Action plan, RM engaged to reform the judiciary system and to confer a specific and clear role to the judiciary power. This role refers to the correctiveness of legislation, namely to the lack of contradiction between laws and regulations, and to the impact of the judiciary power over the application of „the rules of the game" in all areas, including the business domain. Thus, the judiciary power should monitor the activities according to the agreed rules and prosecute, in reasonable time, those actors who infringe the rules.

Therefore, the judiciary power should assume, in the consequent period, the above-mentioned role by ammeliorating some specific aspects, a part of which are mentioned in this chapter.

Legislation	%	To eliminate contradictions in the current legislation and to avoid such further contradictions in the future.	Actions taken: The implementation of the regulatory reform by finalizing the Guillotine 2 process and the permanent analysis of all initiatives with regulatory impact. Obstacles: The incomplete understanding of the regulatory reform importance by the public servants, as well as the lack of state predisposition to accept the Regulatory Impact Asessment (RIA) as a necessity, not as a formality.

%	To guarantee the application of the transparency principle when creating and modifying economic regulations by carrying out preliminary consultations with the businesses and other target groups.	ACTIONS TAKEN: The setting-up of the continuity of businesses consultation process, as well as the institutionalization, through the implementation of RIA, of target groups mandatory consultations. OBSTACLES: The lack of resources and dexterities in order to use advanced technologies while communicating with the target groups and the public opinion, but also the lack of cooperation culture with non-public institutions in the process of drafting regulation.

Judicial System

According to a survey with the participation of Moldovan lawyers and prosecutors, as an action for the implementation of the Preliminary Country Report in the framework of the US Program "Millenium Challenge", approximately 90% of lawyers and 70% of participating prosecutors consider that the corruption phenomenon persists in the judicial system. Almost a half of respondents believe that corruption exists due to inadequate legislation in the judicial sector.
(*The results of the survey were presented by the News Agency Info prim Neo on November 7, 2008)

–	To strengthen the selection criteria of judges.	OBSTACLES: In compliance with the Law on National Justice Institute (NJI), starting with 2009, a total of 80% of yearly nominated judges will have to possess a diploma from the above-mentioned institution. However, it is not clear how the other 20% of judges will be selected. At present, candidates for the position of judges have to pass a capacity exam, being unclear on what basis the final candidates are selected by the Superior Justice Council and on what grounds can certain candidates be rejected by the president.
–	To enforce prosecution of judges when called for.	OBSTACLES: A special disciplinary subdivision is in charge of enforcing prosecution for judges. In most of cases, judges are prosecuted for taking unreasonable grave decisions which generate consequences according with the Penalty Law. At the same time, as shown in the results of the survey below, the disciplinary committee does not apply its prerogatives as a rule, but as an exception.
–	To establish an accountability mechanism for judicial staff.	

2. COMPETITION

State Intervention	%	To limit and then cancel state subsidies to enterprises, regardless of the origin of their capital. To stop the practice of cancelling debts to the state budgets incurred by businesses (including state enterprises), as this runs against market economy principles and is an unfair treatment with regards to other market participants.	ACTIONS TAKEN: Following the initiative of the President of RM, the so-called set of economy liberalization reforms was adopted. It is worth mentioning that this set of reforms cancelled the debts of economic agents and was declared as a last and unique measure taken by the state regarding the cancellation of tax debts.
Legal Framework	−	To clearly stipulate in public the instruments and methodologies that shall be used in the evaluation of anti-competitive behavior on the market.	ACTIONS TAKEN: Following the creation of the National Agency for Competition Protection (NACP), a methodology regarding its activity should have been elaborated. In most of the cases, though, NACP's chosen methods are similar to European methods, without taking into consideration Moldova's specific environment. A relevant example could be the Regulation for defining dominant positions. It was not published, thus creating a situation in which companies were not aware of the methods that could be applied in relation to them. Therefore, even if NACP uses European practices on paper, an equidistant, transparent and efficient activity cannot be achieved at this point in time. However, European practices should be taken over, especially the complete set of OECD principles for small economies should be seriously taken into consideration.
Natural Monopolies	+	To reject the draft law on natural monopolies.	
Grey Economy	−	To detect agents avoiding VAT payments as function of the business volume.	

3. LAND TRADABILITY

–	To allow local companies with foreign capital to purchase farmland.	Actions taken: Although there were sufficient attempts of promoting the modification of the legislation concerning this matter, the actual adoption of a specific law never happened. Furthermore, the Government gave its commentaries on this issue in "The Plan of elaboration and application of the measures necessary for the implementation of FIA proposals presented in the White book 2006", the responsible authority being the General Prosecutor's Office. (!) Obstacles: Several efforts to modify the law nr. 1308-XIII were undertaken by the Government and also by certain opposition members of Parliament. More than that, the Gagauz Yeri bashkan publicly announced the initiative of modifying the current land tradability legislation. Following the excessive political dialogue around this issue, the correspondent FIA recommendation was not considered.

4. INFRASTRUCTURE

–	To attract foreign companies in the (re) building and operation of national roads.	Actions taken: The reconstruction of the national road of european importance Chisinau-Leuseni was finalized. The administration tries to obtain funds for the ammelioration of the national roads situation from the EU and Millenium Challenge Corporation. Obstacles: Although the central public administration states that the investments for (re)building national roads have increased and that public auctions are organized for finding contractors, the Government does not hold international tenders. At the same time, although international institutions are open and eager to offer financial assistance for infrastructure development, the Moldovan authorities do not respect correspondent procedures of funds administration and do not ensure transparency of this process. Furthermore, following the global financial crisis, the state lacks money for rebuilding national roads.
–	To supplement the soviet-type railroad gauge with one suitable for international trains (european standard gauge).	

II. ADMINISTRATIVE CONSTRAINTS

%	To also place laws under the Guillotine (not only by-laws, as before).	Actions taken: In the framework of the Guillotine 2 process, both laws and by-laws were reviewed. But still, there is a series of reserved opinions concerning the quality of those reviews.
–	To ensure compliance by state bodies with the presumption of innocence.	Actions taken: Although the Moldovan authorities generally recognize the above-mentioned principle, it is not always implemented in practice. Still, a step forward was done with the initiative of the President of the Republic of Moldova – to eliminate the practice of controlling companies activity prior to January 1, 2007. At the same time, the application of the presumption of innocence could be much better.
–	To streamline the reporting regime affecting companies.	Actions taken: Unfortunately the intentions of the authorities linked with the elaboration and implementation of a unique reporting form remained at the level of intentions. Therefore, the situation did not change, even if there is an active project with clear objectives financed by USAID.

1. INSPECTIONS

–	To streamline the functions of inspection bodies, in order to prevent duplication of check-ups.	
–	To enforce the legislation so as to ensure that anonymous petitions are not followed upon by relevant authorities unless they contain information affecting national security and public order, by amending the art. 10 (2) of the Law on petitioning Nr. 190 from 19.07.1994. In this context the Law will define the term of „public order", in order to prevent the use of such petitions as a tool of threat and blackmail against properly functioning companies.	
%	To reduce the number of controls and inspections.	Actions taken: The regulatory reform was supposed to be based on the principle of reducing controls and inspections. Obstacles: The regulatory reform should have gone hand in hand with the central public administration reform, the latter being not finalized. Thus, a final conclusion on the number of controls and inspections cannot be drawn. At the same time, it is worth mentioning that president's initiative lead to a decrease of inspections and controls.

% To promote and strengthen the implementation of the one-stop shop mechanism, as well as of the silent approval principle, in the issuance of various company authorizations throughout the country.

ACTIONS TAKEN:
The principle of one-stop shop stands at the basis of the regulatory reform. Although it is present by excellence throughout the legislation, its implementation is not satisfactory.

2. QUALITY & PRODUCT SAFETY

– Today, four types of certificates exist for proving product quality and safety: *quality certificate for food products; hygiene certificate; veterinary certificate; certificate of conformity*. As a result it is necessary to create a single Health Certificate, so as to remove excessive duplication of product safety documentation that imposes a great burden on operating companies.

– To create a *single* National Authority that will be responsible for product safety.

OBSTACLES:
Product safety is now a prerogative of several state institutions. Following the collapse of central public administration reform, the initiative of creating a single responsible authority concerning this matter, collapsed in its turn.

3. TECHNICAL AUTHORIZATION & CERTIFICATE FOR OBJECT SAFETY

X To stop issuing the Certificate for Safety as it duplicates the Technical Authorization.

ACTIONS TAKEN:
During the Guillotine 2 process, FIA pleaded for the elimination of duplicate authorizations and certificates. Although the legislation was revised at governmental level, the Law on Industrial safety at dangerous industrial objects was approved in another form, which fully institutionalized the Certificate for Safety and deeply described the procedure of obtaining it. Therefore, the situation worsened because the legislation provides that instead of only one document, 2 duplicate fully institutionalized documents should be obtained for running dangerous industrial objects.

4. BANK CHEQUES

+ To allow local commercial banks to issue their own cheque books.

III. CORPORATE GOVERNANCE

1. LAW ON LTDs

+ To draft and adopt a Law on LTDs

2. LAW ON JSCs

+ The law was modified, thus modernized. Still, there are certain provisions that can be futher improved. See the second part of this book for further details.

3. SECURITIES MARKET

− The modification of the Law on Securities Market nr. 199 from 18.11.1998 did not deliver any tangible results. During the process of ammendments elaboration consultations took place defectively, that is why an eventual positive role of recommendations was not considered.

IV. VALUE ADDED TAX

1. VAT REFUND

% To no longer limit the eligibility for VAT refund within a determined period to the existing 8 groups of VAT payers. This is also in line with the European Council Directive 77/388 of 17.05.1977 (Common system of value added tax: uniform basis of assessment), which provides for a non discriminatory tax refund to any eligible person that is subject to VAT taxation.

− To amend the current fiscal legislation so as to create legal framework that shall enable offset of un-refunded VAT with other company tax liabilities. This is important, as the current state of affairs reduces the financing capacities of companies, as well as their production capacities, thereby affecting the national tax base. In addition, the un-refunded VAT payments bear an important opportunity cost as a result of pre-financing by businesses of the state budget.

ACTIONS TAKEN:
The Government was receptive to FIA's concern in regards to the VAT refund issue, and tended to adjust the legal framework in the way of gradual harmonization with the VI EU Directive on VAT, also considering the possible impact on State Budget revenues. Thus:

Starting January 1st, 2008 the TAX Code provides the possibility to claim VAT refund linked to VAT paid for investments (fixed assets) with a few exceptions: it is not possible to claim VAT refunds for investments made in Chisinau and Balti (2 major cities in Moldova) as well as for acquisition of living premises and transportation means.

During discussions FIA acknowledged that the reform needs to be made in such a way that it would not affect state budget revenues.
During 2007, it was stated that the Government will come back into discussions on tax policy in 2008 and might proceed to allow VAT refund for investments in Chisinau and Balti, as well as for investments in transportation means. This, unfortunately, did not happen.

2. VAT GROUPS OF RISK

+ To eliminate vertical categorization of VAT payers for VAT refund eligibility, in order to ensure equal treatment of all economic agents.

+ To provide that companies may claim VAT refunds on a monthly basis, exclusive of the requirement of a prior VAT claims control.

+ To remove provision whereby VAT refund favors one group of VAT payers against others, by ensuring that VAT is refunded to all VAT payers, conditioned only upon the legality of their claims and the possibility to offset VAT claims with other company tax liabilities.

3. TAX INVOICE

− To provide that the standardized tax invoice blanks distributed by tax authorities are no longer mandatory.

− To provide that the eligibility for issuing personalized tax invoices is conditioned by transparent and minimal technical requirements, which shall concern the blank form itself and not the type of activities run by economic agents.

− To limit the access of persons in charge with merchandise transportation to fiscal information by delegating certain functions of tax invoices to another document – the Note of Expedition. The above mentioned functions refer to: accompanying the merchandise during transportation, passing the load onto the receiver and confirming the obligation of the transporter to carry the merchandise following the supplier / buyer's commission (order).

− Given that the liability generated by deliveries is paid in the period set for submitting the tax declaration, i.e. in the period up to the end of the month following deliveries, the same should be provided for the period allowing issuance of tax invoices. As such, to set the following deadline for tax invoice issuance: „the last day of the delivery month".

− To no longer require that tax invoices be recorded in the order of their reception/ issuance. As such, in Art. 257(3), to replace the words "Art. 118 para. (3)" with "Art. 118 para. (1)"

V. TAX POLICY

1. INTERPRETATION OF THE TAX LEGISLATION

%

To stop the MSTI practice of issuing letters and instructions of explanation with regards to the application of tax provisions. Such interpretations / explanations should be provided by Government Resolutions or by Laws of RM.

Actions taken:
The processes of legislation review Guillotine 1 and Giullotine 2, in the context of regulatory reform implementation, determined the placement of letter and instructions into Government Resolutions and/or Laws. During the last year, the tax authorities did not individually generate instructions. After the Guillotine 2 process, the Government was obliged to elaborate and pass to the Parliament a draft of the Fiscal Procedure Code, which should contain the whole set of procedures (the former instruction, letters and Government Resolutions).

Obstacles:
Given that the draft of the Code does not include the whole set of fiscal procedures and the Government proposed to prolongue the term of the Code approbation, at the moment this book was finalized, the situation remained uncertain.

+

Because of the lack of provisions regarding the right of tax payer to disagree the decision taken by the tax inspectors as a result of the inspection done, it is required to add at the end of the Art. 8(4): "In case of disagreement with the levy, calculated after the inspection, the non-payment of the disputed tax to the budget is not considered as a delay. In order to ensure the right to further benefit from tax incentives, the deadline for full pay-off of tax liabilities and of other payments computed following the tax control shall not exceed 30 calendar days from the adoption of the final and irrevocable decision by the Court."

2. LOSS CARRY-FORWARD

−

To remove the restriction that the value of the loss carried forward must be "distributed in equal parts during 5 years". The mentioned restriction worsens the financial situation of the companies that have losses in the period immediately after the start-up.

3. DEDUCTIBILITY

In addition to Whitebook recommendations regarding the deductibility of some type of expenses, namely those referring to the SIC/SIRF audit, business aimed trips, staff training, repairing rented cars, it is necessary to clearly stipulate the deductibility of the following other types of expenses:

A. Membership fees	–	To extend deductibility of membership fees so as to cover other organizations, by adding a new paragraph, (16), art. 24 Tax Code as follows : "Deduction is allowed for expenditures made by tax payers throughout the fiscal year in the form of adherence and membership fees, for the purpose of activities related to professional unions, local and international associations. The Deductibility ceiling for these expenditures shall not exceed 1% of the gross income."
B. Remuneration of Administrative Bodies	%	To include remunerations for members of the board of directors, audit and supervisory committees as eligible for deduction. This is especially given that such expenditures are necessary for company operations as they relate to the management body of the joint stock company.
	%	To clarify the mandate of members in the management body of a joint stock company, by providing their role as trustees, rather than employees (which is also in accordance with Art. 61(3) of the Civil Code).

4. DOUBLE TAXATION

	+	To modify art. 80(2) of the Tax Code (on including dividends in the gross income of legal persons). To substitute "include these dividends in their gross income" with "include these dividends in their after-tax profit" or with "include these dividends in the profit evidenced in the financial balance, by qualifying them as income exempt from".

5. PAYMENTS TO EMPLOYEES

	–	To provide that allowances for job assignments locally performed by foreign (natural) persons is not considered income subject for taxation. Since many countries reflect such expenditures for international job assignments as free from income tax, a similar regulation should be put in place by reciprocity in Moldova as well.
	–	Following international practice as evidenced by OECD Model Convention with Respect to Taxes on Income and on Capital, to provide that gains from the sale of a share package (a movable good) by a non-resident to another non-resident person are exempt from income tax.

6. OTHER

A. Tenancy Agreements	–	Because of the fact that is no clear provision mentioned in the Tax Code determining the tax payer in case of tenancy agreements, to provide in Art. 277 that for tenancy agreements, the tax payer shall be the owner of the place, unless otherwise stipulated by the agreement.
B. Settlement of payments	–	To delete the provisions of the art. 10(5) of the Law on entrepreneurship and companies. The law envisages that companies making cash or transfer payments through intermediate parties – with which no direct financial/tax obligations exist – shall be subject to a fine worth of 10% of the payment value. The provision is contrary to the Civil Code.

VI. TRADE FACILITATION

CERTIFICATION OF IMPORTS

As a consequence of regulations regarding certification of meat import, currently there are non-accessible measures for economic agents (inspection of the origin of meat and its evaluation, laboratory analysis when importing, authorization provided by a special commission within the MAFI for one-time imports). Therefore, the EU veterinary/health/quality related certification is not recognized by the Moldovan authorities. Consequently, the situation remained at the same level because certification of imports became more complicated from a procedural point of view.

X To eliminate administrative constraints which lead to commerce monopoly (import - export).

– To recognize the EU veterinary/health/quality –related certification of imported goods as locally valid. In the same time, to set up a traceability system for animal-origin products, in order to ensure and enforce food safety.

– To harmonize and streamline duties of health, veterinary & standardization authorities according to EU standards, so as to eliminate unfounded cost that accrues to raw materials following the local testing required for customs clearance. This is highly important, in light of similar provisions of the EU-Moldova Action Plan, whereby sanitary and phyto-sanitary control systems should be assessed, in particular at borders, "to compare with EU and international requirements".

VII. STATE INTERFERENCE

1. THE FARM MARKET

To ammend the law on farm markets regarding biased decisionmaking, tools for farm market regulation, price setting and contracts.

2. ELECTRONIC COMMUNICATIONS

To remove the obligation for operators to register all their users, as such restriction would significantly limit the access of population to electronic communication services, especially in the rural areas, as well as would seriously disrupt the the mobile market (over 1 million of mobile customers in Moldova use prepaid anonymous cards).

To annul the right for service suspension by authorities, as it constraints personal freedom of expression that is guaranteed by the Constitution. Normally, such limitation is permited only based on a court sanction, issued in connection with criminal proceedings.

3. RENTABILITY

To revoke the Law on monopolistic activity limitation and competition promotion nr. 906-XII din 29.01.1992, due to its outdated provisions in the context of existence of Law on competition protection nr. 1103-XIV from 30.06.2000.

To revoke the Government Resolution nr. 149 from 20.04.1994, on the approval of the normative rate of return for monopoly organizations and enterprises.

VIII. LABOR RELATIONS

1. SALARY REGULATION

+ To annul the mandatory use of salary grids in the private sector.

2. EMPLOYER / EMPLOYEE RELATIONS

Resignation

% To remove the provision of the Labor Code which stipulates that the employer is obliged to take back the employee who had submitted a resignation request, if within 2 weeks after submission, the employee rethinks his decision and no other person is hired in place.

ACTIONS TAKEN:
The Labor Code was ammended, providing the possibility of contract termination prior to the expiry of the 14 day term, in cases when the employer and the employee reach an agreement. Therefore, in these situations, the contract is terminated, thus eliminating the obligation of the employer to take back the employee.

+ To include a clause for training/professional formation cost recovery from the employee resigning within a certain period (set by the employer) after the completion of a course/internship. Alternatively, to stipulate that such provisions shall be regulated by the training contract.

Dismissal

– To provide that all employees, regardless of their position within the company, shall be liable for dismissal in case of a „grave offence". To clearly define in the Labor Code all cases to be considered as a „grave offence".

Retirement

– To provide that the employment contract expires at the moment an employee reaches the retirement age, with the possibility for an extension following negotiations with the employer.

General Manager

– To remove the restriction on the right to work as a general manager at more than one company.

Maternity Leave

– It is prohibited to fire persons in leave for caring after a child aged up to 6 years, and women on maternity leave, except company liquidation. To downsize the 6-year period, as well as to provide the possibility to fire/impose sanctions in case of work abuse, or in case of misuse of the leave granted.

– To remove the obligation of maintaining the position previously held by the person in child care leave. In change, to introduce a clause with regards to the returning person: the salary size shall be maintaine.

+ To remove the provisions of the Labor Code which stipulate that companies are obliged to hire pregnant women or persons with children aged up to 6 years, according to a Government established quota.

Extra Hours	–	To allow compensation of after-work hours with paid free time within a period of 30 days after the execution of additional work. The payment for extra hours shall amount to 150% of the corresponding salary.
Trial Period	%	To remove restrictions to apply trial periods in case of young specialists, graduates of vocational schools; of persons hired on a contest basis; and of persons employed only on the grounds of preliminary examination. ACTIONS TAKEN: The restriction in regards to persons employed only on the grounds of preliminary examination was removed from the Labor Code, the other two categories being not exposed to trial periods.
	–	To allow trial periods for employees applying for new positions at the existing employer.
Annual Leaves	+	To enable a free fractioning of the annual leave, provided that one fraction is not less than 14 days in length.
	–	To provide that vacation days which are not used for 2 years are no longer liable for claim. To further stipulate that at the beginning of any year, the number of unused annual leave days may account for at most twice the total of such days entitled.
	–	To provide a ceiling of allowed additional vacation days for all employees (maximum 4 days).
Compensation for Business Liquidation	–	To provide an upper limit for compensations in case of business liquidation, in the amount of 3 average monthly salaries.
Conflict of Interests	–	To extend the period prohibiting information disclosure after employment termination from 3 months to 1 year.
	–	To introduce a non-competition clause, similar to the EU legislation: „Parties can negotiate and include in the contract a non-competition clause, whereby the employee shall be obliged that after contract termination he shall not provide for personal interest or that of a third party an activity that is in competition with the one provided by his employer, in exchange for a monthly non-competition allowance that the employer is obliged to pay throughout the entire non-competition period".
Litigation	–	To shorten the period allowing an employee to go to court on a labor-related matter from one year to three months.

3. LABOR UNIONS

Dismissal	−	To remove restrictions on the dismissal of employees who are members of labor union bodies. To preserve regulation of cases involving primary labor union leaders, whereby dismissal may only be concluded following a prior consultation with the higher level union body.
	−	To remove the 2-year non-dismissal safeguard following expiration of the syndicate membership.
Work Schedule	−	To provide that issues related to work schedules require only prior consultation and not approval by trade unions.
Remunerations	−	To allow employers to manage incentive payments - including salary increases - independently, and subject annual bonuses to a mere consultation with labor representatives.

4. LABOR INSPECTION

	−	To allow labor inspectors to enter work premises only during work hours, as well as only in the presence of the manager.
	−	To provide that the functioning of business units can be stopped or that sanctions on business units can be applied *only* following a court ruling.

5. MONTHLY PENSION DISBURSMENTS

	X	To provide a threshold of monthly disbursements for the employer. To annul the maximum threshold for the employee, in cases when the employee agrees.

6. IP REMUNERATION

	+	To provide that the payment for an intellectual property shall be negociated between the employer and the employee.

IX. ENERGY SECURITY

1. WASTE QUALIFIER

- To adopt a waste qualifier according to European standards.

2. ALTERNATIVE SOURCES OF ENERGY (BIO-FUELS)

The law on renewable energy was passed by the Parliament in July 2007 and came into effect a month later. It generally stipulates that this type of energy is strategic for the country and defines a state policy in regards to development of alternative sources of energy. However, in light of the law, the production of bio-fuels in Moldova is subject to licensing and to obvious price regulation.

- The general recommendation is to adopt technical requirements and National standards for bio-fuels in accordance with EU standards.
- To provide that production of bio-fuels shall not require licensing. Sale of bio-fuels shall be subject to licensing that is common for the sale of oil products.
- To eliminate provisions regarding the establishment of a special renewable energy fund, considering its negative impact on the competitiveness of the Moldovan economy as a whole.
- To apply stimulatory measures for the production and use of bio-fuels, rather than set compulsory volumes and regulate prices. As such, to make the mineral origin component of bio-fuels excise-free, in order to insure their competitiveness given traditional fuels on the local market. To place the cost of excise administration on wholesalers of oil products, by controlling only the outflow of final merchandise, which represents a mixture of mineral and bio fuels, produced within the free customs warehouses.

3. CUSTOMS WAREHOUSES – OIL & GAS STORAGES

- To draft clear requirements for receiving the authorization to open a customs warehouse.
- To provide the possibility of having different types of storages at the same time, or to define a special type of storage for oil & gas. This is important, as businesses in this area often involve goods that belong to different owners, are usually mixed and cannot be clearly separated.
- To clearly define the procedure regulating periodic customs declarations.
- To eliminate the requirement of providing a financial guarantee in the amount of customs duties, as this is exactly the "economically proven need".
- To eliminate the requirement whereby the storage period is to be declared upfront.

X. INTERNATIONAL COMMERCIAL ARBITRATION

The Parliament adopted 2 laws: Law on International Commercial Arbitration and Law on Arbitration. Serious debates appeared in public on the approval of the first one, as longs as international arbitration conventions are a clear subject of international arbitration regardless of the existence of a national law on the issue. A second inaccurate point is the provision of both laws concerning cases in which disputes either go into courts or in arbitration instances, the outcome of such situations being unclear.

- Law on Arbitration provides that it may cover general, special, internal, as well as *international* arbitrations. However, this runs the risk of creating confusion and uncertainty in the determination of parties as to what substantive law shall prevail – Law on International Arbitration or Law on Arbitration – during arbitration proceedings, when the nature of dispute relates to the definition of an international commercial arbitration. As a result it is recommended, to remove the word "international", so as to explicitly provide that for international disputes only Law on International Arbitration applies.

- To amend both laws so as to clearly provide that no court – except for the competent authority/court entitled to perform certain functions during arbitration proceedings – shall be allowed to intervene during arbitration.

NATIONAL TREATMENT

Land purchase

- To abolish the restriction imposed on companies with foreign capital with regards to the purchase of farm land.

During the last years the FIA has pointed out a special interest of foreign investors towards initiating businesses in Moldova and thus, investing serious financial means. However, after a first „contact" with the Moldovan legislation, a big part of investors prefer to act cautiously in view to their investment intentions, especially due to regulations on land purchase.

Taking into consideration the large number of farm land in the country, the limited amounts of land with industrial destination, the restrictions regarding farm land tradability, the difficult and expensive procedure of changing land destination, FIA points out that these were the reasons for foreign investment decrease or even for losing certain big projects and investors. The general reserved approach of foreign investors concerning big investments in Moldova (tens and hundreds of millions in Euros) in areas like production, services, transportation, communications, etc is understandable as long as they can limit only to renting and concession of land.

Besides the existent status quo (bigger number of farm land in comparison to other types of land), the current legislation is far from being perfect, and even more, is attested as discriminatory in regards to foreign investors versus local investors treatment.

Therefore, in accordance with art. 6, para 2 of the Law on the normative price of land and the means for land sale and purchase nr. 1308-XIII from 25.07.1997 – „the right of sale and purchase of farm land is entitled to the state, natural persons – citizens of the Republic of Moldova and to legal persons whose social capital does not contain foreign investments".

The norm which restricts economic entities with foreign capital from participating in transactions of farm land sale, creates a discrimination between two types of commercial entities of same nature, that should enjoy the same rights and obligations in the Republic of Moldova.

The table inserted below points out the fact that in the majority of the states which were subject of the analysis (except a few CIS member states), the definition of „local legal person" (even with foreign investment) is different from „foreign legal person" or „foreign investor". Generally, the Moldovan legislation differentiates these two definitions, without confounding them, with the exception of land legislation.

Thus, the criteria of identifying a legal person's nationality, provided by the Moldovan legislation, are the place of registration of the legal person (registration location criteria), or the place where the legal person is based (the location of the management headquarters) – the residence criteria. Therefore, a legal person registered in the Republic of Moldova is a local company, regardless of the percentage of foreign investment in its social capital.

However, according to the Moldovan legislation a „foreign investor" is a legal person that „is being founded in compliance with another country's legislation, being based in that country, or a legal person having headquarters or main activity location registered in another state" (Law nr. 81-XV from 18.03.2004 on investments in commercial activities).

Thus, the so-called „Company with foreign capital" or „Company with Mixed Capital" is a Moldovan company. This conclusion is done due to the fact that such companies are registered from a tax point of view in the Republic of Moldova, and, respectively, are subject to tax obligations, having same rights and obligations as companies without foreign capital.

However, the erroneous interpretation of the term „local legal person", found again in the old edition of the Law nr. 1308-XIII from 25.07.1997, lead to a consequent modification of law and regulation of certain express restrictions in regards to purchase of farm land by Moldovan companies with foreign capital.

The experience of other states

In the table inserted below there are 28 states which were subject of analysis.

7 states from those analyzed, including Finland, France, Germany, Greece, Ireland, The United Kingdom and Switzerland generally do not provide restrictions in regards to land purchase (including farm land), by foreign legal persons.

10 states out of those analyzed, as: Bulgaria, Czech Republic, Croatia, Switzerland, Italy, Latvia, Lithuania, Poland, Spain and Turkey, provide the possibility of farm land purchase by foreign legal persons through special procedures.

22 of the states, including Azerbaijan, Czech Republic, Croatia, Switzerland, France, Georgia, Germany, Italy, Kazakhstan, Macedonia, The United Kingdom, Finland, Norway, Romania, Serbia, Spain and other do not provide restrictions in regards to land purchase, including purchase of farm land, by local legal persons with foreign capital (the third column of the annexed table).

Only in 2 states, namely Turkey and Poland, there are special procedures applied in regards to farm land purchase by local legal persons with foreign capital.

In other 2 states, namely Russia and Latvia, the purchase of farm land is partially limited, only local legal persons with less than 50% of foreign capital being allowed to perform this type of transactions.

Only one state, Ukraine, provides total restrictions on farm land purchase by local legal persons with foreign capital.

It is worth to mention that according to the legislation of these states (and to international practices as well as to unanimously recognized rules), by a foreign legal person is meant a legal person which is registered in another state, has its headquarters in another state or has its central administration or main activity location in that other state.

Therefore, from the facts analyzed and underlined, we can draw the conclusion that in the majority of the states local legal persons with foreign capital enjoy the same legal treatment as those without foreign capital, being allowed to purchase farm land.

Restrictions applied to foreign natural persons and persons without citizenship:

(a). Foreign citizens will be allowed to purchase farm land starting with January 1, 2014, with the exception of citizens of EU member states who wish to establish in Bulgaria and perform activities in accordance with this type of land – this category is allowed to purchase farm land prior to the above-mentioned date;

(b). Farm land can be purchased only by citizens of EU member states, who are registered as residents of the Czech Republic for the last 3 years and are certified as involved in agriculture business;

(c). The purchase of land is allowed if the following conditions are respected: their residence is either in Switzerland or in any other state; they are not citizens of an EU member state or of a member state of the European Free Trade Association (EFTA). A special permit, issued by the authorities, is required;

(f). Citizens of non-EU countries require a special farm permit issued by the French authorities. Citizens of EU countries have no restrictions in purchasing farm land;

(g). Several restrictions are imposed on land situated at the borders of the country;

(h). Are allowed to purchase farmland according to the principle of reciprocity between states;

(i). Only citizens of EU countries are allowed to purchase farm land, starting with May 1, 2011;

(l). Farm lands can be purchased starting with 2012, if foreign natural persons or persons without citizenship are residents of EU, NATO, OECD or EEA member states or of any state that signed an Association Treaty with the EU;

(n). There is a special procedure which is applied in any cases except citizens of the EU member states;

(o). As in Bulgaria, EU citizens are allowed to purchase farm land, the rest being allowed starting with January 1, 2014;

(q). Only in cases in which the application of the „equal treatment" principle is possible. In certain cases, in which the specific activity of companies is regulated by special laws, a separate procedure shall be applied;

(r). Only if they are citizens of the EU member states and intend to establish in Hungary or have lived in Hungary for the last 3 years and their business is linked to agriculture.

Restrictions applied to foreign legal persons:

(a). Foreign companies will be allowed to purchase farm land starting with January 1, 2014, with the exception of companies from the EU member states who wish to establish in Bulgaria and perform activities in accordance with this type of land – this category is allowed to purchase farm land prior to the above-mentioned date;

(d). A special permit, issued by the authorities, is required;

(g). Several restrictions are imposed on land situated at the borders of the country;

(h). Are allowed to purchase farmland according to the principle of reciprocity between states;

(j). Under the condition of being registered in the Latvian Commerce Registry and are listed on the stock exchange;

(m). Farm lands can be purchased only starting with 2012, if foreign legal persons have their headquarters in a EU, NATO, OECD, EEA member state or in any other state that signed an Association Treaty with the EU;

(n). There is a special procedure which is applied in any cases except foreign companies from the EU;

(p). May purchase farmland within the limits set for Turkish companies with foreign investment.

Restrictions applied to local legal persons, including local legal persons with foreign capital:

(e). By companies with foreign investment are meant companies whose capital does not contain more than 50% of foreign investment. Therefore, companies with foreign investment shall sell farm and forest land in maximum a year from their acquisition, a court being entitled to sell the land if the term is not respected;

(k). Only companies whose capital consists of more than 50% of local investment (1) or money originating from a legal person registered in a country with which Latvia signed a special treaty on investment promotion and support (2);

(n). A special procedure shall be applied;

(q). Only in cases in which the application of the „equal treatment" principle is possible. In certain cases, in which the specific activity of companies is regulated by special laws, a separate procedure shall be applied.

Therefore, FIA recommendations are similar to its previous recommendations. They refer to a total and partial elimination of restrictions in regards to farm land purchase by companies with foreign capital. The best practices of the world community demonstrate the impact of land legislation over the health of the investment climate.

Country	Foreign natural persons and persons without citizenship	Foreign legal persons	Local legal persons with foreign capital
Azerbaidjan	-	-	+
Bulgaria	+ (a)	+ (a)	+
Czech Republic	+ (b)	-	+
Croatia	-	-	+
Switzerland	+ (c)	+ (d)	+
Russia	-	-	+ (e)
Finland	+	+	+
France	+ (f)	+	+
Georgia	-	-	+
Germany	+	+	+
Greece	+ (g)	+ (g)	+
Ireland	+	+	+
Italy	+ (h)	+ (h)	+
Kazakhstan	-	-	+
Latvia	+ (i)	+ (j)	+ (k)
Lithuania	+ (l)	+ (m)	+
Macedonia	-	-	+
The United Kingdom	+	+	+
Norway	+	+	+
Poland	+ (n)	+ (n)	+ (n)
Romania	+ (o)	-	+
Serbia	-	-	+
Slovakia	-	-	+
Spain	+	+	+
Turkey	-	+ (p)	+ (q)
Ukraine	-	-	-
Hungary	+ (r)	-	+
Uzbekistan	-	-	+

TAXATION

1. TAX POLICY

Interpretation of the Tax Law

The issuance of such solutions represents for taxpayers, who envisage implementing complex transactions, a measure to further mitigate potential tax exposures.

The international practice in this respect confirms that taxpayers provided with such anticipated solutions, ensure compliance with the tax law.

Also, the implementation of this procedure will bring additional resources to the national public budget, due to the fact that, as a general rule, an anticipated fiscal solution is given against a specifically set out fee charged by the competent authorities issuing the solution in question.

The Fiscal Code should provide for the possibility for taxpayers to apply for and benefit from anticipated individual tax solutions (i.e. binding tax ruling).

Deductibility of certain expenses

Expenses related to recharges performed by non-resident entities due to the secondment of their staff to the premises of their Moldovan group entities

- The article 24 of the Fiscal Code should include a new point (18), having the following content: "There shall be allowed the deduction of expenses incurred by a Company with the recharges from a non-resident entity related to expenses incurred with the secondment of staff at the premises of this Moldovan company (including those related to selection, training, remuneration, secondment bonuses and benefits or any other expenses exclusively related to the secondment). The deduction is allowed if the work of the seconded personnel is performed exclusively for the benefit of the Moldovan entity, and recharged expenses are properly documented".

Deduction of expenses related to benefits granted by the employer

- The article 24 of the Fiscal Code should include a new point (20) with the following content: "It is allowed to deduct expenses related to benefits granted by the employer, provided they were taxed at the level of the employee".

Taxation of non residents' income

- Title I of the Fiscal Code should expressly provide for a definition of "recharged costs". Title II, Chapter 11 of the Fiscal Code should specify that the non-resident's taxable income should not include expenses recharged to a Moldovan resident with no mark-up, as these do not refer to any entrepreneurial activity performed on the Moldovan territory.

- It is advisable for the Government to approve Regulations clarifying the overall tax regime applicable to a permanent establishment generated in Moldova by a non resident (i.e. from the perspective of other taxes than corporate income tax (e.g. VAT, fiscal reporting, etc)).

2. VALUE ADDED TAX (VAT)

VAT refund

- To amend the currently available VAT refund ruling.

This recommendation is due to the unfavourable impact the currently available VAT refund procedure has on the business environment, as well as on potential further investments in the national economy (in particular, for businesses performing significant investments in municipals Chisinau and Balti).

The recommendation is also due to the requirement of implementing a fair taxation principle, as well as to the need to align the local tax law to the EU Directives and international practice in this respect.

The urgent need for this amendment is brought by the current situation that generates a series of unfavourable effects for an efficient business development, namely:

- The decrease in the ability to finance both operational and investment activities;
- The decrease in the production capability, and as such a decrease in the taxable basis;
- Incurred opportunity costs as a result of national public budget pre-financing, etc.

Another issue related to the VAT refund, which has not been previously discussed, relates to the restriction of the VAT refund for investments in the transportation means. It would be advisable, at this particular stage, to maintain such restrictions on certain types of vehicles (e.g. luxury vehicles) and not to extend this restriction to all transportation means, due to the fact that Moldova suffers from the lack of investment in this respect and needs to modernize and develop transportation services.

Place of services supply from the VAT perspective

To align provisions of the article 111 "The place of services supply" of the Fiscal Code with the provisions in the EU Directives 112/2006/CEE and 2008/8/CEE

There is a necessity of alligning the current provisions of the Tax Code (art. 119) which refer to the places of services supply from VAT perspective to the VI-th EU Directive. In this way the abiguities which appear when establishing the places of services supply would be avoided.

Harmonization of VAT and customs provisions with the corporate income tax provisions in part of permanent establishments of non-residents in Moldova.

To align the provisions of the Title III of the Fiscal Code, as well as the provisions of the customs legislation with those provided in Title I and II of the Fiscal Code with reference to permanent establishments.

This recommendation is borne by the need to establish a clear and unique regime of taxation of operations performed by permanent establishments of non-residents in Moldova, as well as to introduce provisions in the customs legislation which would allow Moldovan permanent establishments to perform foreign trade operations.

VAT treatment of recharges of costs

Title III of the Fiscal Code should expressly provide the VAT treatment applicable for recharges of costs.

A mere recharge of costs does not refer to any fee charged for a supply of services / goods, but only to the recovery, without a mark – up of costs previously incurred by an entity in dealings with third parties (e.g. transportation expenses, legal taxes, rental expenses, etc.).

Consequently, such operations should be expressly treated in the Fiscal Code as being out of the VAT scope, as there is no taxable object from the VAT perspective.

VAT exempt operations

Art 103 (1), p. 7) of the Fiscal Code should be amended so as to clarify the exact scope of the given VAT exemption.

Due to the fact that the current version of the above mentioned provisions is vague and leaves room for interpretation, there is no uniform treatment of the scope of this VAT exemption.

It is, therefore, advisable to amend the current norms in order for the VAT exemption being applied on services (except for intermediary ones) of handing over or granting of the right to use: any copyright and/or related right on works of literature, art or science, including movies, films or tapes for TV or radio; as well as any patents, trademarks, designs or models, plans, software, secret formulas or process. The amendments should also extend to services of handing over or granting of the right to use the information regarding the experience in the industrial, commercial or scientific fields.

VAT treatment of a transfer of a going concern

Title III of the Fiscal Code should expressly define the scope of the article 107.

The Fiscal Code currently states that the total / partial transfer of the right to perform entrepreneurial activity (known in the international practice as "transfer of a going concern") shall be out of the VAT scope, provided certain conditions are met (i.e. Art. 107, letters a) and b)).

Currently, the tax law does not provide any details regarding the situations when a total or partial transfer of the right to perform an entrepreneurial activity is deemed as being in place. According to a circular issued by the Ministry of Finance in 1999, the mentioned VAT treatment is applicable only in case of business reorganization.

As any assimilation of the handing over of the right to perform entrepreneurial activity with the handing over of fixed assets within a business reorganization process would be restrictive and limitative, it is advisable to review and amend the respective norms by exactly specifying circumstances under which a transaction is qualified as a total or partial transfer of business activity with no VAT implications (including also a transfer of business through a sale – purchase agreement of a multitude of tangible and intangible assets).

Also, as the current provisions of the Fiscal Code do not provide for any control leverages at a certain moment in time, if the respective business activity is to be continued by the beneficiary, such provisions should be either correspondingly amended or exclude this requirement.

Aspects related to issuance of VAT invoices

The law should allow for the possibility to issue a "Note of Expedition" for goods during their shipment.

This recommendation aims at introducing the possibility that the transport of goods is accompanied by a Note of Expedition and not by the VAT invoice or dispatch note which contains pricing data. VAT invoices / dispatch notes could be subsequently delivered directly to the buyer – legal entity.

This recommendation is born by the need to limit the access of third parties to the financial information regarding the terms under which goods are traded.

3. Other

Taxation of dividends distributed to non-residents

The change of the collector of the dividends' tax paid by foreign investors from the central budget to the local public budgets.

The current situation is unfavourable for enterprises with foreign investments as compared to companies with local capital, from the perspective of the direct contributions due to the development of the settlements where the companies are headquartered at.

Cash payment limitation in business to business (B2B) transactions

To amend the provisions of the article 10 (5) of the Law on entrepreneurship and enterprises by providing for:

- Legal provisions which would allow the buyer (beneficiary of services) – an economic agent directly deposit cash into the bank account of the supplier of goods / services, this transfer being assimilated to a bank transfer.
- Increase of the current threshold of the cash settlements to at least MDL 10.000 per transaction.

Based on the changes made in June 2008 to the above mentioned Law, a new threshold for cash payments was introduced for B2B transactions, namely: MDL 1 000 per transaction, while the previous one of MDL 100 000 per month was cancelled.

Taxation of benefits granted by the employer with social security and health insurance contributions

The Law on public system of social insurance and the Law on health insurance should provide that the benefits granted by the employers to their employees, are not taxable with social security and health insurance contributions.

Based on the provisions of the tax law, the benefit granted by the employer represents the value of the tangible and non-tangible goods granted by the employer to his employees, as well as performing payments to their benefit, which are not related to the employees' service duties (e.g. optional medical insurance granted by the employer to its employees, compensation of accommodation expenses etc.).

Current provisions of the Law on public system of social insurance and Law on health insurance leave room for interpretation in part if whether benefits in kind should be subject to social security and health insurance contributions.

Therefore, it is advisable that provisions thereof are amended so as to expressly state that benefits granted by the employer shall not be taxed with social security and health insurance contributions.

Issues related to use of cash dispensers ("CD")

Amending the legislation to provide in CD for certain thresholds for cash excess.

Provisions of the Governmental Decision no. 474 expressly establish circumstances when the CD was not used to register economic transactions, including the detection of money excess (i.e. change left by the client), which can not be justified by the information provided in the documents issued by the CD.

Should such circumstances occur, tax authorities may apply a MDL 6,000 fine per case.

The tax legislation in force does not provide for a permissible threshold of money excess in the cash office, which once identified would not be subject to fiscal fines. Thus, any unjustified money excess in cash office, regardless of the amount, can be qualified by tax authorities as non – use of CD and trigger the applicability of fines above.

Thus, it is advisable that the tax law provides a specific admissible threshold of money excess in the CD.

CORPORATE GOVERNANCE

During 2007 some Law amendments were operated towards the Joint Stock Company Law as well as a new Law regulating the operation of a Limited Liability Company was introduced.

The Foreign Investors Association was one of the parties actively involved in commenting the above-mentioned Laws and considers that a comprehensive legal framework enabling effective company organization is key for ensuring development of the investment climate in the Republic of Moldova.

Both, the new Law on Limited Liability Company and amended Joint Stock Company Law started to produce effects only in 2008. Thus additional analysis is required in order to provide recommendations for its improvement. Nevertheless, some risks for proper company managements associated with adoption of the amendments to JSC Law were revealed during the consultations with authors, while generally speaking the Law was significantly improved.

Among other amendments one of the key issues is that the Law on JSC does not longer consider the possibility of having a separate treatment of non-listed JSC, as it used to be with former Closed Joint Stock Companies, while producing effects on it as well. As such, provisions regarding compulsory disclosure of information, major transactions and data publication seem to be inappropriate for non-listed companies, which are not attracting public financial means, thus affecting the company commercial secrecy towards its competitors.

Takeover bids

- To harmonize the national legislation with the provisions of Directive 2004/25/EC, especially regarding implementation of the squeeze-out procedure.

At the basis of the classical JSC concept stood the idea of creating an alternative for a business entity of attracting capital directly from the population and not from financial institutions loans. Although in Moldova exist approximately 2000 JSC's, none of them ever made use of this attribution. The majority of JSC's appeared as a result of state companies' reorganization and of mass privatization program in the middle of '90's, during a total lack of corporate experience, culture and governance. At the same time, it has been arbitrarily decided on the shareholders' structure, by establishing the quota from the social capital of companies that would be privatized by their employees or by the inhabitants of the RM. This seems to be the moment which would correspond to the IPO, considering that the employees or other persons contributed through vouchers, namely a part of each citizen's from the state patrimony, established according to his work experience.

Out of these reasons, in the following periods, regulation measures had a highlighted social character, the local financial market being dominated by share concentration operations. Therefore, the legislation overtook some international practices which were intended to protect minority shareholders, especially the provision referring to the mandatory bid for the shareholders who obtained control. Along with the fact that this constitutes only an aspect of international practices which regulate situations of taking control over companies, the polices that were promoted altered the general reasoning of regulation and protection both, minority and majority shareholders.

During the consultations initiated by the regulation authority, with participation of the FIA, on ammending drafts regarding takeover bids, the provisions of Directive 2004/25/EC were invoked. Especially it was remarked a major difference between the national and EU legislations regarding missing squeeze-out procedure. This mechanism regulates the situation in which a shareholder or a group of affiliated persons posess more than 90% of a company's shares. Therefore, it should be provided that minority shareholders can ask the majority shareholders or the company to rebuy their shares, or vice-versa, the majority shareholder can ask for minority shareholders' shares retirement, followed by company delisting.

Although there were certain controversies at the level of RM's regulation authority, this provision found its place in the legislation ammendment draft, but was accepted neither by the Government, nor did not reach debates in the Parliament.

Even in the countries with developed financial markets this mechanism was implemented on the background of burning debates in the society, being contested in courts when it appeared from constitutional and human rights points of view. All of the suspicions were demolished when Constitutional Courts from these countries and ECHR reasoned their decisions on the recognition of this mechanism's supremacy benefits for the society (both corporation, but also the countries' economy level in general) in the disadvantage of individual, egoistic interests, the stress being brought on the financial market regulation bodies' responsibility of ensuring procedural transparency and a fair price.

In fact, Directive 2004/25/EC came to unify national regulations of EU member countries in such a way that remaining differencies resume to the establishment of the threshold, owned by majority shareholders, which allows the possiblity of initiating the squeeze-out procedure (starting with 80% in Ireland, up to 98% in Italy). This Directive brought a full detail desciption of all take-control phases, respectively of shareholders rights and obligations at every phase, as well as a clear definition of methods to establish a fair price.

Given RM realities, the procedure will function only if the threshold of initiating the squeeze-out procedure does not exceed 90%. Following the mass privatization in the middle '90's paractically all citizens became shareholders. It is well known that after more than 15 years JSC's have a considerable number of shares regarding which the property right is not certain, and clarification on this matter being very difficult, or even impossible. Even more severe is the situation of the companies which had investment funds, which have been liquidated, as shareholders. A threshold bigger than 90% would make the squeeze-out procedure inaplicable.

COMPETITION

To provide in the new Law on competition protection the following aspects:

- Field of application, clear definitions of main notions, types of anticompetitive actions, both to be similar to EU;
- Regulations on identification of relevant market and assessment of dominant position;
- Insuring due process during investigation by transparent decision making, procedural guarantees against abuses;
- Types of concentrations which needs to be authorized and the authorizing procedure itself, both similar to EU;
- Effective right to appeal;
- Sanctioning procedure and a Regulation for sanctions individualizing similar to EU.

On November 20, 2008 the Parliament rejected the amendments to the existing Law on competition protection, proposed by the Government, with suggestion that the authors have to draft a new Law on competition.

The Foreign Investors Association, being one of the parties actively involved in commenting the abovementioned Law amendments considers that several issues have to be taken into consideration, while drafting the new Law. Most of these proposals were also submitted during consultations held in 2008.

First of all, Moldova should create its competition legal framework based on European Union framework and best practices. Nevertheless, it should be taken into consideration the difference between judicial systems dealing with competition cases, which in EU are based on precedents, while such precedents can be used in Moldova only as recommendations.

FIA is ready to provide its expertise and assistance to the authors who hopefully will ensure an effective consultation process.

LABOR RELATIONS

Employer / employee relations

Referince: RM Labor Code

Resignation

The employer is obliged to take back the employee'who had submitted a resignation request, if within 2 weeks after submission, the employee rethinks his decision and no other person is hired in place.

To remove Art. 85(4)

Dismissal

There is no specific legal provision allowing to fire employees committing work abuse, especially in cases of violation of information confidentiality that is related to company operations. Other cases include: abuse for a material purpose, for personal/third party interest; money swindling; bribery.

Art. 86(1)p). To provide that all employees, regardless of their position within the company, shall be liable for dismissal in case of a „grave offence". To clearly define in the Labor Code all cases to be considered as a „grave offence".

Retirement

The employment contract does not automatically expire upon reaching the retirement date.

To provide that the employment contract expires at the moment an employee reaches the retirement age, with the possibility for an extension following negotiations with the employer.

General manager A person may not serve as a general manager at more than one company concomitantly.	Art. 261(1). To remove the restriction on the right to work as a general manager at more than one company.
Maternity leave It is prohibited to fire persons in leave for caring after a child aged up to 6 years, and women on maternity leave, except company liquidation.	Art. 86(2), 251. To downsize the 6-year period, as well as to provide the possibility to fire/impose sanctions in case of work abuse, or in case of misuse of the leave granted.
The employer is obliged to maintain the position held by the person in leave for caring children aged between 3 and 6 years of old.	Art. 126(1).To align the RM legislation to the provisions of the correspondent ILO convention by providing that the employer is obliged to ensure either the same position or an identical position for the above mentioned category of employees.
Extra hours The Code does not allow for the possibility to compensate after-work hours with paid free hours.	To allow compensation of after-work hours with paid free time within a eriod of 30 days after the execution of additional work.
Trial period It is prohibited to apply trial periods in case of young specialists, graduates of professional schools and for persons hired on a contest basis.	Art. 62 a)c)i). To remove restrictions on cases for which a trial period may be applied.
No regulation exists of cases when the employee starts in a new position at the same employer.	To allow trial periods for employees applying for new positions at the existing employer.
Annual leaves There is no regulation regarding the methodology of calculating fractioned annual leave days, for example in cases when the Government declares additional days-off or national holidays.	To establish a clear methodology in regards to calculating fractioned annual leave days.
No legal regulation exists of cases when employees fail to use their annual leaves for years. Instead, the Code allows for an unlimited accumulation of unused vacation days, which can be claimed by the employee upon request.	To provide that vacation days which are not used for 2 years are no longer liable for claim. To further stipulate that at the beginning of any year, the number of unused annual leave days may account for at most twice the total of such days entitled.
Employees working in some areas of the economy (industry, transportation, constructions etc.) are entitled to request additional vacation days throughout their length of service.	Art. 121(3). To provide a ceiling of allowed additional vacation days for all employees (maximum 4 days).

Compensation for business liquidation

For workers laid off due to business liquidation, employers must secure a compensation for employment termination, in the amount of an average weekly salary for each year of employment.

Art. 186(1)a). To provide an upper limit for compensations in case of business liquidation, in the amount of 3 average monthly salaries.

Conflict of interests

Employees may not reveal information/data throughout their entire employment period and during at most 3 months after employment termination (1 year for management positions).

Art. 53(1). To extend the period prohibiting information disclosure after employment termination from 3 months to 1 year.

Absence of a non-competition clause.

To introduce a non-competition clause, similar to the the EU legislation : „Parties can negotiate and include in the contract a non-competition clause, whereby the employee shall be obliged that after contract termination he shall not provide for personal interest or that of a third party an activity that is in competition with the one provided by his employer, in exchange for a monthly non-competition allowance that the employer is obliged to pay throughout the entire non-competition period."

Litigation

An employee has the right to go to court on a laborrelated matter within one year after he/she "learnt or should have learnt of infringement of his rights."

Art. 355(1). To shorten the period allowing an employee to go to court on a labor-related matter from one year to three months.

LABOR UNIONS

Today, a number of aspects related to labor organization require prior approval by, rather than consultation with relevant labor unions.

Dismissal

An employee that is also a member of a labor union body, may only be fired contingent upon a prior approval by the respective union body, regardless of the nature of the dismissal-related offence, including layoffs for reasons of company liquidation or staff downsizing.

Art. 87(2), 88(1)h). To remove restrictions on the dismissal of employees who are members of labor union bodies. To preserve regulation of cases involving primary labor union leaders, whereby dismissal may only be concluded following a prior agreement from the higher level union body.

Upon expiry of the mandate as member of a syndicate administrative body, an employee may not be dismissed from the original job for a period of 2 years (except cases of company liquidation or employee commission of delinquent offences).

Art. 388(4).To remove the 2-year non-dismissal safeguard following expiration of the syndicate membership.

Work schedule

The schedule of shifts and annual holidays are to be approved by employee representatives.

Art. 101(3), 116(1), 321(1). To provide that issues related to work schedules require only prior consultation and not approval by trade unions.

Remunerations

Salary increase and other incentive payments have to undergo prior consultation with labor union representatives, while annual bonuses – a prior approval.

Art. 137(1), 138(2). To allow employers to manage incentive payments - including salary increases - independently, and subject annual bonuses to a mere consultation with labor representatives.

LABOR INSPECTION

Labor inspectors have the right to:
- Enter work premises at any day or night hour, without preliminary notice

Art. 376(1) a). To allow labor inspectors to enter work premises only during work hours, as well as only in the presence of the manager

- Stop the functioning of business units, even though they "are obliged not to interfere with the activity of units subject to their control."

Art. 376(2). To provide that the functioning of business units can be stopped or that sanctions on business units can be applied only following a court ruling.

MONTHLY PENSION DISBURSEMENTS

The employee contrubution in the pension state fund is amounted to 6% from the salary base, but it cannot exceed 6% from the amount of 5 average national monthly salaries. At the same time, the employer pays 23% out of employee's salary base, regardless of the salary amount.

To provide a threshold of monthly disbursements for the employer. To annul the maximum threshold for the employee, in cases when the employee agrees.

EDUCATION

- To allow companies to train and issue job competence certificates under a certain state supervision. To recognize this type of certificates throughout the country.

During the last years, along with the process of migration of workforce from the Republic of Moldova to other countries, a continue decrease of the workforce offer on the labor market is being noticed. If back in 2000, the existence of cheap and abundant workforce was an argument which attracted foreign investments in Moldova, at this point in time this is more an argument against investing in Moldova.

Firstly, the workforce demand on the labor market cannot be evaluated because of faulty statistics. Basically all the information which refers to the labor market demand comes from the National Employment Agency, an institution that does not have enough access to the business sector. Secondly, the above-mentioned institution does not generally help companies to find employees; it mainly registers unemployed persons and ensures payment of unemployment subsidies.

Therefore, in order to create an efficient mechanism of labor workforce circulation on the labor market, special prerogatives for the business sector should be set up. In the majority of countries, business entities are allowed to issue competence certificates for specialists who are trained on a specific job. The state regulates the exams and the general terms of training.

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