WHITE BOOK

FOREIGN INVESTORS ASSOCIATION

2006

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PROPOSALS FOR IMPROVEMENT OF THE INVESTMENT CLIMATE IN MOLDOVA

2006
Chisinau, Republic of Moldova

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FIA distributes the White Books free of charge. Limited printed copies are available at FIA headquarters, both in Romanian and English. Download versions are also available at http://fia.md/.

FOREWORD OF THE PRESIDENT

More than two years have passed since the establishment of FIA in Moldova, a time that has favored significant consolidation of our institutional capacity and has strengthened the commitment of our members to share their business experiences from abroad.

Yet, the year that followed the publication of the first *White Book* in 2005 has been marked with real challenges to the FIA's resoluteness of continuing the fight for better policies in an environment that still has a record of bureaucratic decision-making and hesitation in accounting for the voice of the private sector.

At the end of the year, the overall conclusion is that most of the 2005 recommendations have not been put through. This is both for the reason that policy amendments sometimes take more time to be realized, but also – very importantly – because of insufficient capacities.

On one hand, most of FIA's activity throughout the entire year turned out to focus on revising *newly* emerging regulations, rather than on fostering a concerted implementation with local policymakers of the proposed recommendations for improving the *existing* state of affairs.

On the other, the hard times that challenged Moldova's macroeconomic situation in 2006, exacted significant capacity resources from public authorities as well. By the same token, these resources could have been otherwise targeted towards improving the conditions that had already been in place.

In this context, the *Evaluation* Chapter of the Book should be read as giving the principal message that we – both public and private stakeholders – must move fast, as a lot of work remains to be done. Together.

This message cannot be overemphasized, as new issues come along continuously. As such, *White Book 2006* presents new chapters reflecting matters that are very concrete, and which lead or may lead to an unjustified increase in the costs of company operations. Herein I would also like to note that the issues raised by the new Book regard not only regulations that are already in force, but also some that are in the process of being drafted.

In such a format, the FIA Books are meant to become an instrument that will enable synchronization of public and private sector considerations in a *dynamic* policymaking environment.

Finally, I would also like to take on this opportunity and express my sincere thanks to the members of FIA – the general directors and their legal consultants – as well as to the FIA permanent staff for their considerable effort in the preparation of this Book.

The Foreign Investors Association is fully prepared to give its support that will help translate the proposed recommendations into action. I only remain to wish all of us an earnest determination for making things happen. Let us proceed.

Joachim Schreiber,
President of FIA

EU	European Union
GR	Government Resolution
GSM	General Shareholders Meeting
IAS	International Accounting Standards
IFRS	International Financial and Reporting Standards
IP	Intellectual Property
JSC	Joint Stock Company
LTD	Limited Liability Company
MSTI	Main State Tax Inspectorate
MTEF	Medium Term Expenditure Framework
MEC	Ministry of Economy and Commerce
NAER	National Agency for Energy Regulation
NCA	National Competition Agency
NSC	National Securities Commission
RM	Republic of Moldova
SAIP	State Agency for Intellectual Property
SCR	State Chamber of Registration
SM	Securities Market
UNCITRAL	United Nations Commission on International Trade Law

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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 16 multinational companies that provide a wide range of goods and services for the economy. Their combined investment exceeds USD500 million, a figure that represents more than 50% of total FDI stock in the country since independence. FIA members employ around 8,000 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.

BOARD MEMBERS, 2006-2007

1.	Joachim Schreiber, President of FIA	Tirex Petrol
2.	Andrian Candu	PricewaterhouseCoopers
3.	Alain Daescu	Metro Cash & Carry
4.	Bruno Duthoit	Voxtel
5.	Hubert Pillet	Lafarge
6.	Silvia Radu	Union Fenosa

MEMBER COMPANIES

1.	Carmez International	Belgium
2.	Ciment - Lafarge	France
3.	Endava	United Kingdom
4.	Efes Vitanta Moldova Brewery	The Netherlands
5.	Knauf	Germany
6.	Leogrant	Turkey
7.	Metro Cash & Carry	Germany
8.	Moldavian Airlines	Switzerland
9.	Moldcell	The Netherlands
10.	PricewaterhouseCoopers	United Kingdom
11.	QBE Asito	Australia
12.	Südzucker Moldova	Germany
13.	Sun Communications	United States of America
14.	Tirex Petrol	Germany
15.	Union Fenosa	Spain
16.	Voxtel	France

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 second White Book that FIA has published since the onset of its activities in January 2004. In the meantime, FIA has managed to better understand its role in the process of policymaking, especially by upgrading the platform supporting the approach towards making proposals and sharing feedback with public authorities. Thus, while the first Book presented recommendations that were more general in form, *White Book 2006* makes proposals that come out of very specific issues affecting business operations, and which can be realized through concrete amendments to the current legal framework, followed by a real enforcement in practice. In this context, the reader shall see that each subchapters of the Book make reference to the legal act(s) requiring upgrade.

The contents of *White Book 2006* are original as they represent problems and proposals that have been collected during various field trips at and meetings with FIA member companies throughout the year. Up to the moment of the publication, the text has been continuously upgraded to reflect current changes in the legislation and ongoing dialogue with public authorities.

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 caveats 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 Book 2005* 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:

National Treatment
(i) to allow local companies with foreign capital to purchase farm land;
(ii) to annul the requirement for foreigners to purchase local medical insurance in case of temporary stay.

Rule of Law
(i) to stop amending the legislation as a reaction to separate cases of law violations;
(ii) to ensure independence of courts and of judge selection;
(iii) to ensure that final rulings are explicated to the parties involved in a trial;
(iv) to establish an accountability mechanism for judicial staff.

Competition

(i) to ensure transparency of NCA activities, including stipulation of instruments and methodologies to be used in the evaluation of anti-competitive behavior on the market, of limits of control etc.;
(ii) to ensure transparency and fair play in the regulation of activities of natural monopolies;
(iii) to limit and then cancel state subsidies to enterprises, regardless of the origin of their capital (public or private).

State Interference

(i) to amend the Law that regulates prices and terms of contracts for commercial agents on the farm market, following European best practices;
(ii) to prevent over- and unfair regulation of electronic communications;
(iii) to revoke the obsolete legal acts setting caps on rates of return for monopolies;

VAT

(i) to draft and enforce a scheme for an efficient VAT refund;
(ii) to eliminate vertical categorization of VAT payers for VAT refund eligibility;
(iii) to allow any commercial agent to issue personalized tax invoices, regardless of the value of business operations;
(iv) 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.

Tax Policy

(i) to no longer allow the MSTI to issue at its liberty letters of explanation on the application of tax provisions;
(ii) to improve the framework regulating tax incentives;
(iii) to expressly provide that expenditures such as – audit, business trips, training, membership fees, maintenance of rented vehicles, remuneration of administrative bodies – are deductible;
(iv) to prevent double taxation of dividends in case of parent-subsidiary;
(v) to remove the restriction that the loss may be carried forward only in equal parts;
(vi) to provide that job allowances for foreigners are free of tax;
(vii) 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;
(viii) to provide that for tenancy agreements, the tax payer shall be the owner of the place;
(ix) to allow settlement of payments through third parties.

Administrative Burden

(i) to ensure compliance by state bodies with the presumption of innocence;
(ii) to streamline the reporting regime affecting companies;
(iii) to create a single Health Certificate;
(iv) to create a single National Authority that will be responsible for product safety;
(v) to annul the Certificate for Safety required for running dangerous industrial objects;
(vi) to streamline the functions of Inspection bodies, in order to prevent duplication of check-ups;
(vii) to ensure that anonymous petitions are not followed upon by relevant authorities, unless they contain information affecting national security an public order; for the purpose of this law, to explicitly define the term “publi order”;
(viii) to amend the legislation to the aim of liberalizing the use of bank cheques.

Capital Market

(i) to provide that amendments to the Law on joint stock companies especially include: the ability to exercise the preemption right by *all* shareholders, and not only by those of former closed JSCs; enforcement of voting rights during the period of compulsory bid for share buy-out; supervision by the National Competition Agency of merger contracts etc.;
(ii) to clarify the supremacy of law application for banking institutions: Law on JSCs vs. Law on Financial Institutions;
(iii) to provide that amendments to the Law on the securities market follow the European Directive 25/2004 on takeover bids, and especially: not to merely introduce the squeeze-out concept, but especially to provide a *procedure* for its enforcement; in case of takeover, to enforce the possibility of making *voluntary* bids, which entail the obligation to announce a bid for the remaining shareholders *at the same time* (and not after) the control of the company is acquired, etc.

LTDs

(i) to provide no restriction on the minimum share capital of a limited liability company.

Trade Promotion

(i) to recognize as locally valid the EU veterinary/health/quality –related certification of imported goods;
(ii) to harmonize and streamline duties of health, veterinary & standardization authorities according to EU standards;
(iii) to stop the practice of changing the rules surrounding the regulatory environment for the purpose of additional revenue to the budgets of public authorities and separate private companies.

Labor Relations

(i) to eliminate the salary grid altogether and introduce the concept of a minimum wage;
(ii) to improve provisions regulating employer/employee relations, including issues like: resignation, dismissal, retirement, maternity leaves, extra hours, trial period, annual leaves, compensations for business liquidation, conflict of interest, litigation, right to hold the position of a general manager at more than one company;
(iii) 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;
(iv) to no longer allow the labor inspection to enter premises at any hour, nor to stop the functioning of units;
(v) to remove the restriction imposed on the upper limits of monthly disbursements into and from the pension fund;

National Roads

(i) to attract foreign companies in the (re)building and operation of national roads.

Energy Security

(i) to update *The Statistical Waste Qualifier*, so as to comply with European changes and trends in waste classification;
(ii) to adopt technical requirements and National standards for bio-fuels according to EU standards;
(iii) to facilitate opening of own customs warehouses.

EVALUATION OF FIA WHITE BOOK 2005

I. BARRIERS TO FDI

1. RULE OF LAW

Following the adoption of the EU-Moldova Action Plan, which calls for the strengthening of democratic institutions and the rule of law, as well as for securing independence of the judiciary, several efforts acknowledging the importance of the proposed objectives have been undertaken. Most importantly, reform of the judiciary system has been initiated, setting out objectives in line with requirements to be fulfilled via the Action Plan. Justice has in fact been declared as one of priority sectors in the implementation of the EU-RM Plan. Similarly, the Speaker of the Parliament has on several occasions reiterated the intention and determination to harmonize country legislation with European standards.

Overall, however, progress in the judiciary has been rather small. Little has been done to ensure independence of courts and of judge selection; lack of transparency still persists in court trials, final rulings of which are not explicated to the parties involved. Delay in the realization of the initiatives set out is mostly due to a lack of capacity and expertise, as well as to a meager availability of financial recourses.

Below is an evaluation of the progress made following recommendations of White Book 2005:

Legislation	% –	To eliminate contradictions in the current legislation.	Actions taken: (i) The Parliament has declared its official intent to harmonize the current legislation with provisions of the European law; (ii) the Guillotine II for the revision of laws has been initiated. Caveats: (i) The expertise and capacity of public authorities is rather low; (ii) there have been instances of non-compliance by state bodies with the Guillotine I process, whereby – before coming into force – all normative acts that have been already or are to be issued must undergo a test of conformity with market economy principles.
	%	To ensure prior consultation with stakeholders.	Actions taken: (i) The Concept on cooperation between the Parliament and the civil society has been adopted; (ii) legal drafts and acts are being posted online; (iii) FIA has been more actively involved by the Government in policy-making dialogues. Caveats: (i) There is a risk that the voice of the civil society may be taken into consideration only "declaratively"; (ii) internet penetration in Moldova is still rather low, a fact that hinders accessibility to online information.

	−	To stop amending the legislation as a reaction to separate cases of violations.	Two of such cases include: (i) revocation within one month after its adoption of an amendment made to the Labor Code following discussions with private and public stakeholders, whereby the individual employment contract should have become void upon reaching the retiring age, with the possibility to be extended upon negotiations with the employer; (ii) implementation of an electronic registry of drugs at the expense of operators on the market, to the aim of "fighting off counterfeit medication."
Judicial System		To strengthen the selection criteria of judges.	Actions taken: Efforts are made to make vacancies public. Caveats: The selection process per se is non-transparent.
	%	To enforce prosecution of judges when called for.	Actions taken: A Law was passed, whereby persons – who through their activity/passivity contributed to the adoption by the European Court for Human Rights of a resolution against Moldova – shall be liable to recover the respective costs borne by the state.
	%	To establish an accountability mechanism for judicial staff.	As above.

2. COMPETITION

Institutionalization	+	To create an independent Agency for Competition Promotion and Protection.	
State Intervention	−	To limit and then cancel state subsidies to enterprises, regardless of the origin of their capital.	Actions taken: (i) The new Law on public debt, state guarantees and state re-crediting requires mandatory reporting to the Ministry of Finance of all state-owned enterprise debts; (ii) according to recent amendments to the Insolvency Law, company insolvency shall be pronounced and dealt with only through courts; (iii) following IMF recommendations, it is envisioned that principles of corporate governance shall be applied to all state enterprises, thereby placing them conditions similar to JSCs. Caveats: (i) State cancellations of company debts (along with other subsidies in the form of state budget disbursements) still take place; (ii) in an attempt to encourage debt repayment, a number of debt penalty cancellations have also been declared. Yet, following the new amendments to the Insolvency Law, whereby the Tax Inspectorate shall be henceforth (replacing the Council of Creditors) in charge of monitoring tax and non-tax debts, there is the risk that – given the budget constraints during the insolvency process – the schedule of debt repayment may be executed disproportionately in favor of the state budget, to the detriment of other private creditors.
	+	To revoke the GR whereby cereals may only be traded through the commodity exchange.	
	+	To clearly define the scope of state intervention in businesses.	Actions taken: The regulatory reform (Guillotine I and II) has diminished the state's entitlement to interfere with business operations.
Grey Economy	%	To detect agents avoiding VAT payments as function of the business volume.	Actions taken: (i) Amendments have been made to the legislation such that protective stamps are to be applied on each cash machine (thereby preserving the fiscal memory of each apparatus), the fee for non-compliance has been increased; (ii) patents for commercial activities are to be abolished, thereby making such activities subject to VAT payments.

%	To institute mandatory receipts for cash payments.	Actions taken: The newly adopted Audiovisual Code requires mandatory receipts from any cash payment (including door-to-door) made for broadcast services.

3. LAND TRADABILITY

X	To allow local companies with foreign capital to purchase farm land.	Actions taken: Whereas previously the prohibition was only "internally circulated" within state bodies, in April'06 the Parliament enforced it by law to cover all types of local businesses with foreign capital.

4. FINANCIAL SECTOR

%	To encourage representation of Western banks on the local market.	Actions taken: In Fall'05, the President of RM officially stated the country's openness to foreign banks. At the beginning of 2006, Raiffeisen Bank opened a representative office. The Italian Gruppo Veneto Banca took over the local Eximbank. At the end of 2006, the French Group Societé Générale took over the local MobiasBanca. Caveats: The mere advent of these foreign banks, together with an insufficient level of foreign currency reserves at the National Bank, does not yet enable the liberalization of the currency market (today, credits foreign currency may only be granted to importers(!)).

5. INFRASTRUCTURE

–	To attract foreign companies in the (re) building and operation of national roads.	Actions taken: The Government has initiated rehabilitation works of the road connecting Chişinău with Leuşeni (the main pass point to Romania). It is also envisioned that additional budgetary resources shall be allocated for road reparation in the following years, to be supplemented with same-purpose donor grants. Caveats: (i) The quality of current rehabilitation works does not correspond to European standards as required of a road of strategic importance. Budgetary resources could have been instead directed towards repairing the same-direction road that runs through habitats, leaving the uninhabited road for strategic investors; (ii) the financial means planned to be directed for road rebuilding are not sufficient, a fact that calls for a public- private partnership in the area.
–	To supplement the soviet-type railroad gauge with one suitable for international trains.	Actions taken: There are plans by Government to build a narrow-gauge railroad connecting Ungheni to Tighina.

6. CUSTOMS AND EXPORT PROMOTION

–	To downsize the role of customs points as tax supervisors, by ensuring a tighter collaboration between customs and tax authorities.	
%	To strengthen the legal framework surrounding customs warehouses and to annul provisions requiring that VATs and excise taxes be charged at the moment of import.	Actions taken: A regulation was adopted, whereby private customs warehouses may – yet again – be created. Caveats: Criteria for satisfying requirements of a private customs warehouse are not clearly stipulated by the customs.

II. ADMINISTRATIVE CONSTRAINTS

+	To provide that, upon issuance, the company Registration Certificate shall come with a list containing the name and contact information of all administrative bodies requiring separate registrations, as well as the respective deadlines as determined by law.	
%	To also place *laws* under the Guillotine (not only *by-laws*, as before).	Actions taken: The Guillotine II for laws has been approved by the Parliament, and initiated.
−	To ensure compliance by state bodies with the presumption of innocence.	Although recognized, the concept is not always applied in practice. A legal provision to regulate personal accountability of inspectors is still missing.
%	To reduce the number of controls and inspections.	Actions taken: The ongoing regulatory reform (Guillotine) is expected to streamline inspections on the ground. Caveats: Following Guillotine I, functions of control and regulation by state bodies have been separated. As a consequence, one would expect to see the number of control bodies in rise. However, final conclusions should be left until the ongoing Reform of Central Public Administration is complete.
−	To streamline the reporting regime affecting companies.	Initiatives are voiced towards creating a single centralized reporting form. It is not sure, however, as to how efficient this process would be and how much it would streamline the reporting effort needed today.
+ %	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: (i) Several one-stop shops for registration have been opened throughout the country (ii) the Law on Guillotine II provides for the application of the silent approval principle, whereby in case authorities do not reply in due time to a company request for authorization, the latter comes into force automatically. Caveats: (i) Due to the fact that the decision on opening one-stop shops is taken by local authorities on a secondary level, the legal existence of such shops has been contested on several instances by central-level inspectors; (ii) regarding the silent approval principles, there is a need to create a record of refusals made in due time by public authorities inclusive of reasons for refusal, in order to prevent abuse by both public and private entities. Furthermore, it is necessary to ensure that in case of no response from public authorities, an agent may nevertheless legally start its activity, for example by providing the right to request a court to issue the authorization documents.

III. COMPANY LAW

In the last quarter of 2006, the Foreign Investors Association was actively involved in the revision of amendments proposed by the National Securities Commission to be made to the current Law on Joint Stock Companies. A group of professional legal experts on behalf of FIA members prepared, following several rounds of discussions, a legal note expressing the FIA opinion on proposed amendments, as well as on existing provisions of the Law. In this context, the Association would like to remark the onset – and hopefully, the continuation – of a new type of collaboration with the NSC, in terms of counterpart discussion around existing provisions, but also of proposed legal amendments prior to their final adoption.

Given that, at the moment this book was finalized, FIA's legal note was still being examined, the present Book shall not include a separate chapter on company law, as had been first envisioned. However, FIA would like to believe that the final draft of amendments to the JSC Law will stay to include the most strategically important points delineated in the legal note, such as: the ability to exercise the preemption right by *all* shareholders, and not only by those of former closed JSCs; enforcement of voting rights during the period of compulsory bid for share buy-out; supervision by the National Competition Agency of merger contracts etc.

Below is an evaluation of progress made following recommendations of White Book 2005:

Law on LTDs	%	To draft and adopt a Law on LTDs.	Actions taken: A draft of the Law has been prepared and submitted to the Parliament for approval. Caveats: (i) The draft Law imposes restrictions on the minimum level of the share capital that an LTD should own (30,000 MDL); (ii) the Law further provides that net assets may not fall below the value of the share capital (whereas the draft Law on JSCs sets that the value of nets assets should not be less than 50% of the share capital).
Law on Investments in Enterpr. Activity	–	To clarify ambiguous terms (*investment activity, reorganization etc.*) and phrasings in the Law, in accordance with world best practices and OECD principles.	
Law on JSCS	%	To decrease the current minimal level allowed for net assets, from 100% to 50% of share capital.	This is provided in the current draft amendments to the law.
	%	To allow for a period of 2 years for the company to remedy on its own the situation where net assets are below the share capital, and only after that let the general meeting decide on how to proceed, if still necessary.	This is provided in the current draft amendments to the law.
	%	In case net assets fall below the share capital, to allow for internal issuance of shares – and not necessarily through a public offer.	This is provided in the current draft amendments, including FIA proposal to allow internal issuance in case net assets go below zero.
	–	To clarify the supremacy of law application for banking institutions: Law on JSCs or Law on Financial Institutions (including issues related to affiliated persons and to the Board).	

IV. LABOR RELATIONS

Throughout the year following the publication of *White Book 2005*, FIA has maintained an open dialogue with the Ministry of Economy and Commerce (MEC), to the aim of concerting proposals made by MEC and recommendations set forth by FIA for improving the Labor Code of Moldova. An informal round table brought together representatives from the Government, labor unions, employers' confederation and FIA members, to discuss and debate labor-related issues of concern to local private businesses today, as well as to share relevant international experience on such matters. Discussions are ongoing. In this context, FIA is hopeful that further negotiations with stakeholders in the social dialogue will be primarily guided by best labor-related practices around the world, and that novel proposals will not be immediately discarded, but rather considered at their prime value, on equal footage for all parties involved.

In the same time, FIA has regretfully noticed that once adopted, coordinated legal amendments need not necessarily remain in force, as they may be subject to revocation by the Parliament, thereby reducing the level of confidence and feeling of stability that investors may have.

Below is an evaluation of progress made following recommendations of *White Book 2005*:

%	To eliminate the mechanism whereby the Government can set through its own resolutions the grid salary size in the real economy, regardless of the labor productivity figure / inflation / cost of living.	Actions taken: The Government retained its right to increase the salary size of the first category of employees, but allowed for the introduction of variable coefficients (vs. fixed as before) in the setting of salary size for the remaining categories, in order to minimize the ensuing overall company costs. In the same time, the Government is set for new 1st-category increases in the upcoming 2 years.
–	To downsize current guarantees for women in maternity leaves, by securing a job spot within the company paid at the level of the pre-leave salary, but not necessarily preserving the position formerly occupied.	Actions taken: The issue has been agreed upon and is to be implemented by the Government.
– X	To provide that the individual employment contract with a pensioner becomes void once reaching the retirement age, with the possibility for extension.	Actions taken: Such an amendment was made to the Code at the end of 2005, which, coming into force in June'06, was revoked in the following month of July.
–	To provide the possibility to dismiss an employee for work abuse/ break of confidentiality/ use of resources for personal interests etc.	Actions taken: The issue has been agreed upon and is to be implemented by the Government.
–	To enlarge the scope of the individual employment contract, by leaving for negotiation issues like: length of workday / work during holidays etc.	
–	To remove restrictions on the types of job positions that are eligible for short-term placement.	

- To reduce the term within which former employees may make court appeals from one year to 3 months.

- To no longer make it *obligatory* for an employer to take back the employee having submitted a resignation request, if within 2 weeks after submission the employee reconsiders his decision to leave and no other person is hired in place.

- To gradually eliminate the mandatory employment termination compensation for employees in case of business liquidation.

- To eliminate the provision obliging the employer to annually create the necessary conditions and to foster employee "professional formation," by allowing companies to decide on their own training policy.

- To introduce clear regulations of cases of conflict of interest: (i) to extend the period for which a former employee may not make disclosure of information; (ii) to provide that simultaneous employment at another company is to be subject for negotiation through the individual employment contract; (iii) to introduce a non-competition clause, following the experience of European countries.

- To clarify contradictions between articles on work inspectors, in light of the latter's non-interference in business activities. To annul the regulation allowing labor inspectors to set fines on the spot.

- To provide that remunerations for Intellectual Property be negotiated between the employer and employee, and not be fixed by SAIP regulations.

% To revise the current legislation imposing limits on deductible business trip expenses.	Actions taken: The recent amendments to the Tax Code no longer consider the amounts in excess of the limits pre-established by the Government as individual taxable income (but are still non-deductible in regards to legal persons).

V. TAXATION

Following the publication of *White Book 2005*, FIA has been invited to take part in the preparation of the Medium-Term Expenditure Framework for 2007-2009, which in short represents the fiscal policy that shall be locally applied in the next three years. It is worth noting that one of the Government's priorities within the MTEF focuses on capital investments, particularly in infrastructure.

In the same time, FIA has to regretfully conclude that although it has been officially consulted on proposed fiscal amendments to be made to the current legislation in order to enable MTEF implementation, FIA's feedback has not been accounted for on a number of points.

Below is an evaluation of progress made following recommendations in *White Book 2005*:

%	To make the country's tax policy public for at least 5 years beforehand.	Actions taken: The MTEF for 2007-2009 has been made public, delineating expenditures planned for each sector. Caveats: (i) The MTEF does not show a clear correlation between the planned expenditures and state budget resources; (ii) the MTEF as adopted resembles more of a fiscal document, lacking in cost-benefit analyses of actions proposed.
–	To eliminate the restriction whereby dividends are tax exempt only in case participations in company stock portfolio remain the same following dividend distribution to shareholders in the form of shares.	
–	To ensure the continuity and equality of tax incentives granted to foreign and local investors, in light of the abolishment of the Law on Foreign Investments of 1992, and adoption in 2004 of the Law on Investments in Enterprise Activity.	Actions taken: The proposed MTEF provides for new tax incentives in case of share capital investments, but only granted that a percentage fraction of the unpaid income tax is reinvested.
–	To grant incentives for loans received from abroad (differing, in terms of amount, period of maturity and purpose), similar to those granted to local banks (50% off the dividend income tax, if credits granted exceed 3 years in maturity).	
– X	To modify the loss carry-forward regime as follows: (i) to allow that losses be carried forward for a period of up to 5 years (and not 3 years, as it is at present); and (ii) to allow companies to decide their own scheme of loss distribution over the allowed period, including carrying forward 100% of the loss in a single year.	Actions taken: The proposed MTEF provides that losses can be carried forward over 5 years, yet in equal amounts, thereby reducing in fact the level of losses per year.

– %	To provide that the following items be eligible for deduction: (i) cost of audit in accordance with IAS/IFRS; (ii) employee training and education; (iii) membership in non-commercial organizations; and (iv) reparation of rented auto-vehicles.	Actions taken: The proposed MTEF provides for the deductibility of membership fees pertinent to employers organizations, in the amount of up to 0.15% of the salary fund. Through draft amendments to the audit legislation it is further envisioned that IFRS shall become mandatory for companies of public interest (but also optional for the rest), a fact that will make such audit-related expenditures eligible for deduction.
–	To eliminate VATs on fixed assets.	

VI. SECURITIES MARKET

In the year between the publication of *White Book 2005* and *2006*, several efforts were made to give a boost to the country's securities market. A project run by the FIRST Initiative Corporation aimed to draft a Corporate Governance Code for local companies, as well as to make corresponding amendments to the current securities legislation, particularly to the Law on Joint Stock Companies and the Law on the Securities Market. Once complete, the project results were put aside as the Government of came forth with an initiative to bring all non-banking financial institutions under the umbrella of a single state regulator, the mega-regulator, by replacing the existing National Securities Commission with a new state regulating body having a broader mandate. Up to the moment of the 2006 White Book publication, amendments to the local securities legislation aimed to institute the mega-regulator have not been adopted yet, but have made part of a consultative dialogue with relevant stakeholders, including FIA.

Concomitantly, draft amendments to the Law on Securities Market have been prepared and presented to FIA for consultation as well. Again, given that at the moment this book was finalized, the FIA legal note was still being examined, the present book shall not include a separate chapter on the securities market. However, FIA is hopeful that the final draft of amendments to the Law on SM will – as stressed out during the meetings held with NSC on the matter – include the points that are most strategically important for reviving and fostering the dynamism of the local capital market, as provided by the European Directive 25/2004 on takeover bids. Of those: not merely to introduce the squeeze-out concept, but especially to provide a *procedure* for its enforcement; in case of takeover, to enforce the possibility of making *voluntary* bids, which entail the obligation to announce a bid for the remaining shareholders *at the same time* (and not after) the control of the company is acquired, etc.

Below is an evaluation of progress made following recommendations *White Book 2005*:

–	To adopt a Corporate Governance Code following world best practices, adherence to which shall be on a voluntary basis.	Actions taken: An internationally-financed project aimed to draft a Corporate Governance Code, and to amend the domestic securities legislation. Upon project completion, project outcomes were put to hold, as the Ministry of Economy came forth with the intent to amend the relevant legal framework, so as to implement the mega-regulator of all non-banking financial institutions in the country.
–	To streamline the procedure for securities registration.	Actions taken: The Strategy for the development of the securities market, as proposed by the NSC provides for speeding the process of document examination.

- To streamline procedures regulating operations with own shares (such as consolidation, fractioning etc.), by requiring that State Registry data be amended solely for the securities issued.
- To eliminate the notion of a tender for share sale.
- To annul new amendments made to the definition of insiders, as they reduce the number of persons eligible for transactions with securities.
- To revise the new amendments made to the definition of manipulations, as they broaden the scope of state interference on the securities market.
- To extend the range of possible forms of payment during tender offers (today, only monetary means are allowed).
- To remove technical restrictions imposed on transactions with securities regarding the: (i) payer of transaction fees; and (ii) timing of payment for securities.

- To no longer allow the NSC to require valuation of securities beyond cases expressly stipulated by laws (and not by-laws) with regards to tender offers, share capital contributions etc.

- To amend the legislation such that publishing – as a means of communicating tender information (on initiation and results) - is no longer mandatory for companies.

- To clarify provisions regulating cases of share placement under collateral, so as not to hinder future capital restructuring of the company.

- To eliminate the NCS' fee of 0.5% on the value of each securities issuance.

  Actions taken: The draft amendments to the securities legislation that aim to establish the mega-regulator of non-banking financial institutions provide that the fee shall be of "up to 0.5%," while issuance of corporate bonds shall be subject to a fee of "up to 0.1%" of the issued value.
  Caveats: The NCS' budget for the next year still provides for a fee of 0.5%.

NATIONAL TREATMENT

I. Land Purchase

Reference:
- Law on the normative price of land, and the means for land sale and purchase, nr. 1308-XIII from 20.04.2006, Art.6(2); modified through the Law nr.86-XVI from 20.04.2005

Legal persons registered on the territory of the Republic of Moldova, having their share capital formed of foreign investments – regardless of their proportion – are prohibited from purchasing farm land.

To abolish the restriction imposed on foreign capital with regards to the purchase of farm land, as it runs contrary to Annex 1B to GATT, Art.XVI para. (2f); to Art.1 of the European Directive 88/361/EEC; and to p.2.4.2(31) of the *Moldova-EU Action Plan*.

In order to avoid passive speculations with land, to provide a mechanism whereby the right to purchase farm land shall be granted in exchange of a particular investment plan. Accordingly, in case such an investment plan is not completed in due time, the investor shall be liable to return the land.

II. Medical Insurance for Foreigners

Reference:
- Law on the legal status of foreign citizens, nr.275-XIII from 10.11.94, Art. 8(2)
- Law on mandatory medical insurance, nr.1585-XIII from 27.02.98, Art. 9
- Law on health protection, nr. 411 from 28.03.1995, Art. 26(1)

Foreign citizens with temporary stay in Moldova are required to obtain at border pass a medical insurance, which shall cover their entire visit. In a context where the credibility of local insurances is accepted abroad, such a restriction comes as a sign of mistrust of the reliability invested in foreign insurance policies.

To annul the requirement for foreigners to purchase local medical insurance in case of temporary stay. Such a requirement may be imposed only on those individuals, whose present medical insurance does not cover a temporary stay in Moldova.

VALUE ADDED TAX

I. VAT Refund

Reference:
- Tax Code of the Republic of Moldova[1]
- Government Resolution, nr. 1124 from 28.09.2006 on VAT refund[2]

According to the Tax Code, existing schemes of VAT refund to companies are made as function of business types, which are twofold: one group may only gradually deduct VAT credits, while the other is eligible for a full refund of VAT payments within a clearly specified period of time.

Art. 101(2)(3)(5)(6)[1] and Art.2[2]. 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.

Following national standards of accounting, VAT payments are recorded either by deduction from revenue or by carrying the excess forward to the following period. However, deductions as this may take several years until summing up to the value of initial large lump VAT payments, thereby depriving companies of important liquidity values that are needed to run current operations. Second of all, such provisions also imply that upon making initial investments, companies have to pay VAT without even having started the production process!

Art. 101(2)[1]. To amend the current fiscal legislation so as to create a 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.

II. VAT Groups of Risks

Reference:
- Instruction for VAT refund, nr. 188 from 17.11.2005[1]
- Government Resolution, nr. 1124 from 28.09.2006 on VAT refund[2]

VAT payers are divided into three groups of credibility – the history of past performance in terms of tax obligations:

Art.3[1] and Art3[2]. To eliminate vertical categorization of VAT payers for VAT refund eligibility, in order to ensure equal treatment of all economic agents.

- VAT payers of the 3rd credibility group are eligible for VAT refund only following a control, while the periodicity of running such controls is not clearly specified. On the other hand, economic agents in the 1st and 2nd credibility groups are subject to a control once per year, and once in 6 months respectively. However, claims for VAT refund by either of these two groups are not strictly contingent upon a prior completion of such controls.

- Chapter II, Art. 9[1]. To provide that companies may claim VAT refunds on a monthly basis, exclusive of the requirement of a prior VAT claims control.

- Only the 1st group is eligible for full refund of VAT claimed, the 2nd group – for only 80% of VAT claimed.

- Chapter II, Art. 9[1]. To remove provision whereby VAT refund favors one group of VAT payers against other, 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.

III. Tax Invoice

Reference: » Order of the MSTI on individual tax invoices[1], nr.82 from 02.05 2006
» The draft Law on Accounting [2]

- The tax invoice (commonly referred to as the VAT invoice) represents a standardized blank form, secured and numbered, distributed to all tax authorities against a fee (to justify printing costs?). It can be of three types: two copies for service delivery and 3 or 5 copies for merchandise delivery. In the last years there has been a trend to constantly change both the blank form and the fees set for it. Today (as of December 2006), tax invoice blanks cost MDL 1.525 (of 3 copies) and MDL 2.197 (of 5 copies).

- In order to be eligible for issuing personalized tax invoices, the business figure must exceed MDL 1 million per month ([1]).

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

- Economic agents issuing more than 1,000 primary certificates of strict evidence (tax invoices) are eligible, following a prior approval by the Ministry of Finances, for issuing personalized tax invoices ([2]).

- 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.

Reference: » Instruction for filling in the standardized tax invoice blank required for merchandise and service deliveries subject to VAT

- The tax invoice also represents a document:
  - accompanying the merchandise during transportation
  - required for passing the load onto the receiver
  - confirming the obligation of the transporter to carry the merchandise following the supplier / buyer's commission.

- Such provisions are inadequate for the purpose of tax invoices. Documents accompanying the merchandise should include, beside identification data of parties involved in transaction, only quantitative indicators, and not also the price; and

  To ascribe these functions to another document – the note of expedition.

Reference: » The Tax Code: Art.108, Art.114, Art.115, Art.117, Art.257

- The tax invoice is to be presented once the tax liability emerges. In the same time, the date of the VAT liability is the date of delivery.

The tax period relating to VAT liability is set for a calendar month, starting with the first day of the month.	
Each entity subject to taxation is obliged to present the VAT declaration for each tax period to the State Tax Service by the last day of the month following the end of the tax period.	
Each entity subject to taxation must disburse to the state budget the VAT sum that is to be paid for each tax period, but not later than the deadline set for presenting the declaration for that period.	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".
Tax invoices on material goods, purchased/delivered services must be recorded in special registries namely in the order of their reception/issuance.	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)"

TAX POLICY

General Reference*: » Tax Code of the Republic of Moldova[1]

I. Interpretation of the Tax Legislation

To the purpose of clarifying tax legal provisions, the MSTI issues letters of explanation / instructions both at own initiative, as well as at the request of economic agents. These documents are made available to the public / posted on the MSTI homepage. Yet, while such responses do not stand as by-laws in their substance and weight, they are nevertheless taken into consideration as guidelines by tax controllers when performing inspections at companies and may serve as grounds for detecting "violations."	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 the Laws of the Republic of Moldova.
An entity may benefit from tax incentives granted by the legislation in force, provided that no tax liabilities exist at the onset, as well as throughout the incentive period (a 30 day-delay of payments is allowed). However, there is no provision allowing the entity to appeal a disputed conclusion of tax authorities following an on-site control, thereby jeopardizing the entity's right to further benefit from legal tax incentives (as currently the conclusion of authorities is final).	Art. 8(1)d). To add a new paragraph at the end: "In case of disagreement with the decision made by the tax authority, 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."

II. Loss Carry-Forward

Following recent amendments to the Tax Code, the period for which loss is allowed to be carried forward is extended from 3 to 5 years. In the same time, the restriction whereby the loss must be distributed in annual equal parts has been left in place. Accordingly, the new amendments in fact make companies worse off, especially those newly established that are operating in loss at start-up.	Art. 32(1). To remove the restriction that the value of the loss carried forward must be "distributed in equal parts."

* Where no reference is made to a legal document, the General Reference should be considered.

III. Investment Incentives

Reference: » Regulation of the Ministry of Finance on the procedure for income tax exemption2, nr. 30 from 21.03.2005

The use of definitions relating to the scope of tax incentives is not uniform. Thus, while the Tax Code Article on tax investment incentives speaks of investments in long-term assets, Regulation[2] (Title II, Art. 10(2)) refers to investments and expenditures in tangible and intangible assets (the latter includes: patents, certifications, copyrights, etc.).

Art. 5(37). To provide that besides long-term assets, the definition of "capital investments" also includes the notion of "intangible assets."

IV. Deductibility

Reference:
- » MSTI Letter on deductibility of expenditures for audit in National and International Standards of Accounting, nr.17-2-09/1-524-2294/24 from 09.06.2003»
- » Government Resolution on employee detachment, nr. 836 from 24.06.2002; amended through GR 363 from 10.04.2006
- » MSTI Letter on training expenditures, nr. 17-2-09/1-152-882/16 from 04.03.2003; clarified through MSTI Letter nr. 17-2-09/1-961-80/3 from 06.01.2006

In addition to the expenditures recommended for deduction in *White Book 2005* – i.e., for auditing performed in accordance with IAS/IFRS, business trips, training and education, maintenance of rented vehicles – the following items should be additionally considered:

Membership Fees

Following recent amendments to the Tax Code, membership fees paid to non-commercial organizations are eligible for deduction only if made for the purpose of activities related to the employers' organizations, subject to a ceiling of 0.15% of the salary fund.

Art. 24. To extend deductibility of membership fees so as to cover other organizations, by adding a new paragraph (16): "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."

Remuneration of Administrative Bodies

Reference » Law on Joint Stock Companies3, nr. 1134 from 12.06.1997

As per current provisions of the Law on JSCs, the President of the Board of Directors is in charge, among other, of concluding employment contracts with company Board members. Thus, Board members are considered employees of the JSC, which makes their remuneration a "necessary ordinary expenditure," thereby deductible. However, members of the Board should rather be considered as trustees – and not company employees – whose warrant may be lifted without a mandatory justification of grounds as required by the labor legislation. Yet, there is the risk that payments to trustees may not necessarily be considered as "necessary ordinary expenditures." The same is the case of members of the audit or supervisory committees.

Art. 24. 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 (Art. 7 of Law3).

Art. 67(2)[3]. 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).

V. Double Taxation

According to the current Tax Code, only dividends received by resident natural persons are exempt from taxation. For resident legal persons, the regime surrounding dividend payment is separate: first, it is paid out of the profit of the original company, which has already been subject to taxation; second, entities receiving dividends must include them in their gross income. As the Code allows for double taxation of dividends paid out to legal persons, there is a need to align current tax regulations to best ongoing practices of the European Union.	Art. 80(2) (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."; and Following the Council Directive 90/435/EEC, to include a separate provision for profit taxation in the case of parent-subsidiary companies. Namely, in case of profit distribution to parent companies (holding not less than 10% of the subsidiary's share capital), to impute the tax already paid by the subsidiary (in its state) against the parent's own tax, with future prospect of imputing taxes paid by successive subsidiaries downstream of the direct subsidiary.
Profits which a subsidiary distributes to its parent company are subject to a withholding tax of 10%.	To implement provisions of Directive 90/435/EEC, whereby profit distribution to parent companies shall be exempt from withholding tax.

VI. Payments to Employees

Allowances – including board and transportation – paid for job assignments in Moldova as performed by non-residents, who become residents of the Republic of Moldova in terms of their tax obligations, and who have job contracts that are to be executed at local companies, are subject to taxation.	Art. 20. To provide that allowances for job assignments locally performed by foreign (natural) persons is not considered income subject to 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.
The current tax legislation does not specifically provide that gains from the sale of shares by a non-resident to another non-resident person shall be free from taxation, if the place of transaction is within the territory of the Republic of Moldova.	Art. 73, 75. Following international practice as evidenced by the 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.

VII. Other

Tenancy Agreements

There is no clear provision determining the tax payer in case of tenancy agreements, as function of contract length.

Art. 277. To provide that for tenancy agreements, the tax payer shall be the owner of the place, unless otherwise stipulated by the agreement.

Settlement of Payments

Reference » Law on entrepreneurship and companies, nr. 845-XII from 03.01.1992

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.

Art. 10(5). To allow settlement of payments through third parties, by revoking the current restriction on doing so, as it also runs contrary to provisions of the Civil Code regarding payments made through intermediate parties in a transaction.

TRADE FACILITATION

I. Certification of Imports

Reference:
- » Law on food products, nr. 78-XV from 18.03.2004
- » Law on veterinary activity, nr. 1538-XII from 23.06.1993
- » Law on sanitary and epidemiologic security for the population, nr. 1525-XII from 16.06.1993

Upon reaching customs, the imported raw foodstuff (esp. of animal origin) already comes with EU certification that clearly traces all steps from the origin of the produce up to the customs check point. In order to be able to pass customs clearance for Moldova, however, the raw material must be accompanied by yet another – local – veterinary certificate, which requires the following. First, it is necessary to obtain a bulletin of health tests, which take 7 days to complete. Second, for imported raw foodstuff that is meant for processing purposes, a certificate of conformity must also be issued by the relevant authority, based on the bulletin. Either with the bulletin or the certificate of conformity, one may finally apply for the veterinary certificate at the Republic Centre for Veterinary Diagnosis.

The Ministry of Agriculture and Food Processing is now promoting the introduction of a new, additional, health certificate, which shall be requir d to accompany raw meat from the import origin. The document is to be signed by the veterinary official at the origin and shall include items ensuring traceability of imported meat. At border crossing, the meat shall be subject to sample tests made by the local veterinary doctor.

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; and

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" (para. (30), 2nd hyphen).

To avoid the implementation of a new traceability document that in fact replicates the EU health certificate, and thus doubles the burden on economic agents.

II. Cost of Changing Rules

Reference: » Government Resolution on some measures for consumer protection, nr. 883 from 02.08.2006

Up until GR 883 came into force, imported raw material of animal origin could be stored at customs – for the entire laboratory sample test period – at own storages. With the GR, customs clearance is only allowed if storage is made at "specially authorized" storehouses, which require payment of a special fee. By this, the customs procedure is now augmented and is covered by an additional fee of 0.1% levied on the value of the merchandise. This is not to mention the additional costs of loading on/off trucks and transportation to own warehouses at the destination.

To stop the practice of changing rules of the regulatory environment for the purpose of additional revenue to the budgets of public authorities or private organizations.

ADMINISTRATIVE BURDEN

I. Quality & Product Safety

Reference:
- » Law on food products, nr. 78 from 18.03.2004, Art.2,13(7)
- » Law on consumer protection, nr. 105 from 13.03.2003, Art.6
- » Law on sanitary and epidemiologic safety of population, nr.1513 from 16.06.1993, Art.1
- » Law on evaluation of product conformity, nr.186 from 24.04.2003, Art.2

Today, four types of certificates exist for proving product quality and safety:

i. *quality certificate for food products* – to confirm quality and safety according to declared/prescribed requirements;
ii. *hygiene certificate* – among other, to confirm safety of merchandise, products and services;
iii. *veterinary certificate* – to confirm safety of products of animal origin and other subject to veterinary supervision
iv. *certificate of conformity* – to confirm product correspondence to established standards, and to confirm product safety.

From the list, it is clear that the main purpose of the four certificates is to ensure product inoffensiveness for public health.

To eliminate overlapping requirements in the four similar certificates, and create a single Health Certificate, so as to remove excessive duplication of product safety documentation that impose a great burden on operating companies. .

The responsibility for issuing the hygiene certificate lies with The National Scientific and Practice Centre for Preventive Medicine, while the veterinary certificate – with the State Veterinary Service. Since both certificates serve for a similar purpose of proving product safety, there is an evident duplication of functions of public authorities in this respect.

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

II. Technical Authorization & Certificate for Object Safety

Reference:
- » Law on industrial safety at dangerous industrial objects, nr. 803 from 11.02.2000[1]
- » General Regulations (GR) approved by the Standardization and Metrology Service of RM (RG-01-68:2005, Art.6.1) [2]
- » Technical Regulation for industrial safety expertise NRS 35-01-18:2005, Art.1.2[3]
- » Government Resolution on the list of certificates for enterprise activity issued by public authorities, nr.920 from 30.08.2005[4]

For dangerous industrial objects, both a Technical Authorization and a Certificate for Safety are required. Yet, these are completely similar. In the same time, in practice the safety certificate is only issued after an expertise that comes at the company's expense.

In order to be able to start operations at a dangerous industrial object, an economic agent is required to obtain, among license and other documentation, a Certificate for Safety[1]. However, the Law does not expressly state how and when the certificate is issued, or which is the public authority responsible for it; nor is it on the List of authorizations and certificates issued by public authorities, as approved by the Government[4]. In practice, the certificate is issued following a positive on-site expertise made by the Technical Industrial Safety and Certification unit of the Standardization and Metrology Service, and is valid for only 1 year. Yet, according to Art. 14(2) of Law[1], the expertise for safety is run at the expense of the economic agent. It seems to be odd that a company should pay for obtaining a certificate, issuance of which is nowhere expressly regulated. Moreover, if compared, the Certificate for Safety almost entirely replicates the Technical Authorization that is already expressly required by sector laws for running dangerous industrial objects. The document is also issued following a paid-for expertise, but is valid for 5 years. Yet, the front of the Technical Authorization states that it is only valid if presented together with the Certificate for Safety.

To annul the Certificate for Safety required for running dangerous industrial objects, as it only doubles the functions of the Technical Authorization and of the license obtained for the respective activity, at company's expense.

III. Inspections

Reference:
- » Government Resolution on the reorganization of The Standardization and Metrology Service, nr. 586 from 16.06.2005

In order to separate functions of control and delivery of paid services, the former centralized State Inspectorate for Standardization, Metrology, Technical Supervision and Consumer Protection has been divided in two Inspectorates: (i) for Standardization, Metrology and Consumer Protection; (ii) for Technical Supervision of Dangerous Industrial Objects; while maintaining the (iii) standardization and metrology centers in Bălți and Ceadâr-Lunga. However, as current practice evidences, the mandates of these bodies overlap on several matters, thereby leading to duplication of inspections.

To streamline the functions of Inspection bodies, in order to prevent duplication of check-ups.

Reference: » Law on petitioning, nr. 190 from 19.07.1994

There still exist instances where unplanned inspections are run to check *all* company operations, following the reception by public authorities of anonymous letters containing false accusations and misinformation against the proper functioning of businesses. This takes away important legal resources and may entail a certain blow to the company's image.	Art. 10(2). 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. For the purpose of this law, to explicitly define the term "public order." This is important, as it may prevent the use of such petitions as a tool of threat and blackmail against properly functioning companies.

V. Bank Cheques

Reference: » Regulation on the use of cash cheques, nr. 377 din 16.12.1999

The current legal framework does not enable the use by natural persons of bank cheques as payment instruments. Given that the write-up of cheques is very cumbersome - as it currently requires knowledge of data that is not readily available - bank cheques serve today mostly as a means of cash withdrawal (from existing bank accounts) by legal persons.	To amend the legislation to the aim of liberalizing the use of bank cheques as a payment instrument. This mainly involves: (i) to remove all the redundant elements that need to filled in for the writing a cheque, and (ii) to allow commercial banks to issue their own bank cheques / cheques to be cashed in by the bearer / cheques to be cashed in at a bank different than the drawee bank.
An issuer of a bank cheque may only be a legal or a natural person undertaking enterprise activity.	Point 1.4. To allow issuance of bank cheques for all presons, regardless of the nature of their activities.
Cheques may only be cashed in by authorized persons. The authorized person as such must be employed by the issuer.	Point 1.4. To allow the possibility for cheques to be cashed in by the bearer.
The National Bank of Moldova is the only institution entitled to issue and to ensure primary distribution of bank cheques to commercial banks.	Point 1.4. To allow local commercial banks to issue their own cheque books.
For each bank cheque in the cheque book, commercial banks must manually complete information regarding the drawer: name, account number, fiscal code, and address.	Point 3. To streamline the procedure regulating the issuance of bank cheques, by centralizing all relevant drawer-related information, and by indicating it on the cheque solely in the form of the drawer's bank account.
A filled in bank cheque is valid only for 10 days after its issuance.	Point 4. To allow commercial banks to set their own period for cheque validity following the issuance.
For each bank cheque in the cheque book, the drawer must indicate the place of issuance, the name of the authorized drawer's representative, the purpose of the payment, and data from the identity card of the drawer's representative. In addition, the cheque must be authorized through the drawer's stamp and two different signatures.	To remove provisions requiring indication of the place of issuance, the name of the drawer, identification data, purpose of payment (which, according to Ch. 5.2, serves to check "the legality" of the payment), stamp placement and second signature on a bank cheque.

STATE INTERFERENCE

I. The Farm Market

Reference: » Law on the organization and functioning of markets of farm and food products, nr. 257 from 27.07.2006

The Law is a newly adopted act aimed to regulate the functioning of the farm product market starting with March 2007. However, its provisions represent a direct interference in the activity of players on the farm market. During the drafting of the document, no public consultations with the civil society have been made. In short, the Law comes as an evident infringement upon the freedom of enterprise activity and principles of competition protection.

To amend the Law on the organization and functioning of markets of farm and food products, for the following major reasons:

Biased Decisionmaking

Market functioning shall be regulated by the Ministry of Agriculture and Food Processing (MAFP), and Councils on Product Lines (CPL) that shall be established following a list approved by the Government, containing farm products to be subject to regulation. CPLs embrace representatives of public authorities, as well as of inter-professional organizations (made of professional organizations, which serve to promote interests of a product industry) involved in activities related to a specific product. In the same time, inter-professional organizations (IPOs) may only be established with a prior approval by the MAFP. Furthermore, agreements concluded between MAFP and CPLs on the annual policy surrounding farm production are to be followed by IPOs on a mandatory basis, as otherwise the latter shall be excluded from CPLs. In such a way, the state – through MAFP – has a greater power of regulation and influence over the functioning of the farm market.

Tools for Farm Market Regulation

Market regulation tools are approved following an initiative set forth by MAFP, after consultation with the CPLs. Given the possible biasedness of CPLs, there is a risk that proposals for farm market regulation shall not preserve the parity of interests of all stakeholders involved.

Price Setting

Three types of prices are provided: (i) internal market price – established by demand and supply; (ii) reference price – base price for negotiation between the buyer and seller; and (iii) intervention price – minimum price guaranteed by the public authority, corresponding to strictly defined product quality and quantities. All of these prices are to be exactly followed by all economic agents.

IPOs, through negotiations with the state and the civil society, are to agree on a shared policy regulating the sale and purchase prices. However, such price-regulating provisions run contrary to free market principles, given that they enable only a few public authority representatives to determine conditions for price setting and for signing agreements among market players.

Contracts

The functioning of the farm market shall also be supervised through the regulation of contracts concluded between farm producers and suppliers of raw material, which are to include terms on various items such as product quality, terms of supply, price, penalties etc.

However, regulation of contract conclusion between market players runs contrary to principles well-established in Moldova's Constitution, which guarantees freedom of commerce and enterprise activity. In addition, it contradicts the current Law on enterprises and enterprise activity that allows economic agents to set their own production and pricing policy, as well as to freely choose related suppliers and customers; but also the Civil Code providing for a full freedom to parties in the conclusion of contracts.

II. Electronic Communications

Refeence: » Draft Law on electronic communications, pending final approval by the Parliament

The new draft Law on electronic communications contains a number of controversial provisions, which seem to be inconsistent with both the EU legislation and the Constitution of the Republic of Moldova. Of these:

Operators are required to register all their users. Yet, provision of anonymous electronic communication services is a worldwide practice (public pay phones, home Internet, Internet cafe, mobile prepaid cards). The EU Directive on data retention expressly allows operators to offer "prepaid anonymous services".	Art. 20(3)e).To remove the obligation for operators to register all their users, as such restriction would significantly limit the access of population to electronic communications services, especially in the rural areas, as well as would seriously disrupt the mobile market (over 1 million of mobile customers in Moldova use prepaid anonymous cards).
Law enforcement bodies are granted the right to suspend provision of services to specific customers.	Art. 20(3)e). To annul the right for service suspension by authorities, as it constrains personal freedom and freedom of expression that is guaranteed by the Constitution. Normally, such limitation is permitted only based on a court sanction, issued in connection with criminal proceedings.

III. Profitability

Reference:
- Law on monopolistic activity limitation and competition promotion[1], nr. 906-XII from 29.01.1992
- Law on competition protection[2], nr. 1103-XIV from 30.06.2000

Law[1] provides that the monopolistic over-profit shall be additionally taxed, in case the company's rate of return is twice (or more) the level of the rate of return as set by the Government. There are several major concerns regarding this stipulation: (i) Law[2] provides that a company may be considered a monopoly at a 35% of market share – a figure that is nowhere substantiated and should be regulated by the Competition Agency; (ii) there is no legal framework regulating the evaluation of monopolistic over-profit; and (iii) setting by the Government of an allowed profitability level represents a direct intrusion by the state in the functioning of the economy.

- To revoke Law[1], in the context of the newer Law[2].
- 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 for 1994.

COMPETITION

I. Legal Framework

Reference:
- » Law on competition protection, nr. 1103-XIV from 30.06.2000
- » Law on monopolistic activity limitation and competition promotion, nr. 906-XII from 29.01.1992

There is no clear methodology establishing the instruments and indicators that shall be used in the determination and monitoring of anti-competitive behavior. These include the minimum market share for which an economic agent may be considered as having a dominant position (today it is set at 35% - a provision that was taken on from the anti-trust Law nr.906-XII); substituibility of goods/services; the import/export character of goods or services, etc. Given such gaps, there is a risk of power abuse by the Competition Agency that is to be established.

To clearly stipulate the instruments and methodologies that shall be used in the evaluation of anti-competitive behavior on the market.

II. Debt Amnesty

Reference:
- » Laws on the revocation of historical debts and penalties of some enterprises

The Government still has the entitlement to come with initiatives – to be approved by the Parliament – for annulling debts to the State budget and to the social security fund run by certain business entities (including state enterprises).

To stop the practice of canceling 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.

III. Natural Monopolies

Reference: » Draft Law on natural monopolies
» Government Resolution, nr. 582 on the regulation of monopolies from 17.08.1995

The prime motivation for the drafting of a new Law on natural monopolies follows the need to update the current legislation regulating such types of monopolies (today, it encompasses only a Regulation approved through the GR nr. 582). While FIA welcomes the initiatives intended to adapt existing legislation at current/changing economic trends, it would like to stress out the imperativeness for such a Law to reflect a sincere commitment to promote principles of market competition and to ensure a fair and optimum regulation. In this respect, it is crucial that the Law is seen not as a tool for punishment, but rather as a legal framework controlling the *incentives* of the regulated firms. Below are the main points that need to be reexamined and more thoroughly considered in light of such a proposed objective.

Regulatory Agencies

The draft Law provides for several regulatory Agencies that shall be responsible for natural monopolies by sector. However, the Law does not clearly nominate these Agencies, and also enables the Government to establish such bodies by sector, where the legislation does not expressly do so.

- Art. 9. To provide *exhaustively by law* (and not through Government Resolutions) the agencies that shall be in charge of regulating sector-specific natural monopolies.

The Law makes no reference to the National Competition Agency as to how it would fit in the activities of the Regulatory Agencies. This is important especially in order to prevent duplication of regulation and to ensure consistent degrees of monitoring and compliance requirements.

- To clearly define the roles of the regulatory Agencies with respect to those of the Competition Agency, in order to prevent over-regulation and to ensure predictability for the business community. In this context, it would be helpful to study the experiences of other countries, where the Competition Agency – in what regards natural monopolies – is primarily responsible for the following: (1) to render advice; (2) to actively participate in the regulatory reform process (give opinions on legal drafts, make legislative initiatives etc.); (3) to strengthen cooperation between sector regulators and the agency; and (4) to counteract anti-competitive practices on the market (review of mergers, enforcement of laws on abuse of dominances).

Instruments of Regulation

The methods for regulating the activities of natural monopolies are very vague.

- Art. 6. To clearly define by law the indicators that shall constitute the matter of regulation pertaining to monopolistic activities by sector. For example, when it comes to "price regulation", to differentiate between the regulation of end-user prices or of prices of inputs etc. To remove the statements "other methods provided by law," as it leaves room for potential abuse.

Limits of Control

The Law is very vague in what concerns the limitations of regulators' control activities.

To specify as clearly as possible the areas/operations that shall be subject to constant and direct control by the regulators. For example: transactions of important share packages by or from the share capital of the natural monopoly; capital investments above a threshold value; acquisition of fixed assets above a threshold value; refusal of service; discrimination among customers, other monopolistic behavior etc.

Areas of Regulation

The Law provides for 8 areas in which activities shall be deemed as pertaining to natural monopolies. The perception is that the Law intends to regulate sectors in their integrity, rather than by segments along the chain: production vs. distribution vs. transportation vs. supply.

Art. 4. It is important to understand that regulation of monopolistic behavior should not necessarily imply the existence of a full monopolization of same goods and services. A reform of monopoly regulation may in fact result in competitive sectors. If natural-monopolistic opportunities are indeed identified on the market, it is important to localize such behavior as narrowly as possible at the level of segments within an industry. Only by doing such an analysis will it be able to come up with the most efficient regulation for an industry, one that shall not annihilate competition that could otherwise exist within various industry segments.

LABOR RELATIONS

I. Salary Regulation

Reference:
- » Government Resolution, nr.1332 from 22.11.2006
- » Law on remuneration, nr. 847 from 14.02.2002

The structure of a part of the local labor market is guided by a grid of salaries that divides employees into eight categories. Salaries as such are determined by applying different coefficients to the 1st-category salary base. In the same time, the Government Action Plan for 2005-2009 provides for an increase in the national average monthly salary from a current USD125 to USD300 by 01.01.2009. However, such an increase may not necessarily reflect actual increase in labor productivity / inflation / cost of living. Instead, the Government intends to raise the salary for the 1st category of employees in the real sector (from a current MDL700 to MDL1000 in 2009). This implies unjustified hike in costs for companies, as employee categories are interlinked.

While the setting of a minimum wage is indeed a prerogative of elected policy-makers, the regulation of national salary figures through a direct interference by state in company remuneration schemes is contrary to world best practices. By this, the recommendation is to eliminate the wage grid altogether and to implement the concept of a minimum wage.

II. Employer/Employee Relations

Reference:
- » Labor Code of the Republic of Moldova

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).

There is no regulation of cases when great sums are invested in employee training.	Art. 217 or Art. 214. 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

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 remove the obligation of maintaining the position previously held by the person in child care leave. In change, to introduce a two-fold clause with regards to the returning person: (i) the salary size shall be maintained; and (ii) she/he shall have to undergo a test of re-qualification before work resumption.
Companies are obliged to hire pregnant women or persons with children aged up to 6 years, according to a Government established quota.	To remove Art. 247(2).

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 period 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; for persons hired on a contest basis; and persons employed only on grounds of preliminary examination.

- 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

An annual leave can only be divided in two parts, one of each shall not be less than 14 days in length.

- Art. 115(5). To enable a free fractioning of the annual leave, provided that one fraction is not less than 14 days in length.

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.
- To allow for a monetary compensation of unused vacation days (with the employee's agreement).

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.

An employee may engage in a part-time job at a different company, without asking the consent of the original employer.

- Art. 267. To provide that the right to be employed at a second work place be negotiated with the original employer through the individual employment contract.

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 labor-related 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.

III. 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 lay-offs for reasons of company liquidation or staff down-sizing.

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.

IV. 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.

V. Monthly Pension Disbursements

Reference: » Law on the budget of state insurances for 2007, Art. 6(1)(2)

Employee contribution to the state pension fund is of 4% from the salary base (set by the Government) and may not exceed by law 3 average monthly salaries in the economy. This means that the monthly limit contribution is of only MDL242 (around €15 for 2007), regardless of the individual salary size. Concomitantly, an upper limit is thereby also set on disbursement out of the pension fund to retired persons. Yet, no ceiling is set on employer disbursements to the pension fund.	To remove the restriction imposed on the upper limit of employee monthly disbursements *into* the pension fund, with the employee's agreement in writing. To further annul the upper limit on payments *from* the pension fund to retired persons, by allowing these payments to reflect the amounts individually disbursed into the fund, as a percentage value of the salary size during employment.

VI. IP Remuneration

Reference: » Regulation on the intellectual property created in the execution of work duties, Chapter V, p.18

Employers must pay the author of an IP at least 15% of the profit obtained from the use of the respective IP (even if the respective employee is paid a salary for the creation of IP).	To provide that the payment for an IP shall be negotiated between the employer and the employee.

ENERGY SECURITY

I. Waste Qualifier

Reference:
- The Statistical Waste Qualifier, 1997
- Law on air protection, nr. 1422 -III from 17.12.1997, Art.10(4)
- Law on production and household waste, nr.1347 from 09.10.1997, Art.20
- Law on environment protection, nr. 1515 from 16.06.1993, Art. 73

As a net importer of power and energy resources, national energy security is an issue of vital importance for Moldova's economy. However, several provisions of the current legislation hinder the possibility to substitute for a number of (solid) energy resources that are allowed to be used in European Union member countries, as they are locally categorized as waste products.

Although the Qualifier has been drafted following international statistical standards on waste classification, a part of its listings have now become outdated, lagging behind the current changes in international industrial operations. The European Waste Catalogue is not an ever-fixed listing: following new knowledge and research results, interpretations by European Courts and appellations by Member States to the European Commission, it has been subject to an ongoing process of amendments, which continues to determine and clarify the concrete produce that should not fall under the definition of waste. The National Qualifier, however, has not been updated to comply with European trends.

The Moldovan environmental legislation prohibits import of waste products, with minor exceptions.

To update T*he Statistical Waste Qualifier*, so as to comply with European changes and trends in waste classification, thereby removing restrictions currently imposed on some produce that could be used as solid fuel, following European practice.

II. Alternative Sources of Energy (Bio-Fuels)

Reference: » Draft Law on the use of renewable sources of energy,

Another aspect to be considered in the context of energy security is the need to set up a legal framework for the production, sale and use of bio-fuels. Along with several foreign investors in Moldova that are already producing raps oil, there has been an interest from potential investors to put in place bio-fuel production capacities. Until now, the only feasible business in this area has been the bulk export of raps seed and/or related oil as raw material to EU markets. It is only recently that the Ministry of Ecology and Natural Resources has drafted a Law aimed to fill the gap in the current Moldovan legislation. The draft Law was later approved by the Government and submitted to the Parliament for approval. However, due to a poor consultation with stakeholders it raises several concerns, as below.

	The general recommendation is to adopt technical requirements and National standards for bio-fuels in accordance with EU standards.
Activities involving production and sale of renewable sources of energy require special licensing.	Art. 20. 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.
A national Fund for renewable energy shall be created out of allocations paid by distribution companies and importers of oil products, as percentage (0.7%) of the annual cost of traditionally generated power and imported oil products respectively. The use of this fund shall be defined in a separate Regulation.	Art. 19. 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.
The law sets mandatory rates of utilization by economic agents of renewable energy. In addition, it provides that the National Agency for Energy Regulation shall be responsible for the regulation of prices on renewable energy.	Art.12, 18. 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.

III. Customs Warehouses – oil & gas storages

Reference:
- » Regulation on the application of customs destinations provided by the Customs Code of the Republic of Moldova, Section 4
- » Customs Code

The world experience tells us that it is necessary to ensure that a specially determined quantity of oil and gas remains inside the territory of a country at all times, in order to avoid shocks from market price fluctuations. For Moldova, which imports almost 100% of its energy resources, this is a priority task. Although the market is liberalized and the major operators represent private companies, public authorities need to create greater incentives by no longer applying excises and VATs right at the border, but rather at the moment the goods leave the warehouses, as it is in EU. Unfortunately, the Moldovan legal framework does not provide for this possibility. Several EU countries went even beyond such measures by establishing a compulsory storage period for wholesalers. For example, in Germany this period is 118 days.

In order to open a customs warehouse, a special authorization needs to be issued by the customs office, depending on the specific site (location). The legal framework says that in order to receive such an authorization, "the need should be economically proven", with no other requirement being clearly defined.	To draft clear requirements for receiving the authorization to open a customs warehouse.
There are different legal types of customs warehouses (A, B, C, D), depending on the agent responsible for the goods stored.	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 can not be clearly separated.
There is no clear procedure for making customs declarations on a periodic basis.	To clearly define the procedure regulating periodic customs declarations.
A financial guarantee in the amount of customs duties levied on the goods stored must be made for the entire storage period.	To eliminate the requirement of providing a financial guarantee in the amount of customs duties, as this is exactly the "economically proven need".
The customs declaration must include the definite period for which the goods shall be kept in the storage.	To eliminate the requirement whereby the storage period is to be declared upfront.

INTERNATIONAL COMMERCIAL ARBITRATION

Reference to Arbitration issues as below is made in the context of *draft* legal proposals that by the moment of publication of this Book had been submitted to the Parliament for reading. Thereby, FIA would like to welcome the policy motivation to follow international principles that are generally accepted for international commercial arbitrations, in accordance with provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as well as the UNCITRAL Model Law on International Commercial Arbitration of 1985.

In particular, FIA would like to highly appreciate the determination to secure enforcement of arbitration awards, by providing that decisions of competent courts/authorities with regards to certain arbitral proceedings as stipulated in the Model Law – including appointment and challenge of arbitrators, and settings aside an arbitral award following recourse by a party against the award – shall be subject to no appeal.

Below are some recommendations that, given the draft text, are aimed in principle to eliminate possible confusions that may arise out of interpretations that might be given to the respective laws during arbitration proceedings.

General Reference:
- » Draft Law on International Commercial Arbitration1
- » Draft Law on Arbitration2

I. Nature of Dispute

Law[2] 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[1] or Law [2] – during arbitration proceedings, when the nature of dispute relates to the definition of an international commercial arbitration.

Art. 5(4) of Law[2]. To remove the word "international," so as to explicitly provide that for international disputes only Law[1] applies.

II. Non-Interference During Proceedings

Given the text of the draft Laws, one reads that when a judicial court before which an action is brought in a matter that is also subject to an arbitration agreement, the conflict of competence shall be decided upon by the higher judicial authority. However, such a phrasing may be subject to an interpretation in that the decision of a higher court (which may not necessarily be the court competent for arbitration proceedings, as provided by the Model Law) upon the conflict of competence can be made *during* arbitration proceedings – a fact that undermines the authority and enforceability of arbitration as a dispute resolution mechanism. This is an important remark, especially given that the Model Law already provides for a balance between the primacy of arbitration vs. the individual rights of parties. Namely, in case of a conflict of competence between a judicial court and an arbitration tribunal, the latter is allowed to continue the arbitration proceeding, while granting each party the right to request the competent court to decide on the jurisdiction of the arbitral tribunal up to the moment when the final award is made.

Art. 8(2) of Law1 and 8(4) of Law[2]. To amend 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.

NOTES

NOTES


meat & sausage production
Carmeo
international


EFES VITANTA MOLDOVA BREWERY


endava


KNAUF

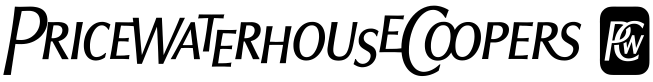

LAFARGE


LEOGRANT


METRO


MDV
MOLDAVIAN


MOLDCELL


PRICEWATERHOUSECOOPERS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