WHITE BOOK

FOREIGN INVESTORS ASSOCIATION

2017

WHITE BOOK

2017

The proposals of foreign investors
for improvement of the investment climate
in the Republic of Moldova

2017
Chisinau, Republic of Moldova

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TABLE OF CONTENTS

Text *NB. Blue frame with white text - suggestions 2015* - Issues

Text *NB. Gray frame with blue text - suggestions 2017* - Suggestions

ABOUT FIA

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

FIA is part of the regional network of the Foreign Investors Councils, entities which have many achievements in the countries where they are operating.

The Association has among its members the largest companies with foreign capital in the country, companies providing a wide variety of goods and services, covering all the fields of the country's economy - agriculture, industry, banking system, telecommunications, distribution, audit and legal consultations.

The objectives of the association are:

- representing and promoting the views of its members to protect their shared interests, but also to attract new investments;
- cooperating with public authorities of the Republic of Moldova to overcome the difficulties and the barriers that may exist in their relations with the foreign investors;
- protecting the interests of the international business community in the Republic of Moldova;
- informing the members of the association, but not only, about the investment climate in the country;
- sharing with the potential investors the experience of the FIA members, etc.

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

According to the Board of Directors decision of April 19 2017, it was agreed to optimize the activity of FIA, and namely, to focus on an Individual Approach - each member has to be approached separately.

FIA is:

- the first and the only business association, representing the Direct Foreign Investment companies;
- independent from any diplomatic mission;
- an association, the members of which have an impeccable reputation and a strong presence on the Moldovan market;
- an organization firmly committed to promote reforms for a healthy investment climate and an open dialogue with the public authorities;
- a unique alliance of the biggest and the most prestigious strategic investors in the country, who are not involved in politics and look beyond competition.

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

EXECUTIVE SUMMARY

The White Book 2017 was developed by the experts of companies, who are members of FIA, and it represents the fifth edition of the document. The first edition of the White Book was published in 2005, representing a real platform for the dialogue between the business environment and the Moldovan authorities, reflecting fully the priorities of FIA's activity.

The White Book provides recommendations and describes a concrete action plan for the improvement of the investment climate in the country. The White Book reflects the essence of the FIA activity as an Association, the members of which consider that through experience exchange and joint efforts made by the foreign investors, can be developed a clear vision of the issues and decisions influencing the investment climate in the Republic of Moldova.

Chapter I. Tax Legislation – presents the improvement of the issues highlighted in the previous edition of the White Book, which includes the alignment of the tax legislation of the Republic of Moldova to the best international practices. Also, it identifies a number of issues which have to be analyzed and solved in order to make the investment climate more attractive.

Chapter II. Labor Relations – highlights the need of amending labor law, based on the international practice, as well as the importance of a flexible approach to labor relations, focusing on the individual employment contract.

Chapter III. Competition – currently, in the Republic of Moldova, the competition legislation is fully aligned to the strict European regulations. However, there are still issues in various fields, e.g. banking sector, telecommunication, insurance, etc., which need more attention and involvement of the state, to ensure all competition conditions are observed.

Chapter IV. Banking System– identifies the considerable positive changes which occurred in the recent years, ensuring the compliance of the legislation currently in force to a number of European Union regulations, particularly concerning prudential rules. Additionally, other aspects, which need review and enhacement in order to improve the investment climate, are mentioned.

Chapter V. Land Issues– proposes the review of the land law of the Republic of Moldova in order to strengthen the protection of the current investments in agriculture, and to attract new ones under fair and equal conditions for both local and foreign investors.

Chapter VI. Healthcare – comes with solutions which create the opportunity of using the mandatory health insurance in private institutions, which currently is limited due to the lack of a legal mechanism to allow the voluntary contribution of the patient to health services costs sharing. Also, it recommends the demonopolization of oncology- related services.

Chapter VII. Energy – mentions the strategic role of the state and the need to stimulate competition and economic activity in this sector to increase energy efficiency, the efficient use of all resources, and advancing renewable energy sources, etc.

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TAX LEGISLATION

The regulatory framework related to taxation undergoes frequent modifications. In 2017 several amendments, presented in the previous issue of the White Book, were approved and came into effect. They align the tax legislation of the Republic of Moldova to the best international practices. And namely: the implementation in the tax legislation of the concept of "individual anticipated fiscal solution", the deferral of future fiscal losses, and also amendments concerning the taxable period, concerning the income tax for legal entities, etc.

At the same time, certain issues which need review and amendment, in order to create an attractive investment climate, are still present.

TAX POLICY

The implementation of certain mechanisms, which could determine the stability of the customs/fiscal policy

In the recent years, the business environment was confronted with a large number of tax and customs legislation amendments, being thus (1) challenged to adjust/adapt its business strategies, but also (2) exposed to uncertainty concerning long term planning of its activity. Moreover, it is a well known fact that the establishment of the fiscal and customs policy represents a determining factor in attracting investments in the economy.

Currently, there are no clear legal norms in the Tax Code, which would establish the law to be applied in case of tax legislation amendments.

Thus, we consider necessary to take all needed measures to ensure the stability and the certainty of the fiscal and customs policy, as well as to exclude the frequent amending of the Tax Code and Customs Code practice.

Also, the cases when the tax legislation amendments come into effect immediately after being published or retroactively shall be excluded.

To establish in the Tax Code clear norms, concerning the application over time of the tax procedure and material legislation, at the same time defining the terms of material and procedure tax legislation.

The correlation of the terms used in the tax legislation with the International Financial Reporting Standards (IFRS) and the new National Accounting Standards (NAS)

Since January 1, 2012 it is mandatory for the public interest entities to prepare financial statements according to IFRS; and since January 1, 2015 the application of the new NAS by all entities, excepting the ones of public interest and those, which did not adopt the IFRS, is mandatory.

For tax purposes, the financial statements methods based on the new NAS and IFRS provisions, which don't contravene to the tax legislation, can be implemented. The new IFRS and NAS include new terms, which are different from those used in the tax legislation and which can generate confusions and other interpretations of the tax legislation.

Especially, we refer to:

- income/expenses tax treatment of the agricultural produce at its fair value minus the estimated costs at the point-of-sale during harvesting, according to the IAS 41 Agriculture;
- the fiscal treatment of the wear of right of use and of the expenses linked to interests acknowledged by the tenant (excepting small under one year contracts and low value assets) based on IFRS 16 Leases, which will come into effect on January 1, 2019.

We propose the harmonization and the correlation of the terms used in fiscal legislation with those foreseen by the new NAS and IFRS, especially by:

- deducting expenses and taxing the harvested agricultural produce according to IAS 41;
- deducting the wear of the right of use, according to the IFRS 16, as well as deducting the expenses related interests (according to the same standard) within the limits foreseen by art. 25 of the FC.

IT Parks

The Law on Information Technology Parks was published, but the complementary regulatory framework was not. Thus, so far, there was no IT park created and the by laws of the IT parks were not published.

Adapting the legislation and creating the conditions for the implementation of the IT Parks Law in order to support and develop the IT industry in the Republic of Moldova.

The lack of tax regulation of partnership business activity

The Civil Code foresees the option of conducting activities within partnerships, however the Tax Code does not foresee any taxation mechanism of these economic agents. Until 2017 there were a few terms used, however, these were excluded. We are aware of the intention of certain foreign investors to conduct activities using this form of organization.

We propose to conduct an analysis of the international practice, concerning the taxation approaches for this type of companies and the amendment of the tax legislation to the international practice.

PAYROLL TAX

State social insurance contributions

The employer covers the social insurance contributions of 23%, calculated from the gross salary, and the employee pays 6% of the contributions.

The reduction of the contributions paid by the employer and the proportional increase of the individual contributions of the employees, which will allow the option of redirecting these to private pension funds.

Also, agricultural sector employers can benefit presently from facilities for social insurance contributions, if they activate throughout the budgetary year, excluding the agricultural activities listed in groups 01.1 - 01.4 of CAEM. Thus, employers are not allowed other types of income, e.g. selling unused spare parts, sub-lease of agricultural fields, leasing agricultural equipment, etc.)

Stimulating the creation of the private pension funds by creating the legal framework and redirecting individual contributions, according to the decision of the employees.

To modify Law no. 329 of 25.03. 1999, concerning non-state pension funds, by aligning it to the best EU practices, providing tax facilities for employers and employees, the contributions to which would be deductible.

Improving the business environment in the agricultural field by revising the conditions of implementing the social insurance contributions facilities, so that it could be offered to the employers, who have more than 75% of their income coming from agricultural activities.

Mandatory health insurance premium

Both the employer and the employee pay into the Mandatory Health Insurance Budget premiums of 4.5% each, calculated based on gross salary. Simultaneously, the insurance premium calculated based on fixed cover represents 4056 MDL (in 2017), and certain categories of insurance holders benefit from 50% or even 75% waivers, if they pay the premium within the first three months of the year. The health insurance is not individualized and does not take into account the paid volume of premiums in relation to the potential services provided to the insurance holder.

Establishing the mandatory health insurance premiums ceiling, which equals to an estimated average wage multiplied with 5.

Stimulating the creation of private health insurance funds and of the competition between public and private service suppliers.

Income Tax for Physical Persons

The annual income of employees, which does not exceed 31 140 MDL is taxed by 7% and the one which exceeds this sum is taxed by 18%. Each employee has a personal income exemption of 10 620 MDL per year.

Establishing an annual personal exemption for subsistence minimum.

Establishing the ceiling of a 7% quota for the income tax for sums which don't exceed the annual value of the projected average monthly salary or establishing a single quota of 15% for physical persons / individual entrepreneurs taxes, regardless of their income.

Taxes applied to benefit in kind provided by the employer

Benefit in kind are double taxed by the income tax, and by the social contributions and health premiums. These contributions/premiums applied to the benefit in kind provided by the employer represent a burden for both employers and employees, and don't stimulate employers to support the healthy interests of the employees/social/cultural matters.

Benefit in kind provided by the employer should be taxed only through the income tax and not through the social contributions/ health premiums too.

Expenses related to food and transportation of the employees

The amount of food and transportation expenses covered by the employer was not adjusted since 2014, regardless of the fact that the inflation rate was high in recent years.

We recommend that the anual amount of the food and transportation allocation provided by the employer to be proportionally indexed with the inflation rate set for the respective year.

INCOME TAX APPLIED TO THE ENTREPRENEURIAL ACTIVITY

Reviewing the deduction regulation concerning the income tax of the entrepreneurial activity

Many of the current provisions, concerning deductions of certain expenses from the income tax of the entrepreneurial activity are often unclear, being differently interpreted by certain tax payers, as well as by the authorities leading thus to tax payers errors and to an inconsistent application of the respective provisions by the tax authorities.

Therefore, we consider that the review of the deduction regulation for the purpose of calculating the income tax applied to certain expenses linked to the entrepreneurial activity should be on the agenda of the respective authorities. Namely, we refer to the need of defining clear criteria, which would determine the type of ordinary and necessary expenses covered by the entrepreneurial activity.

The record and calculation of the wear and tear of the fixed assets for taxation purposes

The record of the wear and tear of the fixed assets for taxation purposes is not only too complex, leading to various errors, but it implies also that tax payers have to invest considerable resources. Simplifying the fixed assets record procedure would significantly reduce both the time invested by the tax payers to draft the income tax statement, but also the potential errors which occur in the record keeping of the fixed assets.

We recommend the simplification of the fixed assets wear and tear calculation for the tax purposes formula. Also, we suggest the full deduction of the repair expenses throughout the period of repaired fixed assets wear.

Deducting expenses for the general and current repair works

To include in the tax legislation the division of the expenses for general and current repair works so that the general repair work expenses of leased fixed assets to be fully deducted while the lease contract is valid.

The deduction of allowances for non-recoverable receivables for tax purposes

Recovery through court of law of receivables is burdensome, expensive and lengthy, and it is the only way to allow that these non-recoverable receivables are deductible for tax purposes.

Similarly to the mechanism implemented for the leasing companies, we propose removing the court of law procedure concerning the deduction of non-recoverable receivables (for which the payment period has expired) and to allow deduction for tax purposes an amount of up to 5% of the annual average balance of receivables, only if these receivables do not relate to affiliated parties of the tax payer.

Tax exemption of dividends paid to companies registered in the EU member states

The EU Association Agreement foresees the compulsory harmonization of the Republic of Moldova legislation with the relevant EU legislation.

2011/96/EU Directive foresees the exemption of the withholding tax for the payment of dividends to mother-companies from the EU member states (and which hold at least 10% in the share capital of its subsidiary within a period of at least to two years), avoiding thus double taxation of this income.

Taking into consideration the EU Association Agreement, as well as the fact that the Republic of Moldova did not sign the Conventions avoiding double taxation with the EU member states, e.g. France, or that certain current conventions are outdated, e.g. Germany, we recommend implementing the fiscal legislation of the 2011/96/EU Directive.

We recommend tax exemption for the dividends paid to mother-companies (residents of the EU), aiming to align the Moldovan legislation to the European Directives, as well as to stimulate EU investments in the Republic of Moldova.

Extending the validity of the tax residency certificate

Currently, in order to apply the provisions of an agreement to avoid double taxation, it is compulsory for the non-residents to submit to the income tax payer a residency certificate, issued by the tax authority of the residency state before the income tax payment date. This certificate is submitted once per calendar year.

Taking into consideration the practice of other states, e.g. Romania, we recommend that a residency certificate provided during a calendar year to be valid also during the first 60 days of the next year, except the situation when the residency conditions have changed.

The amendment of the accounting for tires related expenses

Currently, tires write off takes place according to the mileage of the respective vehicle.

For those economic agents, that have a small vehicle fleet and tires expenses are insignificant compared to the turnover, and when their main operational activity is not provision of transportation services, accounting for tires write off under the current framework, requires time and additional administrative resources.

We recommend amendmenting the tax code in such a way, which would allow to write off the expenses based on two years wear and tear norm.

The amendment accounting for the small - value and short-life items

According to NAS, small-value and short-life items, which have a unit value exceeding 1000 MDL, are writen off to expenses by calculating 50% of wear and tear upon entry and 50% upon exit (write off).

We recommend giving the opportunity to the companies to choose in their accounting policies the method they prefer for this type of items: recording this items as expenses or wear and tear for a certain period of time (as it currently is).

The amendment of the documentation related to business trips outside Republic of Moldova

When employees travel abroad on business trips, the date of border crossing is determined by the notes made in the passport at border checkpoints.

We recommend documenting the international business trips of employees based on travel documents, where the name of the employee, who has been traveling internationally for business purposes, is mentioned.

This restriction creates certain difficulties for companies and their employees. When traveling with a Moldovan passport, it is not mandatory for the border police to apply a border crossing stamp, and when the crossing is conducted with the passport of another state - the stamp is applied (which leads to the need for the employees to renew their passports more often).

Also, the current legislation requires the application of certain limitations concerning the compensation for taxi transportation expenses during traveling abroad on business trips.

To exclude from the Regulation the provision concerning the compensation of taxi journeys expenses when the arrival time or the departure time of the employee does not correspond to public transportation schedule. When traveling internationally, employees usualy don't have information about the public transportation schedule from the respective city.

Accounting for discounts

The discounts for the purchased assets are usually applied after they are purchased. For example, for merchandise, which throughout a month was not sold, the distributors give a price discount to the buyer in order to reduce the acquisition cost and facilitate the sale of goods.

Based on the current provisions of NAS, companies have high value stocks, which do not reflect the market prices, simultaneously recording income from discounts. There are no sales made and the taxable income grows, while the company performance (P&L) doesn't reflect the real situation.

Adapting the NAS provisions to allow the inclusion in the value of goods of the discounts received after the entry of the goods. For goods the value of discounts allowed to be icluded should be proportionate to the value of the existent stock of goods at the date of the discount.

VALUE-ADDED TAX AND EXCISE

VAT on imported services

To repeal the provisions concerning the VAT payment when services are imported, and perform it on the date, when the payment for services is conducted.

To provide upon the import of services a VAT payment until the 25th of the month, following the month when the payment for the imported services was performed, according to the reverse-change mechanism foreseen by the EU regulations.

The excise covered by the producers of the goods to which excises apply

Currently the producers of goods on which excise is charged are required to transfer to the State Budget the respective excise when the goods are delivered.

To allow the producers of goods on which excise is charged to pay the amount of the respective excise by the end of the month (similar to the VAT). This type of practices exist in most countries, including Romania, Ukraine, and Russia.

Calculation of VAT for the goods delivered in exchange of the agricultural land lease

Currently, the tax regulations require the VAT to be calculated based on the market price of the goods delivered in exchange of the agricultural land lease.

We recommend amending the Tax Code by excluding the compulsory calculation of VAT based on the goods delivered in exchange of the agricultural land lease.

At the same time, the market price cannot be lower than the cost of the goods (art. 99, par. (6) of the Tax Code) - which leads to additional costs for the agricultural entrepreneurs, especially in drought years, when the costs for certain harvested products can be higher than their market price.

The documentary confirmation of the right to VAT returns for exports of goods

Currently, beside the sale and purchase agreement, the export customs declaration, etc. in order to confirm the right for VAT return, copies of invoices are required.

Taking into consideration the significant number of invoice copies, which the tax payers have to prepare, as well as the fact that important details from the invoice are included in the export customs declaration, we recommend excluding the requirement of presenting as well copies of invoices from the list of compulsory documents to be presented, as well as their submissions for VAT return upon export.

The VAT return mechanism

The tax legislation entitles the companies which perform capital investment (for the production of goods and services) with the right for VAT return. This restriction limits the opportunities of companies investing for other purposes, to use significant amounts of funds, which could be invested in the development of the entrepreneurial activity.

We recommend amending the Tax Code provisions in order to give the VAT return rights for all types of capital investments.

OTHER TAXES AND FEES

Initiating criminal cases for technical errors identified in the economic agents' tax declarations

The legislation, as well as the practice of the prosecutors allow the opening of criminal cases even when technical errors are identified in the tax declaration. So, the initiation of criminal cases represents an instrument of putting pressure on managing directors of companies and reduces the attractiveness of the investment climate in the Republic of Moldova.

To align the legislation of the Republic of Moldova to the best practices of the EU, concerning criminal penalties for tax violations.
Initiating criminal cases, when tax evasion is 1% of the turnover, but not less than 75000 MDL

Annual inventory

According to the provisions of the Accounting Law, economic agents are required to make an annual inventory.

To provide for the compulsory development of the company assets inventory once in two years. During this period of time, the shareholders or the company management should decide if to create or not an inventory.

Determining the customs valuation of certain goods

According to the customs interpretations, if the goods are used for the production of other goods, which are subjects to royalty payments, the royalty should be included in the customs valuation as well.

Although, in theory, customs legislation requires companies to include the paid royalty to nonresidents in the customs valuation of the imported goods (when royalty refers to the respective imported goods), no official mechanism was developed yet and there were no customs procedures developed either.

Thus, in practice, companies are facing a challenge, which can be sanctioned by the customs authorities if companies pay such royalties abroad and include them incorrectly in the customs valuation of the imported goods (due to lack of mechanisms/clear rules).

We recommend the repeal of Law no. 1466-XIII of 29.01.1998 on repatriation of funds, resulting from external economic transactions of sale of goods or provision of services

By maintaining the compulsory obligation for repatriation of funds and the sanctions applied, the compliant resident economic agents could be charged and sanctioned for the actions/non-actions of the nonresident companies, which don't fulfill their contractual obligations (namely, they don't pay for the purchased goods/services). Hence, besides covering certain financial prejudices caused by the fact that third parties did not execute their contractual obligations, the resident companies are subject to sanctions foreseen by the Law on repatriation of funds.

We consider that companies should not be sanctioned twice for the impossibility of recovering the debts linked to their external commercial activity.

Moreover, we believe that by repealing this Law the state security will not be at risk (as art. 1 par (2) of the Law foresees), because companies themselves are interested in repatriating and collecting funds from external trade.

Also, such regulations are not used by the European states. And it is common sense to cancel this outdated practice, which is not compliant with the community acquis.

Thus, in order to cancel any restrictions concerning capital flow, especially concerning the obligations of repatriation (according to the EU practice), we suggest the repeal of Law no. 1466-XIII of 29.01.1998.

The single account

The transfer of taxes to each subdivision is costly compared to the amount of the taxes paid, which contravenes to the principle of tax efficiency (foreseen by the Tax Code), which implies the collection of taxes and fees with limited costs, to be as affordable as possible for the tax payers.

Collecting all fees into one single account and redistributing them at a later point would reduce the use of resources of both companies and local public administration, and would unburden the tax authority per subdivisions.

The implementation of the Mechanism for the single Treasury accounts for tax transfer, without transferring the payments to subdivisions and local budgets.

Tax liability

Currently, in the Tax Code there are no regulations on continuous tax violations and prolonged tax violations, and respectively of the application of fiscal liability in both cases.

Clear regulation on fiscal administration of the definition - continuous and prolonged violation and specification of the applied tax liability in both cases.

Law on environmental pollution payment no. 1540-XIII of 25.02.1998

The new version of art.11 from December 2016, was approved without a regulatory impact analysis and public debates, includes a number of inconsistencies and unclear aspects:

- the fee for the merchandise which, while being used, leads to environmental pollution:
- the harmonization of the fee for environmental pollution, stipulated in Annex no. 8 to Law 1540/1990 in the amount of 2%;
- the fee calculation formula for environmental pollution as quantum of the customs value of goods and not invoice value, the first one including also insurance, transportation, loading/unloading costs, etc.;
- the fee for products with plastic packaging (specified under tariff codes 3923 21, 3923 29 and 3923 30) or with packages from non corrugated cardboard (specified under tariff code 4819 20 000), with or without aluminium foil with / or without polyethylene - the quantity of the material used for the fabrication of packaging differs based on its volume/size and it is not considered to be an amendment;
- the payment for emissions of pollutants, spill and storage of waste, previously calculated and paid for on an anual basis, has now been amended to monthly payments. Thus, the calculations made with the support of specialized consultancy companies cost at least ten times more than the actual fee.

Suggestions:

- To return to the differentiated payment for the goods listed in annex 8, Law 1540/1998;
- The return to the fee calculation formula based on the invoice value of goods;
- The breakdown of the grid, determining the fee for packaging (up to 0.1 l, from 0.101 up to 0.3 l, from 0.301 up to 0.5 l, from 0.501 up to 1.0 l, from 1.001 up to 3 l, from 3.001 l, excepting the packaging of products with a volume lower than 0.02 l);
- The significant reduction of the fee rate for packaging;
- The application of the packaging fee only to liquid goods (as Law no. 37 of 24 March 2017 provides);
- Returning to the annual calculation and payment of the emissions of pollutants, spilling and storage of waste in order to compare the amount of the fee with its administration costs.

Compensatory remuneration of at least 3% of the received amount (re-sale) of equipment, e.g. telephones, tablets, notebooks, flash cards, etc., as well as of memory sticks

Art. 26 of Law 139 of 2010 concerning copyrights and related rights provides:

„Article 26. Replication of works for personal use. Private copy

(1) The replication of a work legally published is allowed without the consent of the author or of another copyright holder, but the payment of a compensatory remuneration under the conditions of par. (3)-(11), when the replication of the work is completed by a natural person and only for personal use and if it doesn't want to have any direct or indirect commercial gain of it, is added. ***The right to compensatory remuneration can be exercised exclusively by an association, which manages collectively patrimonial rights.***

(3) The compensatory remuneration mentioned in par (1) is paid by the natural and legal persons, which produce or import any type of equipment (audio, video, drivers, etc.) and material support (for the audio and/or video recording, cassettes, CDs, laser discs, etc.) which can be used for this type of replications.

As an exhaustive list of equipment, necessary to perform the remuneration payment, was lacking, the associations administering patrimonial rights, authorized by AGEPI to manage independently or jointly, based on the agreement, all the rights which they were entrusted with to manage, it was requested for the suppliers of networks and electronic communications services to cover the 2014-2017 compensatory remuneration payment of at least 3% from sales revenue (re-sales) of equipment and accessories, e.g. telephones/ smart phones, memory sticks, tablets. We would like to mention the fact that due to the lack of a legal framework, which could ensure the payment of these fees when these products are imported, the request to perform a payment for a period of time from the past doesn't have any legal grounds; and it actually represents an attempt of enrichment without any justifiable grounds.

The national legislation currently in force expressly provides for the obligation for importers of mobile telephones and accessories to pay the compensatory remuneration specified above. Moreover, the Decisions of the Supreme Court of Justice of the Republic of Moldova of April 01, 2016 on the application of legislative provisions on copyrights and related rights, point 76 provides clear explanations on the application of the regulation set in art.26 of Law 139 of 2010 and namely:

„Author's remuneration is collected only through the system of joint management from producers and importers of:

- *equipment (**audio, video, drivers for discs);***
- *material support **(CD, DVD),** used for this type of replications."*

LABOR RELATIONS

A never outdated and always important topic for the foreign investors is the the Labor Code and its rigid provisions, considered to be archaic. The Labor Code contains important obstacles for an efficient business activity. Flexible labor relations represent an important factor in creating a competitive economy, which easily adapts to different market conditions.

FIA welcomes the initiative of the Government related to the amendment process of the current code, based on the suggestions provided by the business sector. At the same time, the representatives of the business sector suggest drafting and approving a new Labor Code, a process in which local and international experts, as well as the development partners should be involved. It is suggested to focus on the individual employment contract, which is a bilateral voluntary legal document, and which regulates labor relations.

Military records of the employees

The current provisions of Law no. 1245-XV of 18.07.2002 on the military training of citizens to protect Motherland and art.57 of the Labor Code it is mandatory for the employer to ensure daily records and inform monthly the Ministry of Defense about the employment status of each person, as well as to ensure that the records which are in place are according to the internal bylaws of the Ministry of Defense. Besides the fact that these norms are outdated, they also force employers to perform improper actions which require financial and human resources.

It is recommended to eliminate the current provisions of Law no.1245-XV of 18.07.2002 on the military training of citizens to protect the Motherland and art. 57 of the Labor Code which provides for the mandatory military records keeping of the employees.

Art. 60 Trial period

Currently, in order to verify the professional abilities of the employee, entering an individual employment contract, a trial period of maximum three months may be agreed upon.

In most cases, this period is not sufficient to verify the professional abilities of the employee.

It is considered, extending the trial period from three to six months, to be a justifiable amendment.

Art. 62 Banning the trial period

Current provisions ban the use of a trial period for persons employed through a vacancy competition. The organization and implementation of the competition doesn't allow the evaluation of all abilities and competencies of the candidate, thus a trial period is necessary.

Art. 62 lit. c). Cancel the restrictions concerning cases, where the implementation of the trial period for the employees employed through a vacancy competition is allowed.

Art. 74 Transfer to another job

The Labor Code doesn't provide for the opportunity to temporarily transfer an employee on another position within the same company (based on the written agreement of both parts). This leads to problems related to filling temporarily vacant positions in a company. The only solution being the employment of new persons on the base of fixed-term or plurality of offices contracts, replacing a temporarily absent employee, which represents a disadvantage for the employer and for the employee.

The transfer of the employee to another position within the same company is very important especially for the companies, where training of new employees takes time and implies specific knowledge and training (introductory courses, knowledge of informational systems and activity, security procedures, etc.) and a longer adaptation period. The temporary transfer of the employee is important also in case of temporary substitution of certain employees, heads and deputies of subdivisions, etc.

It is suggested for the Labor Code to provide for the opportunity to transfer an employee for a limited period of time, provided the employee agrees to it, especially related to business travels of employees, secondment of employees for short and medium - term, plurality of offices of the temporarily absent employee, long-term sick leaves , etc.

Art. 85 Resignation

Par. (4) art. 85 states that the employer doesn't have the right to dismiss an employee, who has submitted a resignation letter, if within seven days after the submission the employee retracts (cancels) the submitted letter and there is no other new person employed already.

The seven days deadline provided by the Code represents the minimum period of time, in which the employer has to select and employ another person. Thus, upon the retraction of the resignation letter by the employee, the employer loses financial and human resources invested in employing a new person.

We recommend the reformulation of art. 85 par (4) provisions of the Labor Code, and namely, the employee has the right to retract the letter, but only upon the approval of the employer.

Parental leave

Overextended parental leaves lead to loss of professional abilities of employees, reduced chances to move up the career ladder, as well as reduced presence of women on the labor market, etc.

The reform of the parental leave system is satisfying. The employee is the one to decide/ to choose independently the length of the paid leave, which implies differential payment of the childcare allowance, determined by the selected period of time. The unpaid parental leave shall be excluded. In conclusion, this will be a win-win situation for both, employees and employers.

Art. 101. par. (5) Shift work

To modify par. (5), the deadline for notifying employees about the work schedule with at least 14 days before it will be implemented or, as soon as possible, if the schedule is changed due to the leave of one of the employees.

Art. 104 Overtime work

The legislation of the Republic of Moldova doesn't provide for paid free time rewards for overtime work.

To allow the rewarding of the overtime work by offering free paid time within 30 days since the overtime work was performed. Thus, the employee will benefit from more free paid time, equal to the number of overtime work hours, and continuing to receive a salary for the work performed over the usual work schedule.

Conflict of interests
The lack of a non-compete clause

To introduce a non-compete clause, stated in the EU legislation: "Parties can negotiate and include in the contract a non-compete clause under which the employee agrees not to enter into or start, for his/her own interest or of a tertiary part, an activity competing with the employer for a monthly non-compete allowance which the employer commits to pay throughout the validity of the non-compete clause".

In the same context, the non-compete clause can be negotiated by the parties during the negotiation on terminating the individual employment contract, and not necessarily in the Contract itself.

The obligation of paying the monthly non-compete allowance has to be correlated with the obligation of the employee to pay penalties (damages - interests), should this clause be violated.

The lack of a conflict of interests clause

To introduce a new clause on conflict of interests. "The employer can add in the individual employment contract or in the bylaws a clause on conflict of interests, under which the employee has to declare the conflict of interests".

Art. 9 par. 2 letter j. The employee has to declare the potential conflict of interests, according to the procedures established by the employer.

Art. 74 par. 1.....excepting the conflict of interests cases.

"the conflict of interests - the conflict between the exercise of duties and personal interests".

Art. 216 Apprenticeship contract and continuous professional education contract (CPE contract)

According to which the employer has the right to conclude an apprenticeship contract with a person searching for a job and who has no professional qualification. Par. (2) foresees that the apprenticeship contract, signed in written form, represents a civil law contract and it is regulated by the Civil Code and other normative documents.

For the dual education system to function efficiently in the Republic of Moldova it is necessary to create a legal and normative framework which is clear, foreseeable and adapted to the reality of the Republic of Moldova.

Labor legislation has an important role in modernizing the legal framework because the specific feature of the student-apprentice activity includes, besides the training aspect, the actual work. Thus, the student-apprentice participates, according to the specifics of each profession, in the production activity as well. Also, for an apprenticeship contract in the dual educational system to be regulated by the civil law, the parties (the employer and the student-apprentice) should have equal legal statuses, which is not the case in the dual education context, as the student-apprentice has to observe the discipline rules, the time and days of work and of rest, as stated in the internal regulation of the company.

In Germany, France, Switzerland, Austria and Lichtenstein the dual system apprenticeship is regulated by a specific law, and it is performed based on an apprenticeship contract, apprentices being considered employees of the respective company.

In this sense, we recommend the amendment of the Labor Code provisions and thus to exclude the norm which stipulates the apprenticeship contract is a civil law contract, being more appropriate the drafting and adopting of a special law, which would regulate the apprenticeship relations in the dual educational system, taking over the best practices of the states which successfully implement this model.

Temporary Agency Work

We believe that introduction of a new chapter in the Labor Code of the Republic of Moldova: agency for temporary work is advisable.

Art. X:

(1) Work through agency for temporary work represents the work performed by a temporary worker, who has entered a temporary employment contract with an agency for temporary work, and who is available to a user company for temporary work under its supervision and leadership ;

(2) The temporary worker is the person, who has signed a temporary employment contract with an agency for temporary work, in order to be available to a user company for temporary work under its supervision and leadership;

(3) The agency for temporary work is a legal entity, authorized by the Ministry of Health, Labor and Social Protection, which concludes temporary work contracts with temporary employees for a user company, to perform work for a fixed period of time, according to the contract and under the supervision and the leadership of the company. The conditions of the agency for temporary work, as well as the authorization procedure are set by Government Decision;

(4) The user is the natural person or legal entity for which the temporary employee, made available by the agency for temporary work, under its supervision and leadership, works;

(5) Temporary work refers to the period of time in which the temporary employee is available to perform temporary work for the user, under the supervision and leadership of the user [company], and to perform specific, temporary tasks.

Art. Y:

(1) The temporary work mission is agreed for a period of time, which cannot exceed 24 months;

(2) The duration of the temporary work mission can be extended for successive periods of time, as long as added to the initial duration of the mission, and it doesn't exceed a period of 36 months;

(3) The conditions concerning the extension of a temporary work mission duration are provided in the employment contract or can be the object of an additional agreement.

COMPETITION

Building and maintaining a fair competitive environment represents an important mission, which can be realized only through joint efforts of the business environment and of the state authorities, which will create a balance and a spirit of fairness among companies. The competition legislation was drafted and approved, following an open and productive dialogue, a process in which the experts of the FIA member companies have participated. Currently, the competition law in force and applied in the Republic of Moldova is fully aligned to the strict European regulations. However, in certain field there are still some unsolved issues: the banking sector, telecommunication, insurance, etc., which require the attention and the involvement of the state in order to ensure competition conditions are observed.

Unfair competition conditions in selling goods on the territory of the Republic of Moldova, namely in the Transnistrian region

The companies from the right bank of the Nistru river may sell their merchandise on the Transnistrian territory of the Republic of Moldova only upon the payment of import duties, which can reach up to 10% of the total value of the goods, an amount levied and charged by the unconstitutional Transnistrian customs "authorities". Taking into consideration this disadvantage and barrier, a fair competition for the sale of products is not achievable in the respective region of the Republic of Moldova.

In order to maintain a fair competitive environment it is necessary:
(i) to cancel the respective duty or
(ii) to provide equal conditions to all stakeholders of this sector.

Economic subventions (supply of natural gas under preferential conditions, etc.) provided to the competitors from the left bank of the river Nistru by the Russian Federation, which disadvantages domestic companies

A defining or significant component in products price formation represent the costs incurred by companies during the manufacturing of goods.

To this end, (i) the price of the natural gas supplied to the competitors from the left bank of the river Nistru, as well as (ii) the charged electricity fare are around 3.5 times lower than the ones set for the right bank companies.

Taking into consideration this rationale, and the fact that the impact of fuel costs is significant, domestic companies are facing discriminatory tariff conditions.

In the context of the facts presented above, new legislative regulations to counter such unfair advantages are required.

Mobile telephony sector

According to art. 4 of Law no. 827 of 18.02.2000 on the Republican Fund of Population Support, one of the sources of raising the financial means for the Fund are the monthly transfers made by legal entities, providing mobile telephony services, in the amount of 2.5% of the sold services based income. This tax was introduced in 2000, being considered a "tax on luxury goods".

The amendment of the Law on the Republican Fund and of the local funds for population's social support, no. 827 of 18.02.2000 is timely and the amendments should include the elimination of art. 4 par. (1) letter b), and namely the compulsory monthly transfers which are made by the legal entities, providing mobile telephony services, in the amount of 2.5 % of the sold services sale income.

OTT services providers (Viber, Skype etc.)

Currently, the biggest threat the mobile telephony companies from Moldova are confronted with is the drop or the stagnation of profitability rates of these companies from the perspective of investment returns. So the telecommunications companies are forced to share the customers database with a number of other stakeholders which provide OTT smart phone applications, e.g. over-the-top, applications which are not distributed through traditional channels. The OTT service providers have created various attractive alternatives to the traditional offers, e.g. voice calls and texting (sending sms), which are more attractive than the standard services.

The telecommunications stakeholders challenge is even bigger in the context of a clear regulation gap, which could create non-discriminatory and fair competition conditions on the electronic communications services market.

Impose to OTT service providers similar regulations to the ones for the telecommunications companies, to create thus a fair competition environment for all providers of similar services. This would mean registering them on the territory of the Republic of Moldova as taxable economic companies.

The banking sector/the tax legislation favors legal entities more than natural persons

According to art. 25 of the Tax Code, it is allowed to the legal persons to deduct expenses related to the payment of loan interests, which reduces the taxable amount, while for natural persons there isn't such a provision.

Amend the Fiscal Code by implementing certain provisions which would allow the deduction of the expenses related to loan interest payments of natural persons.

Allowing the deduction of the expenses related to the payment of natural persons loan interests, could stimulate mortgage lending, which could lead to increased investment in constructions, to an increased number of real estate transactions which would lead to additional VAT cash in, etc. The deduction of expenses related to the payment of interests for mortgage loans of natural persons would reduce the taxable base for citizens, and it wouldn't discriminate natural persons vs. legal entities.

From international practice, we have mentioned Russia and Ukraine, but also a number of other European countries. art. 220 par (4) of the Tax Code of the Russian Federation provides for these exemptions. Also, similar exemptions are provided by the Ukrainian Tax Code art. 166.3.1.

Banking sector/Utilities payments

Currently, banks are not allowed to apply fees to cash utilities payments made by their customers, although the fees cashed in from the beneficiaries don't cover the costs borne by the banks. On the other hand, it seems that the state enterprise Moldovan Post applies fees a few times higher than the ones paid to the banks.

Eliminating the legal barriers, which don't allow banks to be competitive regarding the cash in of utilities payments from the population.

Cashing in the fees for utilities payments made in cash by clients, would allow the development of alternative means of payment (internet banking, electronic terminals, etc.).
It is suggested to eliminate par. (5) of art. 50 of the Law on payment services and electronic money.

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

Copying refers to punishable actions meant to confuse people by creating products similar to products of other companies. The products of the competitors fully or partially imitate/copy the products of certain companies by launching on the market their own packaging to promote the product, which " having a parasitic effect" have the same shape, color palette, the same design, and combination of colors and words.

Make market controls stricter and create a strict legal framework in order to counteract and/or sanction certain practices of this type.

Overloading trucks - an anti-competitive practice leading to additional gains on the market

The practices of heavy trucks overloading, over the legal limits, provided by the legislation in force, bring illegal advantages to the construction sector companies (especially cement transportation). Companies which respect the current legal framework are a priori disadvantaged. Moreover, the road infrastructure is irreversibly damaged.

The commercial sector/interference of the State in the traders' contractual relations and establishment of market prices

Recently, the state proposed a new legislative initiative to regulate the trading activity.

According to the Constitution of the Republic of Moldova, the market, the free economic initiative, and the fair competition represent the main factors of the economy.

It is recommended to evaluate and analyze the regulatory impact, according to art. 13 of Law no. 235 of July 20 2006, regarding the main regulatory principles of the entrepreneurial activity, as well as the provisions of the Governmental Decision no. 1230 of 24.10.2006 on the approval of the regulatory impact analysis and regulatory activity efficiency monitoring methodology.

The competition law establishes the main principles of competition: the state ensures the free entrepreneurial activity, the protection of the competition; the product prices are determined in the context of free competition, based on supply and demand.

Thus, any interference in setting market prices formation or imposing any other obligations to the food market participants, represents a severe violation of the contractual freedom and of the competitive framework, whereas the excessive regulations will lead to the distortion of the competition and to several other effects.

Also, it is requested to:

- take into consideration the European community legislation, the constitutional provisions, the international practice and the potential repercussions on the economy of the Republic of Moldova;
- to request the approval of the Government of the Republic of Moldova, of the Competition Council, as well as to request an impartial financial - economic expertise;
- to review the different categories of restrictions and prohibitions applicable to the contractual relations between the merchants and suppliers.

The insurance sector

The insurance sector is underdeveloped and continues to fight the unfair competition, characterized especially by features linked to joint liability related to payments made into the Green Card Insurance System; the use of the company name by the insurers in a manner which one could easily confuse with other, worldwide known insurance company names, leading to neglecting regulations on prices policy of mandatory insurances and prudential rules.

Although the necessary commitments to implement Solvency II measures are in place, including certain measures concerning the restoration and the capacity building of the regulatory entity, and those linked to shareholder structure transparency shall enter into force in 2018; there are still concerns regarding the implementation of the regulations on the shareholder structure transparency, the observation of the prudential norms, corporate governance in the insurance companies and the quality of assets covered by the actuarial reserves.

It is recommended to:

- Eliminate the unfair competition created by some insurers by naming a company in a manner which leads to confusing it with the names of worldwide known insurance companies;
- Ensure the regulations on policy prices for compulsory insurance products are observed, and which if not complied with lead to financial destabilization of the insurers, which have joint liability in the Green Card System;
- Implement the commitments of Solvency II criteria so that it could enter into force;
- Ensure the legal requirements, concerning the implementation by the insurers of the prudential norms, shareholder structure transparency and corporate governance in insurance companies, are observed.

BANKING SYSTEM

The evolution of the regulatory framework in the banking system went through significant positive changes between 2015-2017. The Republic of Moldova ensured compliance of its legal framework with a number of EU regulations, especially concerning prudential rules. Currently, the Parliament of the Republic of Moldova is finalising the process of adopting a new law, which regulates banking activity, ensuring thus full compliance of the national banking legislation with the EU acquis.

At the same time, certain issues, which need to be reviewed and solved to create an attractive competitive environment, are still present.

Banking system transparency

Severe corporate governance issues in the banking system, coupled with a weak judiciary system, represent a high risk for the financial stability of the Republic of Moldova.

The recently adopted and implemented by the authorities reforms and legal amendments had some success, however deficiencies in applying banking regulatory requirements continue to be noted.

In this context, it is vital to improve the quality of banking sector corporate governance by strengthening the real owners transparency, and the end beneficiaries of banks.

It is proposed:

- To achieve greater transparency of the commercial banks structure of shareholders in the Republic of Moldova;
- To implement measures and mechanisms, ensuring the stability of the banking sector and the protection of the investments in the commercial banks.

Greater efficiency of the cooperation with the court bailiffs

For the enforcement of writs of execution, the court bailiffs are entitled to request and receive, free of charge, from the public central and local authorities, from (financial) institutions, and from other organizations holding state registries and relevant information enforcement proceedings any information, on paper or online, which could lead to the identification of the debtor, its assets and whereabouts. The submission of this information by the commercial banks leads to additional administrative costs, as well as to irrational use of employees' work time, considering that 1/3 of the court baliffs requests are related to the clients of a bank. Annually, around 50000 requests were answered, which indicates that the bank doesn't hold back the requested information.

- The implementation of an information related solution, with the support of the Ministry of Justice and the National Union of Court Bailiffs is necessary in order to facilitate the information exchange and solve potential differences, which occur when banks become involved in the enforcement of court decisions and collection orders issued by the court bailiffs.

Deposit guarantee fund

As of 01.01.2018 the guaranteed deposit, which currently represents 6000 MDL, will be raised to 20.000 MDL. On the other hand, the need of reviewing the entire deposit guarantee system, starting with the set up and collection of contributions from banks and ending with the duties of the fund, is ignored.

Currently, the collection of contributions from banks is performed based on the solidarity principle - all banks participate in the creation of the fund, regardless of their risk profile. In the context in which the banking system faces corporate failures, and the transparency issues still persist, the solidarity principle no longer can be considered viable, efficient and fair. This principle, disregarding the risk profile of the banks, can motivate some of them to accept higher risks.

It is proposed:

- To restructure the Fund by associating with institutions, as the NBM, to monitor rigorously financial institutions;
- To strengthen the regulatory base related to deposit guarantee funds (introducing the concepts of risk and grading of banks based on them, etc.);
- To review the way contributions to the Fund can be made by deciding on the contributions based on the risk grade, leading thus to greater discipline and transparency in the banking system.

The Law on the Central Securities Depository

On 3rd October 2016, the Law on single Central Securities Depository was adopted. The main shareholder of the Depository is the NBM, which intends to exclusively carry on the activity of keeping the records of the securities owners. On the other hand, the existing National Securities Depository is liquidated, and thus, the fate of investments made by the banks is unknown.

- It is necessary to find a solution to compensate the investments made by the banks in the National Securities Depository, by modifying art. 47 of the Law on single Central Securities Depository in order to establish clear provisions related to compensation.

The liberalization of operations with current accounts/deposit accounts opened by residents in EU member states

Law no. 62-XVI of March 21, 2008 on the foreign exchange regulation establishes the rules for opening current/deposit accounts for residents abroad and for the operations which can be performed in/from these accounts. According to the provisions of art. 13 of the above mentioned law, the opening of deposit accounts abroad by residents can be carried out, with an approval provided by the National Bank of Moldova. At the same time, the National Bank of Moldova has the right to approve the operations which can be performed in/from the accounts opened by residents abroad: the limits of the balance of the accounts and the storage terms of the fund on these accounts, as well as other related conditions of the respective accounts, and the requirement of registering (when accounts are closed) the balance of the respective accounts in accounts opened in licensed banks.

These regulations make the implementation of a centralized corporate treasury management agreement (cash pooling/ centralized treasury management agreement) with the Finance and Treasury Division of the mother-company, residing abroad, very difficult. The goal of this agreement is to optimize the treasury flows and the liquidity management between the two entities (mother-company vs. daughter-company). These flows can go two-ways: (i) disbursement of the intra-group loan from the mother-company to the daughter-company and/ or (ii) remitting the treasury surplus / liquidity generated by the daughter -company to the Finance and Treasury Division of the mother-company. The implementation of this agreement implies opening a current account abroad by the resident company.

It is proposed:

To exclude opening of current/ deposit accounts abroad (in the EU member states) by residents from the list of operations requiring NBM authorisation, in order to implement a cash pooling agreement with the mother-company. The exception can be legalized by complementing par. (5) or art.13 of Law no. 62-xvi of March 21 2008 on the currency regulation:

(5) without an authorization from the National Bank of Moldova, residents may open running and deposit accounts abroad when:

(c) residents open accounts to perform operations abroad (in the EU member states) linked to the centralized management of liquidity/ intra-group treasury flows with the participation of the mother-company or of another affiliated company from the group, having the role of coordinator of the centralized treasury structure.

Limit the abusive interference of other authorities in the banks' activity

The NBM as the Regulator of the financial institution, should take a stronger stance in relation to other public authorities, not allowing them to request excesive information from the banks when the NBM is already holding the required information. To this end, we propose providing for additional guarantees in the Law on financial institutions no. 550 of 21.07.1995/Draft law on banking activity in order to exclude double reporting and provision of similar data to different state authorities.

The interaction between the NBM and the commercial banks

The legal framework provides a distinctive decision making autonomy to the National Bank of Moldova. There are frequent situations when important decisions impacting the banks' activity are not discussed with banks in time or their proposals are not taken into consideration.

Amend Law no. 548 of 21.07.1995 on the National Bank of Moldova, to include guarantees according to which the NBM, as the Regulator, will have to consult with the banking system the implementation deadlines of the new legislative acts, taking into consideration their complexity and their impact on the entire sector.

At the same time, new rules and regulations or amendment of existing ones, should not be issued without prior consultation with the banking sector.

The access of credit history bureau to data collected by another credit history bureau

According to the amendments of 14.07.2017 to the Law on credit history bureaus it is mandatory to ensure the automatic access of any credit history bureau by another credit history bureau to the data collected by commercial banks.

In order to support entrepreneurial activity, companies are free to establish independently the types of activity they engage in, and to choose their supplier and the beneficiaries of their services, also from the trust perspective.

Adding the mandatory aspect of ensuring automatic access for any credit history bureau to the data held by another credit history bureau represents a measure of advantaging the activity of the first bureau, who will benefit from the efforts and investments made by the other bureau to collect, maintain and process the respective data. Currently, all commercial banks and several microfinance companies have cooperated with the Credit Bureau Ltd., they being also the founding members of it. Additionally, the banks did not demonstrate the data would be secure, should they be transferred in this way.

In this sense, we propose the amendment of of art. 6 par. (2) provisions of the Law on credit history bureaus no. 122 of 29.05.2008, so that the automatic access among credit bureaus to be approved only when the high level of data security is ensured and only for a surcharge.

Adjustment of the regulatory framework for the non-banking lending entities to the best international practices

There is a minimum regulatory framework established for the activity of the non-banking lending organisations, in respect to the protection of consumer rights, organisational activity, financing, compliance, etc. Compared to the regulatory framework set for the finance institutions - banks. Having a weakly regulated framework could result in consumer rights infringement, bring competitive advantages to non-banking lending entities, etc.

We recommend adjusting the regulatory framework of the non-banking lending entities to the best international practices in the EU, as well as analyzing the option for the NBM to act as the non-banking lending entities regulator.

LAND ISSUES

Another area which requires attention of the authorities is the land legislation. The current regulations in this field limit the access and interest of foreign investors to invest in agriculture in long term, which represents a priority sector for the Republic of Moldova. In this sense, in the 2017 White Book, a new chapter - Land Issues - was introduced, where recommendations are provided to review the land law, in order to strengthen the protection of current investments, as well as attract new investments in agriculture under fair and equal conditions for local and foreign investors.

Law no. 198-XV of 15.05.2003 on the lease in agriculture

There are no regulations on investment recovery for lease contracts canceled before the expiry date.

It is recommended in chapter III, art. 16, par (1) of the Law on lease in agriculture to provide for cases when a contract is canceled before the expiry date, upon the request of the land owner, that later will return the investments made by the leaseholder.

Land Code no. 828-XII of 25 December 1991

Chapter X on land protection:

Due to the excessive land fragmentation and of the small surfaces of the farmland (a consequence of the "Land" program), agricultural productivity started decreasing at a dramatic rate, processing technologies and rotation are not observed, the soil is degrading, and it is impossible to invest in modern and economically viable technologies.

The current regulation on the protection of farmland proved to be inefficient, its provisions are not linked to the current conditions of the rural environment.

Under these conditions, we consider necessary to review the current regulation on land protection from Chapter X of the Land Code, as well as to add some imperative norms to it, as they will provide for the obligation of the land owners, which own more than 10 percent of the consolidated field, to participate in the consolidation project and procces of the fields similar in terms of bonitation and surface, located in the administrative area of the same locality.

At the same time, it is necessary to add a juridical norm in art. 79^1 of the Land Code, referring to the compulsory investor indemnity, who in order to ensure the integrity of its land, has worked the land of the neglectful owner (the owner of the land/fallow land).

Law no. 272 of 23.12.2011 on water resources

Law no. 272 of 23.12.2011, provides for the irrigation as a major priority of the owners of river basins/water catchment areas (except the supply of drinking water and for household needs of the population). However, this is impossible to achieve due to the lack of a single owner of the river basins and of a centralized management of these river basins.

It is recommended that the water managing entity, (Moldovan Water Agency) to subordinated to the Ministry of Agriculture, Regional Development and Environment, which would thus become the sole managing authority of the national river basins and will ensure the implementation of the farmland irrigation.

We believe the development of new regulations, to provide for the transfer of all river basins and of the water catchment areas from the local authorities management under the management of the water management authority, would be able to ensure the achievement of the national priorities.

Concerning the privately owned river basins: upon the issuing of the authorizations for use, it should be provided that the farmers owners of land will have access to the river basins for irrigation.

Law no. 1308-XIII of July 25 1997 on the normative price, sale and purchase of land

Art. 6. The sale and purchase of privately owned farmland.

(2) The state, natural persons, citizens of the Republic of Moldova, as well as legal entities, excluding those with foreign share capital, have the right to sale and purchase farmland.

Foreign investors recommend, and consider it rationale to amend the legislation (art. 6 of Law no. 1308-XIII of July 25 1997 on the normative price and sale and purchase of land procedure) in order to repeal the provisions which limit the sale-purchase right of farmland by legal entities, whose share capital includes foreign investments.

HEALTHCARE

Both the state and the business environment acknowledge the need of creating the conditions necessary to strengthen the healthcare sector in the Republic of Moldova increasing the quality and the competition in this sector through the efficient integration of private medical institutions. The current regulations are faulty due to the unfair treatment of the private service providers compared to the public ones. Also, the freedom of choosing the doctor and the health institution is limited thus the rights of the patient are violated by the Constitution.

In the newly added chapter in the White Book 2017 - Healthcare, a number of recommendations are provided, which create the opportunity of using the mandatory health insurance in private institutions, contracted by the National Health Insurance Company, which currently is limited due to the lack of a legal mechanism to allow the voluntary contribution of the patient to the costs sharing of health services. Also, it is mentioned the need to demonopolize certain medical services, as oncology- related treatments.

Stimulating competition between private and public health services providers

For many years an unfair treatment of the private and public service providers within the national health system has been in place, especially from the perspective of accessing health services provided by the private institutions to the patients insured by the National Health Insurance Company (NHIC).

Even if the public health expenses are continuously growing and in 2017 it is planned for them to go over 6 billion MDL, only up to 5% are used to contract private health institutions. These sources are discretely distributed between the NHIC contracted private providers, they contribute in a limited manner to the development of loyal competition and to the strengthening of the quality and of the efficiency of the health sector services, first of all to the detriment of the citizens of the Republic of Moldova.

It is recommended:

- To promote loyal competition among private and public health services providers and observe the principle of equality, according to which all the participants to the mandatory health insurance system are provided with a non-discriminatory approach regarding the rights and obligations provided for by the law.
- To promote certain criteria, consulted with the private and public health institutions, based on the quality and efficiency indicators of the provided services, to contract private and public health institutions by the National Health Insurance Company.
- To facilitate the access of the patient from the mandatory health insurance system to qualitative health services, also from the private sector.

Respect the free choice right of patients within the mandatory health insurance system

The Constitution of the Republic of Moldova guarantees its citizens the right to health care. The citizens of the Republic of Moldova, having the right to choose the medical doctor, the health institution and the form of health care, cannot use the mandatory health insurance, when freely choosing the service or the service provider.

Currently, patients cannot share the costs and cannot use the mandatory health insurance for the selected services, their rights being thus violated.

It is required:

- To promote and protect the rights of the patients to select freely the health institution by developing and legalizing a mechanism which would allow the sharing of costs with the state health insurer, the National Health Insurance Company (NHIC);

The legalization and the institutionalization of the mechanism of health services costs sharing between the insurer and the insured represents a frequent practice in many developed countries, which could contribute to the solving of the insufficient health sector funds problem, support sustainability and legalize the informal payments, which discredit the health system from the Republic of Moldova, and contribute at the same time to the national public budget through taxes and fees afferent to the legally cashed in payments.

Demonopolize the oncology sector

The participation of private health institutions in the provision of health services to patients suffering of oncologic diseases is forbidden by law in the Republic of Moldova, unlike in other states, including neighboring ones.

Cancer related statistics in the Republic of Moldova are alarming. Mortality caused by cancer is on the rise, being the second most frequent disease, after cardiovascular diseases, while in most European countries it continues to decrease.

It is required:

- To apply the needed amendments to the legislation in effect in the Republic of Moldova to demonopolize the oncology sector by amending art.411 of the Health Care Law no.411-XIII of 28 March 1995.

ENERGY

For a country as the Republic of Moldova, lacking traditional energy resources, expanding the energy supply offer represents a strategic task of the state. The current limitation of the access to traditional and alternative energy sources has severe consequences for companies and for the population in general as well. The new chapter - Energy - from the White Book 2017, mentions the need to stimulate competition and economic activity to develop a "green economy", and thus, to contribute to the growth of energy efficiency and the efficiency of using all resources, to the advancement of renewable energy sources, job creation, and reduction of carbon emissions and environmental pollution.

The procedure of exchanging the electricity supplier

In the context of transposing a number of European Community directives on electricity to the national legislation, in 2013 the National Energy Regulatory Authority (NERA) Regulation on the procedure of exchanging the electricity supplier by eligible consumers (Decision 534) was drafted and approved. According to relevant provisions, and based on the current legal framework amendment tendencies, consumers have the right to purchase electricity from any supplier or producer, including foreign ones, without being forced to sign bilateral electricity procurement contracts produced by thermal power stations from the Republic of Moldova.

However, the legislation in effect makes the procurement of electric power from the Central Supplier, produced by the sources regulated by the Agency, mandatory.

The electric power share, planned to be supplied to Eligible Consumers by the Agency regulated sources, is annually approved by the Agency based on the market share, determined on the electric power consumption *(p.2 o of the Decision on the approval of Electric Power Market Regulation no. 212/2015 of 09.10.2015)*.

It is proposed:
To ensure a competitive structure of electricity costs by excluding the binding provision of giving to eligible consumers the right (i) to choose independently and (ii) to conclude electricity procurement contracts for the desired volume and at the agreed price, without any restrictions, and from any supplier or producer, foreign or local.

Achieving the interconnectivity of electricity transmission networks from the Republic of Moldova and Romania in order to integrate the Republic of Moldova in the European Union electricity market. Achieving this technical objective will allow the Republic of Moldova to access the European market of electricity, using the European Network of Transmission System Operators for Electricity.

In order to achieve this objective it is necessary for the state authorities institutions to set clear terms for the execution of each stage of interconnection works: studies, assessments, design, building, and to determine the financing sources.

Co-incineration/co-processing of waste

Together with the key amendments made to Law no. 209 of July 29, 2016 on waste, approved in December 2016, the waste co-incineration method was excluded.

At the national level, various medical waste, expired pharmaceutical products, tires, used oils, etc. are annually generated and burnt in open aer, without any legal regulations negatively influencing the environment.

In the European Union, co-incineration is considered to be recycling operation with recovering the energy, which also represents a priority for the energy sector, as the waste is being used as an alternative energy resource.

The amendment of the current legislation is needed for in order to receive the permission to implement the waste co-incineration/co-processing system, this being one of the optimal solutions, beneficial for environment as well.

Thus, it is suggested to amend Law no. 2009 of July 29 2016 on waste (the Official Gazette of the Republic of Moldova, 2016, no. 459–471, art. 916), and namely, to review art. 17, art. 25 par. (14) and Annex no. 2 of the law.

The proposed amendments are conditioned by the need of introducing a new waste management system to comply with the waste hierarchy, being part of a complex package of new environment protection regulations. The improvement of the current waste management system includes the transposition of Directive-Framework on waste, which sets the regulatory framework on waste management in order to protect the health of the population and the environment; taking into consideration the provisions of around nine EU regulations.

Accepting co-incineration, subject to an on-line scrutiny of emissions, represents a secure alternative of treatment and revaluation of waste, used in most countries, including the ECE, and which is part of the international environmental law.

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