

WHITE BOOK



2015

WHITE BOOK

PROPOSALS FOR IMPROVEMENT OF THE INVESTMENT CLIMATE IN THE REPUBLIC OF MOLDOVA

2015

Chisinau, Republic of Moldova

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FOREWORD OF THE PRESIDENT

More than 10 years have passed since the creation of the Association of Foreign Investors, an association that gathered together the leading investors in the Republic of Moldova. During these years FIA succeeded to impose itself as an important and stable partner in the dialog with the Government.

Today, with the occasion of 10 years anniversary and after 6 years from the last edition, FIA is launching the White Book 2015 – a publication that comes with a set of proposals aimed at improving the investment climate in the country.

Traditionally, White Book summarizes the main obstacles to investment and business development in the country and formulates concrete proposals to overcome these impediments. It is designed and presented by FIA as an instrument for a constructive dialogue and partnership between investors and government that further can help to improve the business and investment environment and lead to increased private investments.

Of course, this publication cannot cover all aspects of the economy, and therefore the 4th edition of the White Book is comprised of 4 chapters: Taxation, Labor Relations, Competition and a chapter dedicated to specific Sectoral and Cross-sectoral issues.

The purpose of these chapters is to present in a practical way a constructive view of what remains to be done in order to improve the legislative framework. These proposals were written on the basis of the long-lasting international experience of major foreign investors, which often includes the familiarity with emerging markets and willingness to share this experience with the Government.

It's important to mention that today FIA members are optimistic about the future development of the country. The program of reforms adopted and implemented by the Government during the past years, choosing the pro-European orientation, signing of the DCFTA agreement, as well as, openness of the authorities to a constructive dialogue with business representatives, make us believe that together we can build better conditions for business. Of course, all of us, current members have faced and are still facing various challenges, critical situations and "small crises" in their day-by-day work, but nevertheless, none of the members ceased the activity in the Republic of Moldova, and the fact that so many of us remain willing to devote our time and efforts to this project shows our commitment to this country.

Thus, we hope that the White Book 2015 will become a platform for a more constructive dialogue between the authorities and the Association. FIA is prepared to continue to provide the Government with its fully support to help to transpose its recommendations into practice and believes that the implementation of this proposals will make the Republic of Moldova a more attractive destination for foreign investments and will ultimately generate an increase in FDI.

Finally, I would like to thank in the name of FIA, all the members and contributors who supported us in publishing the 4th edition of the White Book.



Ridha TEKAIA
President of FIA

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ABOUT FIA

Foreign Investors Association (FIA) is a non-profit association from the Republic of Moldova, founded in September 2003 by eight foreign investors, with the support of the OECD, through a project that aimed to stimulate the reforms and the improvement of the business environment in the countries of the Southeastern Europe.

FIA is part of the regional network of Foreign Investors Councils, institutions that have registered numerous successes in the countries where they are operating.

The Association has among its members the largest companies with foreign capital in the country, companies that offer a wide variety of goods and services, covering the whole range of fields of activity of the economy — agriculture, industry, banking sector, telecommunications, distribution and audit.

The objectives of the association are:

- Representing and promoting members' views;
- Defending the common interests of the international business community in the Republic of Moldova;
- Cooperating with public authorities of the Republic of Moldova to overcome the difficulties and obstacles that may exist in the relations with the foreign investors;
- Providing information to its members, but not only, about the investment climate in the country;
- Sharing to potential investors the experience of the FIA members in the country etc.

The main mission of the Association is to facilitate the dialogue between relevant decision makers and investors in order to create a positive investment environment for the foreign direct investment.

FIA represents the interests of its members in various structures: the National Confederation of the Employers of the Republic of Moldova, State Commission for Regulation Entrepreneurial Activity ("Guillotine"), the Economic Council to the Prime Minister, thematic working groups of the Government etc.

WHITE BOOK

The White Book is the emblem of FIA's spirit and dynamism. This is what its title says – policy documents in the form of recommendations based on international experience. Hence, this is not a report that focuses on what has been done. Rather, the book reflects an outlook on what still remains to be accomplished. An action plan for FIA to follow.

MEMBERS OF FOREIGN INVESTORS ASSOCIATION



EXECUTIVE SUMMARY

After six years from its last publication, the Foreign Investors Association launches the 4th edition of the White Book.

Publication of the White Book has started in 2005 and became in the meantime a real platform for the dialogue with the Moldovan authorities, representing at the same time an agenda of FIA's activity priorities.

This year edition comes with new recommendations aimed at improving the investment climate in the Republic of Moldova and comprises four chapters: I. tax legislation; II. labor relations; III. competition and IV. sectoral and cross-sectoral issues.

Each of these chapters identifies specific problems faced by the foreign companies in the country and formulates concrete proposals to improve the legislation.

Chapter I highlights a set of recommendations that aim to: reduce unfounded compliance costs in line with the best European practices, enable tax and customs policies' stability, stimulate the tax base expansion etc.

Chapter II, based on the international practice, emphasizes the need to amend legislation regulating labor relations and underlines the importance of enterprises' flexibility in labor relations, in order to enhance their competitiveness, both at national and international level.

Current labor legislation has numerous elements that represent real reminiscences from the past which are not only affecting the efficiency of enterprises' activity, but are also hindering the process of creation of new jobs, of attracting young professionals and motivating them to not leave the country.

Chapter III focuses on public administration actions that restrict competition and enterprises' practices that are contrary to the honest economic activity (unfair competition).

Chapter IV refers to a number of issues not related to fiscal policy, labor law and competition policy, but which create difficulties in the foreign investors' activity. Some of them are related to specific sectors of activity, such as the banking industry or trade, other, however, such as the environment and energy, are common to several areas of economic activity.



FISCAL POLICY

Over the last years, tax policies proved to be unstable, as they were often adopted in a non-transparent way, and consultations during their drafting process were more formal. Unfortunately, the Government did not had a consistent approach toward the challenges related to tax base reduction – reduction of the number of taxpayers in relation to social insurance beneficiaries (pensioners), as well as the structure of the real sector, consisting mainly of small and medium enterprises, which hardly cope with the tax burden.

To this end, FIA comes with recommendations aimed at reducing unfounded compliance costs in line with best European practices, on the one hand, and stimulating tax base expansion on the other hand, by ensuring a fair taxation of wages.

I. Tax policy

Implementation of mechanisms to ensure the stability of tax/customs policy

In recent years, the business community has witnessed a large number of amendments to the tax and customs legislation, and was thus exposed to: (1) the challenge to adjust/adapt its business strategies, and (2) uncertainty in the long term planning of its activity. Moreover, it is well known that the stability of the tax and customs policy is a key factor in attracting investments in the economy.

- Thus, there is a need to undertake all necessary measures to ensure the stability and certainty of tax and customs policy and to exclude the practice of making frequent amendments to the Tax Code and the Customs Code.
- Also, there is a need to exclude situations when amendments to the tax legislation come into force immediately after publication or retroactively.

Alignment of terms used in the tax legislation with International Financial Reporting Standards and the new National Accounting Standards

International Financial Reporting Standards ("IFRS") became mandatory for public interest entities starting with 1 January 2012 and starting with 1 January 2015 the application of the new National Accounting Standards ("NAS") became mandatory for companies other than public interest entities.

For tax purposes, can be used financial accounting methods based on the provisions of the new NAS and IFRS that do not contravene to the provisions of tax legislation. IFRS and new NAS include new terms that differ from those used in tax legislation and can result in confusion and misinterpretations of tax legislation.

In the context of the above, we propose to standardize and harmonize terms used in the tax legislation with those provided in the new NAS and IFRS.

Implementation in the tax law of the "advance tax ruling" concept

The current provisions of the Tax Code are interpreted through instructions, decisions, orders, circulars and other documents issued by tax authorities or other competent institutions, often expressing conflicting views. Also, the provisions of the Tax Code may be general and interpretable. Consequently, taxpayers face a number of difficulties in interpreting tax rules and have no tools to secure their tax treatment in relation to certain complex transactions.

In this context, we propose to introduce some rules in the Tax Code regulating the procedure of issuing "advance tax rulings" by tax authorities.

II. State social insurance contributions

The employer pays to the State Social Insurance Budget 23%, calculated from the gross salary, and the employee pays to the State Social Insurance Budget 6%, while their maximum limit is set at five average salaries (which are determined every year by the Government).

Currently, employers in agriculture can receive incentives for social insurance contributions, if during the budget year they perform only agricultural activities (reflected in groups 01.1-01.4 of the CEAM). Thus, employers are limited in obtaining other income (e.g. selling unused spare parts, subleasing agricultural land, leasing agricultural equipment, etc.)

To reduce contributions paid by the employer and proportional increase of individual contributions paid by employees.

To encourage the creation of private pension funds by redirecting individual contributions at the discretion of employees.

To improve the business environment in agriculture by reviewing the requirement to provide incentives for social insurance contributions so that these are provided to employers with a share of income from sales from agricultural activities higher than 75%.

III. Mandatory health insurance contributions

- Both the employer and the employee pay premiums of 4,5% (calculated from the gross salary amount) to the Mandatory Health Insurance Budget. At the same time, the lump sum insurance premium is 4056 MDL (for 2015), while some groups of policyholders enjoy an exemption of 50% and even 75%, if they pay such premiums in the first 3 months of the year. Health insurance is not individualized and does not take into account the size of contributions paid as compared to services provided to the policyholder.
- ▣ Capping of contributions similarly with the mechanism of capping of social insurance contributions.
 - ▣ To encourage the establishment of private health insurance funds, and competition between public and private service providers.

IV. Income tax for individuals

- The employees' annual income not exceeding 29,640 MDL is taxed at a rate of 7%, while a higher income is taxed at a rate of 18%. Every employee enjoys a personal exemption from income amounting to 10 128 MDL/year.
- ▣ To set the annual personal exemption at the level of minimum subsistence.
 - ▣ To apply a single rate of income tax or increase the threshold for applying the rate of 7%.

V. Income tax for legal entities

- ▣ Revise the rules for deduction from the perspective of income tax from entrepreneurial activity**

The current provisions regarding the deductibility of certain expenditures for the purpose of income tax from entrepreneurial activity are in many cases unclear and are interpreted both by taxpayers and by authorities, which leads to errors committed by taxpayers and the inconsistent approach to such provisions by tax authorities.
- ▣ Thus, we believe that revision of the rules of deduction for the purpose of income tax from entrepreneurial activity of certain types of expenditures and carryover of tax losses should be on the relevant authorities' agenda. In particular, there is a need to define clear criteria for determining the ordinary and necessary expenditures incurred in entrepreneurial activity.
- ▣ Carryover of losses to future years**

Just like other countries where the Tax Code was developed based on the International Tax Code, Moldova has the option to carry forward losses to the next years when they occurred. In most cases, the starting of a business generates tax losses in the first years of activity. Accordingly, the staggering of losses in equal parts over a period of three years has a negative impact on the investment climate in Moldova, because these losses (occurring as a result of documented ordinary and necessary expenditures) cannot be carried forward fully, or their carryover is not advantageous for companies.
- ▣ Article 32 (1). To remove the restriction relating to the carryover of losses "in equal parts".
 - ▣ Article 32 (1). To set a maximum period of 5 years, during which losses may be carried forward to the future.
 - ▣ To explore the option to carry forward tax losses within the limit of the taxpayer's taxable income, without dividing them into equal parts.

Accounting and calculation of depreciation of fixed assets for tax purposes

Accounting of depreciation of fixed assets for tax purposes has a high complexity, which leads to numerous errors, and requires considerable resources from taxpayers. A simplified accounting of fixed assets for tax purposes would significantly reduce the time spent by taxpayers for preparing reports on income tax from entrepreneurial activity and errors that may occur while keeping the accounting of fixed assets.

 Articles 26-27. To unify the accounting of fixed assets for tax purposes with financial accounting.

Fiscal period for the income tax of legal entities

The tax law stipulates that the fiscal period for income tax is a calendar year, while the accounting law provides for the use of a reporting period other than a calendar year, which should be equal to the reporting period of the parent company. Consequently, companies are now required to prepare financial statements twice: first time in order to prepare the income tax return and secondly in order to consolidate the financial results of the parent entity.

 In line with the best European practices for the application of a fiscal period for income tax other than a calendar year, similarly with provisions already contained in the Accounting Law.

Deduction of expenditures for current and major repairs

 To provide in the tax law for the breakdown of expenditures for current and major repairs so that expenditures for major repairs in case of capitalization are fully deducted during the validity of the lease agreement.

VI. Value Added Tax

Although multiple changes were made to VAT administration (electronic register of invoices, VAT refund in case of capital investments, etc.) over the last years and attempts were made to change VAT rates, at least for agricultural products, and then to return to the original situation, it should be noted that the overall situation improved. However, there is still a need for improvements in order to align with European standards.

VAT refund

The tax law expressly provides for and limits the cases in which economic operators can seek reimbursement of VAT (e.g., export operations, capital investments). Thus, companies that do not perform such transactions and record the transfer of VAT to their account (VAT debit) due to various reasons (including different periods of procurements and deliveries) are compelled to invest additional funds in the deferred VAT.

 To align the legislation with the provisions of the Sixth Directive of the European Union so that economic operators can enjoy the right to seek reimbursement of VAT, when deferred VAT is recorded.

Tax invoices

The tax invoice (usually referred to as a VAT invoice) is a standard, secure and numbered form sold by tax authorities.

The tax invoice is also used to:

- Accompany goods while transporting them;
- Confirm the obligation of the carrier to transport goods at the demand of the vendor or purchaser, while delivering goods to the recipient.

VAT on import of services

Include provisions to regulate the offset of VAT on material values, services purchased

Currently, the Tax Code does not include rules to provide for the right to offset the VAT on purchases made by VAT payers for certain deliveries, and namely:

- deliveries under Article 95, paragraph (2) of the Tax Code;
- delivery of services that, pursuant to international instruments, is not subject to VAT (e.g. international telecommunications services).

 Documents accompanying goods should contain the parties' identification data and quantitative indicators only, but not the price; this role can be assigned to another document, the Delivery Note.

 To repeal the provision relating to payment of VAT on import of services on the date of payment for services.

 To provide for the payment of VAT on import of services until the 25th day of the month following the payment for imported services.

 We recommend introducing an express provision clarifying the right to deduct the VAT on purchases made for deliveries that are not subject VAT, as referred to earlier.

VII. Excise duties

Excise duties paid by producers of excise goods

Currently, producers of excise goods are obliged to transfer to the State Budget the relevant excise duties upon delivery of products.

 To allow producers of excise goods to transfer the amount of relevant excise duties by the end of the month (similarly to VAT).

Excise duties on import of fuel oil

Excise duties on import of fuel oil diminish the competitiveness of products of Moldovan industrial enterprises using fuel oil in the production process.

 To introduce the option of repayment of excise duty for fuel oil used by manufacturing companies, in line with the Directive 2003/96/EC.

VIII. Other taxes and duties

Payments to the Population Social Support Fund

Since the year 2000, mobile telephony services have been additionally taxed at a rate of 2.5% of turnover, as they were treated as luxury services. These funds are transferred to a special Fund to support vulnerable people. Although, the transparency and management of this Fund improved, this fee still creates market distortions in relation to other providers of landline telephony services and Internet Service Providers.

 To repeal the Law no. 827 of 18/02/2000 on the national fund and local funds for social support of the population. Transfer expenditures made from the Population Social Support Fund to the Social Fund.

IX. Other tax issues

Initiation of criminal cases for technical errors detected in tax returns filed by economic operators

Legislation and practical approach adopted by prosecuting agencies allow the initiation of criminal cases even when detecting technical errors in tax returns (which led to penalties of over 30,000 MDL). Thus, initiation of criminal cases is a tool to exert pressure on managers of economic operators and reduces the attractiveness of the investment climate in Moldova.

 To align the Moldovan legislation to the best practices of the European Union on the application of criminal sanctions for tax violations.

Annual inventory

Pursuant to the Accounting Law, economic operators are required to perform the inventory on an annual basis.

 To provide for the requirement to make inventories of an entity's property every four years. During this period, additional inventories may be made at the discretion of the company's shareholders or management.



LABOUR RELATIONS

Moldova's legislation governing labour relations remains an area where changes take place with great delay and difficulty. National economic development, rapid changes in the national and international economy require rapid adaptation of businesses to new market conditions. In this regard, the companies' flexibility in terms of labour relations is a key factor with a direct impact on the companies' competitiveness and potential to adapt to new economic conditions.

The outdated labour law framework creates obstacles not only for the efficient operation of companies, but also for ensuring higher equity between employees and providing jobs to young specialists, short-term and medium-term job creation, development of a modern economy and creation of favourable conditions to attract investments.

Below is a list of recommendations to amend the Labour Code of the Republic of Moldova, including recommendations stemming from international practices that will lead to the modernization of the labour law framework.

I. Employer - Employee Relations

Reference: Labour Code of the Republic of Moldova

Transfer of employees

The Labour Code does not provide for the option of a temporary transfer of the employee within the company (with the written consent of the parties). This creates problems in filling a temporarily vacancy in the company. The only option is fixed-term employment, which is a disadvantage to both the employer and the employee.

-  Article 74. To include the option of a fixed-term (temporary) transfer of the employee, especially in cases of duty travels of employees, short-term or medium-term secondment, long-term medical leaves etc.

Temporary transfer is necessary for companies where the employee's work requires special knowledge and training (initial training, knowledge of information systems and work procedures, security procedures, etc.) and a greater adjustment period.

Age retirement

Moldovan law has different approaches to employment in the public office and that in the private sector in terms of termination of labour relations with a person who reached the retirement age. Thus, labour relations with a person employed in the public office ceases when reaching the age conferring entitlement to old-age pension, while in the private sector such a labour relation continues for an indefinite period. These provisions create impediments in hiring young professionals, and respectively, in providing them with jobs and income.

Parental leave

Persons on parental leave caring for a child aged up to 6 years and those on maternity leave shall not be dismissed, unless the company is liquidated.

Overtime

Labour legislation of the Republic of Moldova does not provide for an option to compensate overtime with paid time off.

Probationary period

Application of probationary period for young specialists and persons employed on a competitive basis shall be prohibited.

The Code does not provide for cases when an employee is transferred to a new position within the same company.

 To provide for an option of fixed-term employment for jobs that were left vacant following the temporary transfer of an employee.

 It should be stipulated that the retirement age shall serve as grounds for termination of the individual employment contract, while it may be extended upon the parties' mutual agreement.

 Article 86 (2), 251. To reduce from 6 to 3 years the term for prohibition of dismissal of persons on parental leave.

 To provide for compensation of overtime with paid time off within 30 days of the completion of overtime work.

 If the employer chooses to compensate overtime with paid time off within 30 calendar days after completion of overtime work, the employee will receive a number of free hours equal to the extra hours worked, and will be paid for hours worked over the normal work schedule.

 Article 62) a), c). To cancel restrictions relating to cases in which application of probationary period is allowed.

 To allow the application of probationary period to employees who are transferred to a new position within the same company.

In most cases, three months are not sufficient for testing the professional skills of an employee.

Annual leave

There is no provision on cases in which employees have not used their annual leave for many years. Instead, the Code allows unlimited accumulation of unused leave days that can be re-used by the employee upon request.

Employees from some sectors of the national economy (industry, transport, construction, etc.) are granted additional paid annual leaves.

Pursuant to Article 113 (1) of the Labour Code, all employees are granted paid annual leave, with a minimum length of 28 calendar days, except for holidays.

Resignation

The employer is not entitled to dismiss the employee who submitted an application for resignation, if within two weeks from submission of the application, the employee withdraws (cancels) the application and no person is employed to his/her position.

The two weeks' notice period prescribed by the Code for submitting the application for resignation is a minimum period available to the employer to select and hire another person. Thus, upon withdrawal of the application for resignation by the employee, the employer loses financial and human resources for hiring a new person.

Dismissal

The Labour Code does not provide an option for the dismissal of an employee, whose actions or inactions caused serious damages to the employer. The law contains no provisions that would allow the dismissal of employees in the event of the employee's actions or inactions that endangered or damaged information systems, databases, security systems, seriously damaged the image of the employer, if confidentiality of information about company's operations was not observed and in other cases with serious consequences for the employer.

 To increase the probationary period from 3 to 4-6 months.

 It should be stipulated that annual leave days which were not used during the current year should be used no later than within the next two years, otherwise these days will not be valid.

 Article 121 (3). To provide for a maximum limit for additional leave days (up to four days), regardless of the industry of the employee.

 To change the length of the annual leave as follows:

- 20 working days for companies where the work week is five days;
- 24 working days for companies where work week is six days.

 To cancel Article 85 (4).

 Article 86 (1). To provide an option for the dismissal of any employee, regardless of their position in the company, in cases of "serious violation" as defined by the internal regulations or policies of the company.

Compensation in the event of liquidation

Employers are obliged to provide the employees made redundant due to company liquidation with a compensation amounting to the average weekly salary for each year of service.

Technical unemployment

Article 80, paragraph 4), of the Labour Code provides that during technical unemployment period, which may not exceed six months in a calendar year, employees shall receive an allowance which cannot be less than 75 percent of their base salary, except for cases of suspension of the individual employment contract according to Article 77 letter c).

Conflict of interest

Lack of a non-competition clause.

Guarantees and compensations for employees combining work with studies

Under the Labour Code, employees who combine work with studies are granted additional leaves while being paid the full or a part of the average salary and other incentives, as established by the Government. The Government Decision no. 435 of 23/04/2007 requires the employer to grant an additional leave for studies up to 30 days for exams, tests, etc. and up to 90 days for writing the thesis paper for Bachelor's degree, Master's degree, while being paid 75% of the average salary for the main job. Such provisions cannot be justified from the economic perspective and in some cases can endanger the company's operations.

 Article 186 (1) a). To provide for a maximum limit for compensation in the event of liquidation, in the amount of 3 average monthly salaries.

 To reduce the technical unemployment benefit to 50% of the base salary of an employee.

 To introduce a non-competition clause, taken from Community law: "The parties may negotiate and include a non-competition clause in the agreement whereby the employee undertakes, upon termination of the contract, not to perform for his/her own interest or for a third party an activity competing with the employer's activity, in exchange for a monthly non-competition allowance to be paid by the employer throughout the whole non-competition period".

 To change Articles 178-182 by granting additional leaves while maintaining the full or a part of the average salary only for employees sent to studies by the employer. For employees studying on their own initiative additional leave may be granted, based on a mutual agreement, without maintaining their average salary.

II. TRADE UNIONS

Dismissal

Article 87(1). Dismissal of employees who are trade union members in case of reduction of the number or workers or positions can take place only with the prior written consent of the trade union organization of the company. The law does not require the trade union to give reasons for their agreement or disagreement with dismissal of union members, which may jeopardize the company's operations. In practice, reduction of the number or workers or positions is used by the employer in case of restructuring and/or for economic reasons.

Article 87(2) Dismissal of a person elected to the trade union organization is allowed only with prior consent of the trade union whose member is that person, regardless of the nature of reasons for dismissal, including dismissal in the event of liquidation or reduction of staff.

Dismissal of employees who were elected to the trade union organization is not allowed for two years after expiry of their mandate, unless the company is liquidated or those employees commit culpable actions.

Work schedule

The schedule of shift work and annual leaves is approved by the employer in agreement with employees' representatives.

Overtime

According to Article 104 (4) of the Labour Code involvement in overtime work in cases other than those provided for by the law is allowed with the written consent of the employee and the workers' representatives. However, trade unions are not responsible for the efficiency of the company. There are frequent production-related situations in the company's activity that require operative solution and it is not possible to follow the complicated procedure of involvement in overtime work.

 Articles 87(1), 88 (1) h). To remove the letter c) from the Article.

 Articles 87(2), 88(1) h). To remove restrictions relating to the dismissal of an employee who is a member of the trade union. Keep the provision on cases relating to trade union leaders, so that dismissal is done only after prior consultation with the trade union organization.

 Article 388 (4). To cancel the provisions of this paragraph.

 Articles 101 (3), 116 (1), 321 (1). It should be stipulated that issues relating to the work schedule should be consulted, and not jointly agreed with, trade union representatives.

 To change Article 104 (4) to enable the employer to involve employees in overtime work only with their written agreement and cancel the employer's obligation to request the agreement of workers' representatives.

 **Incentive payments**

The employer has the right to establish different incentive payment systems after consulting with workers' representatives and compensations based on the annual performance – with their approval.

 Articles 137 (1), 138 (2). To allow employers to manage independently their incentive payments schemes, including salary increments. It should be stipulated that compensations based on annual performance shall only be consulted with trade union representatives, and shall not be subject to their approval.



COMPETITION

I. Actions of public authorities restricting competition

Competition may be affected not only by the behaviour of companies on the market, but also by the actions or inactions of public authorities.

Pursuant to the Law on Competition No. 183 of 11.07.2012, any action or inaction of central or local public authorities and their institutions, which limit, hamper or distort competition, and namely:

- a) limiting the companies' procurement or selling rights;
- b) setting discriminatory requirements or granting privileges to some companies if they are not stipulated by the legislation;
- c) setting prohibitions or restrictions on companies' activities that are not stipulated by the legislation;
- d) imposing companies, directly or indirectly, to associate or to merge under any format shall be prohibited

🚩 Conditions of unfair competition for selling goods in the Republic of Moldova, and namely in Transnistrian region.

Companies may sell their goods in the Republic of Moldova (Transnistrian region) only after having paid an import duty of 10% of the goods value, and this amount is levied by the "Transnistrian unconstitutional customs authorities" of the Republic of Moldova. Considering the aforementioned barrier or disadvantage, the goods cannot be sold on the mentioned Moldovan territory under fair competition.

🚩 In order to maintain a fair competitive environment, it is necessary:

- (i) to repeal the import duty, or
- (ii) to create level playing field for all sector players.

❏ Economic subsidies (supply of natural gas etc. under preferential conditions) provided to competitors from the left bank of the Nistru River by the Russian Federation, which disadvantages the local companies.

The costs incurred by companies while manufacturing goods represent a defining or significant component of the price formation process. To this end, (i) the price of natural gas supplied to competitors established on the level bank of Nistru River; and (ii) the tariff charged for electricity is approximately 3,5 times lower than those set for the companies established on the right bank of Nistru River. Stemming from this rationale and taking into consideration the fact that the impact of fuel costs is substantial; the indigenous companies are facing discriminatory tariff conditions.

❏ In the context of the aforementioned, it is necessary to apply legal regulations aimed at counteracting such uncompetitive advantages.

❏ Mobile Telephony Sector

Pursuant to Art. 4 of the Law on the National and Local Funds for Population Support (No. 827 of 18.02.2000), one of the Fund revenue sources is the monthly transfers to be made by the legal entities that render mobile telephony services in the amount of 2,5% of the proceeds derived from the sales of such services. This fee was introduced in 2000 as a "luxury fee".

❏ To repeal the Law on the National Fund for Population Support (No. 827 din 18.02.2000). To transfer expenditures under the National Fund for Population Support to the Social Fund.

❏ Roaming services

GSM/3G services – an alternative to international roaming services rendered by the mobile telephony operators in the Republic of Moldova, benefit de facto from lighter legal and fiscal statutory scheme; thus, granting them an unjustifiable competitive advantage. Besides, the retail tariffs for roaming services applied by the local providers to end users are determined by the engross tariffs levied on local

❏ The amount of proceeds derived by foreign operators from selling their international roaming services in the Republic of Moldova almost equals the amount of losses incurred by local providers in selling the same services. To this end, it is needed to create a level playing field for both national and international roaming service providers.

providers by foreign operators which networks are used by end users when abroad. The EU adopted recently a series of regulatory acts stipulating the gradual reduction of engross tariffs levied amongst the EU operators for the international roaming services with the concurrent gradual reduction of retail tariffs imposed by those operators on end users to the level of national tariffs. As the Republic of Moldova is not part of the EU, such regulations are not applicable to the engross tariffs levied by the EU operators on Moldovan providers; therefore, the engross tariffs are still very high. This situation does not enable the local providers to offer competitive roaming tariffs relative to the EU operators. In cases where the EU grants its operators exclusive commercial advantages, which are not available to the Moldovan providers, allowing the EU operators to sell their international roaming services directly on the Moldovan territory in competition with the local providers should mean that the foreign operators are favoured in the detriment of the indigenous providers, and this fact is not justified at all; moreover, it contravenes the interests of the national economy.

Banking sector/Social benefits

The Savings Bank “Banca de Economii” holds the monopoly on payment of pensions and other social benefits. Pensioners and other population groups cannot choose independently the bank where to receive their pension and other payments. Given the current situation, they are also subject to a certain risk.

Banking sector/Wage projects

Pretty frequently the companies conclude contracts with one bank only to pay the wages through the bank card accounts. In most cases, the company employees do not have the choice to pick up a bank where to get their remuneration from; instead they have to get it from the bank the company concluded an exclusive contract with. This is an infringement of the consumer's freedom of choice.

Banking sector /Tax legislation favours legal entities more than individuals

Pursuant to Article 25 of the Moldovan Tax Code, the legal entities are allowed to deduct their expenses related to interest payments on contracted loans; thus, having lowered their taxable base; at the same time, there is no such provision in place for individuals.

Banking sector / BEM – Unfair competition

As per the Government Decision No. 152 of 21.06.2013 on the Report of the Investigation Commission related to the review of the way how the State shareholdings at the Savings Bank are being administered and on the situation in the banking and financial sector of the Republic of Moldova, it was decided the Parliament and the Government to take all the required measures to transfer the turnovers of all enterprises, state owned enterprises and those companies where the State holds the controlling shareholdings to the Savings Bank. This Decision restricts fair competition in the banking sector.

 To amend the legislation and involve other banks in the process of transferring pensions and other payments.

 To develop such a legal framework that would sanction the employers urging their employees to get their remuneration and other payments only from those banks with which they concluded a contract to transfer wages on bank card accounts.

 To amend the Tax Code by introducing a provision to allow for the deduction of expenses related to interest payments on loans contracted by individuals.

 If providing that the expenses related to interest payments on loans contracted by individuals are deductible as well, this would create incentives for mortgage lending development, would decrease the taxable base and eliminate discrimination of individuals in relation to legal entities.

 To have sufficient leverages aimed at counteracting unfair competition, it is needed to improve the Competition Law and to ban any actions or inactions carried out not only by the central and local public authorities and their institutions, but also by the Parliament, which restrict, hamper or distort competition.

 To repeal Article 3 of the Government Decision No. 152 of 21.06.2013 on the Report of the Investigation Commission relating to the review of the procedure for management of State shareholdings at the Savings Bank and on the situation in the banking and financial sector of the Republic of Moldova.

Banking sector /Utility payments

Currently, the banks are not allowed to impose commissions when accepting utility cash payments from clients, although the commissions they receive from customers are by no means sufficient to cover the costs incurred.

Levying commissions for utility cash payments made by customers would enable the development of alternative means of payments (such as Internet banking, electronic terminals, etc.).

 To remove the legal barriers that limit the bank opportunities to compete for accepting utility payments from population.

II. Unfair competition

In the context of the Law on Competition (No. 183 of 11.07.2012), unfair competition means any action taken by companies in the process of competition that is against fair practices in the economic activity.

Confusing the consumers concerning the product trademark, design and model of certain companies

Quasi-slavish copies – punishable actions of confusion by creating similarities with the products of other companies. The competitors' products imitate/copy, in part or in full, the products of other companies by launching their own package for selling the product on the market, which has a "parasitical effect" of tracing, having the same format, same colour spectrum, same way of placing the design, same colour combinations and word combinations.

 To conduct more rigid inspections on the market and develop a more rigid legal framework to counteract and/or sanction such practices.

Overloading of trucks – anti-competitive practice aimed at deriving additional benefits on the market

The practices of overloading the heavy duty vehicles with loads that exceed the currently permissible levels stipulated by the legislation in force bring illegal benefits to companies working in the construction sector (especially, those transporting cement). Companies that comply with the current legal framework are a priori disadvantaged. Moreover, the road infrastructure is affected in an irreversible way.



SECTORAL AND TRANSVERSE ISSUES

A range of issues not related to fiscal policy, labor law and competition policy also creates impediments to the activity of foreign investors. While some of them are specific to particular sectors of activity, others are common to several areas where there have been made foreign direct investment.

I. Banking Industry

Transparency of the Banking System

Major corporate governance problems in the banking system along with the weak judicial system remained a risk to the financial stability of the Republic of Moldova.

Reforms and legislative amendments adopted and implemented in this respect by authorities over the last years have not led to remarkable progress and further deficiencies were noted in the enforcement of regulatory requirements for banks.

-  Increasing transparency in the ownership structure of commercial banks in Moldova.
-  Implementation of measures and mechanisms to ensure the stability of the banking sector and protect investments in commercial banks.
-  Prevention of shareholders' expropriation and fraud in the banking activity.
-  In this context, it is vital to improve the quality of corporate governance in the banking sector, including by enhancing the transparency of end beneficiaries/ owners of banks.

Increasing the Efficiency of Cooperation with Bailiffs

To enforce writs of execution, a bailiff is entitled to request and receive free of charge on paper or online from the central and local public authorities, from (financial) institutions, and from organizations holding state registers and relevant information for enforcement proceedings, any information that could identify the debtor, its assets and whereabouts. Submission of this information by commercial banks results in some additional administrative costs, as well as irrational spending of employers' work time, considering that only 1/3 of the bailiffs' requests are related to bank clients, and around 50,000 requests per year require a response that the bank has no relevant information.

Deposit Guarantee Fund

The issue related to the increase of the amount of guaranteed deposits, which is currently MDL 6.000, is frequently discussed.

We find that the discussions are related to the value of the guaranteed amount, which is not yet specified, but the issue on the need to review the entire deposit guarantee system is ignored, starting with the method of setting and collecting contributions from banks and ending with the Fund duties in general. Currently, the principle of solidarity is the base of collecting the contributions by the banks - all the banks participate in establishment of the fund, regardless the risk profile of each one, while the disbursements are subsequently made to problematic banks. The principle of solidarity no longer can be considered viable, effective and fair, when the banking system has corporate failures and transparency problems still exist. By ignoring the risk profile of each bank, this principle may foster even more the banks' acceptance of increased risks.

 An agreement with the National Union of Bailiffs would be welcome to facilitate the exchange of information and the settlement of any divergence that occurs when banks are involved in the enforcement of court decisions and collection orders issued by bailiffs.

 Restructuring of the Fund by its partnership with financial stability institutions (i.e. NBM) to rigorously monitor the financial institutions.

 Strengthening the regulatory basis in the area of deposit guarantees (introducing the concepts of risk and banks grading depending on it, etc.).

 Reviewing the method of contribution to the Fund by establishing premiums/ contributions depending on the risk, and increase of banking system's discipline and transparency level.

II. Trade

Price Regulation

According to the provisions laid down in Article 20 (6) of Law on Interior Trade “the products and services shall be traded on the territory of the Republic of Moldova at competitive prices, except for prices/tariffs which are regulated by the State. The price for trading socially important products/services for the first necessity, which reflect the behaviour of consumers from vulnerable social categories, shall be approved by the Government and shall be regulated by limiting the yield when producing and/or by limiting the margin at selling. Price regulation shall be carried out by the Government for a term not exceeding one year and shall be preceded by economic arguments and statistics on the need and the opinion of the Competition Council.”

Thus, no significant changes in the Government Decision No. 547 on the Measures of State Coordination and Regulation of Prices/Tariffs have been registered so far, and the list of socially important products was not revised since 2010, contrary to the Law No. 231/Law No. 187. The practice shows that each attempt to regulate the prices of some products has led to their increase and respectively disadvantaged the end consumer.

If compared to the EU legislation, the possibility of the Government to be involved in setting prices is not typical. These provisions provide to the Government the possibility to make some serious changes in the free market competition.

Trade Regulation Procedure

According to the national legal framework, to practice entrepreneurship a lot of permits (authorizations, certificates, notices, licenses, etc.) are requested, many of which are doubled, involving major costs in terms of time, financial and human resources.

One of these documents is the operating permit, which in the context of current regulations entails a difficult and problematic procedure involving significant financial and human resources.

The procedure of obtaining a operating permit takes about 70 days and is possible only after obtaining some preliminary notices and additional authorisations from several state bodies (LPA, divisions responsible for construction and town planning, NPHC, NAFS, MIA, fire-fighters' service, Licensing Chamber). In addition, this process involve spot controls which, generally, are conducted by local public authority, NPHC, NAFS and fire-fighters' service, and the cost for operating permits varies from one settlement to another.

It is worth mentioning that a license is valid for one year. Upon the expiry of this term, entrepreneurs have to initiate the procedure to obtain a new license.

 The review of regulatory framework related to measures of state coordination and regulation of prices/tariffs (Government Decision No. 547) by setting the cases, terms, reasons and methods by which the Government can regulate the prices for socially important products.

 In addition, there is a need to set a reasonable timeline for the involvement of the state in setting prices for a particular product.

 Optimization of the procedure of obtaining an operating permit, by reviewing the Law No. 231 on the Internal Trade of 23.09.2010.

III. Environmental Protection

Development of a Waste Recovery Market

The current legislation of the Republic of Moldova does not foster the development of waste recovery market, because the Article 20 of Law on Industrial and Municipal Waste forbids burning of any waste (Article 20 (1) (d) of Law on Industrial and Household Waste No. 1247-XIII of 09 October 1997). At the same time, there is a Law on Air Protection (Article 23 (2) (d) of Law on Air Protection No. 1422-XIII of 17.12.1997), which allows waste recovery in special facilities.

This situation hinder any initiative to develop and invest in waste recovery sector, as a part of much bigger initiative to cope with efforts of minimizing the impact on the environment and to create new economic opportunities on local communities.

 Creation and implementation of a legal framework for development of waste recovery sector according to provisions of European Directives which are in force in European Union (for example see Romanian legislation, which introduced them in their legislation).

 Amendment of Article 20 to allow the burning, co-incineration of production and household waste, etc. in the clinker kilns).

IV. Energy

Procedure for Changing the Electricity Supplier

In the context of transposition into national legislation of several European Directives in the process of amending the Electricity Law, in 2013 ANRE developed and approved the Regulation on the Procedure of Changing the Electricity Supplier by Eligible Consumers (Decision No. 534).

Using the existing relevant provisions and the tendencies to adapt the current legal framework in the energy sector, consumers are entitled to purchase electricity from any supplier or producer, including from abroad, with no obligation to conclude bilateral contracts on purchasing electricity produced by CHPs of Moldova.

However, the legislation in force, through the Law on electricity nr. 124 (art. 30 (8)) indicates the obligation to purchase the electricity from "supplier designated by the Government under Article 5 (1) f1)", in volumes determined by ANRE in accordance with the of the electricity market rules and depending on the share market and electricity consumption.

 To ensure a competitive structure of electricity cost by excluding the obligation to purchase electricity from local producers, thus providing for all consumers, including the eligible ones, the right (i) to choose independently and (ii) to sign contracts on provision/purchase of electricity in the agreed amount and price, without any restriction, from any local or foreign supplier of producer.

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