

# 2018 BUSINESS CHALLENGES REPORT

AmCham Moldova



**AmCham** Moldova  
fighting for your business



2018



The American Chamber of Commerce in Moldova comprises a wide range of companies representing more than 30 industries with investments coming from 22 countries. This allows AmCham to gather data on the best business regulatory practices worldwide, to process the information in the local context, and to afterwards come up with recommendations to address the challenges of the business community.

AmCham Moldova's advocacy agenda is shaped by the concerns and needs of our member companies, strongly correlated to the EU-Moldova Association Agreement Implementation Agenda.

Advocacy activities are performed mainly within two flows: (i) bringing investment and business issues into the spotlight of the Moldovan public authorities; and (ii) coming up with commentaries and recommendations on the drafts of business regulations proposed for public consultations.

Through committees' work and individual member meetings, AmCham Moldova develops policy positions on issues affecting the business community at large.

**The 2018 Business Challenges Report** is aimed at inventorying the main constraints that foreign and domestic enterprises are reporting. The issues highlighted in this report constitute key priorities within the current AmCham advocacy agenda.



**I. INVESTMENT CLIMATE FUNDAMENTALS**

- **Corruption**
- **Rule of law**
- **Shadow economy**
- **Business regulatory environment predictability**
- **Rapid pace of reform**
- **Infrastructure**
- **Labor and consumer market**

**II. BUSINESS FUNDAMENTALS**

- **Regulatory policy**
- **Tax policy**
- **Labor market and education regulations**
- **Competition policy**
- **Customs policy**
- **Personal data protection policy**
- **Environmental policy**

**III. SECTOR PERSPECTIVE**

- **Financial**
  - Banking
  - Insurance
  - Microfinance
  - Leasing
- **Healthcare**
  - Pharma
  - Private healthcare services
- **Food safety**



## I. INVESTMENT CLIMATE FUNDAMENTALS

The strong consensus among the private sector is that **corruption** remains to be a widespread phenomenon infiltrated in all public authorities delivering services to business. It shatters the **rule of law** and thus hampers the effective application of Moldovan laws, and fails to protect the legitimate rights of entrepreneurs. It also destroys the level playing field both within and across industries, by inequitable application of the law to all companies.

A particular issue is the deficient tax collection within the **shadow economy**. Other than the harmful effect on the state budget, this practice encourages unfair competition within the business community resulting in burdening clean companies and investors to pay a disproportionately high amount of taxes.

**Business regulatory environment predictability** is of a paramount importance for attracting investment, but also to maintain existing investment in the long run. The frequent by-passing of consultations with stakeholders when it comes to amending business regulatory acts, diminishes investors' trust in the capacity of Parliament to conduct effective and efficient consultative processes.

On the other hand, the **rapid pace of reforms**, dictated by the EU Association Agenda, requires business to allocate human and capital resources to adjust their business operations in compliance with the new requirements, rather than focus on growth.

These deficiencies are amplified by an inadequate physical **infrastructure**. Poor roads and difficult access to public utilities are being identified across a range of industries, especially those involved in manufacturing and cross-border trade. Although the density of roads is considered acceptable, their quality is still poor, resulting in



significant transport repair costs and delays in deliveries. In addition, a deficient customs' posts infrastructure is also considered as an obstacle for streamlining external trade. The UNCTAD "Investment Policy Review" states that the poor state of roads implies additional costs for users amounting to approximately \$213 million annually.

**Labor and consumer market.** The consistent emigration trend mixed with a falling birth rate creates a unique challenge on the near-term ability to find skilled employees. The issue is amplified within the IT sector, where the industry faces a challenge to find skilled employees with requisite English fluency. The problem is even more acute in rural parts of the country.

These phenomena also have a negative impact on long-term investment decisions when it comes to businesses aimed at servicing the domestic market.



## II. BUSINESS FUNDAMENTALS

- **Regulatory policy**

The main constraints to private sector growth stem from difficulties posed by business regulations.

Unfortunately, **many important pieces of legislation are not preceded by genuine impact analysis**, based on statistical data and projections, despite a specific legal requirement in this regard.

Moreover, companies are struggling with meeting over-bureaucratic administrative requirements that do not derive from officially published normative acts, but are nevertheless enforced by public authorities.

The existence of cumbersome, and, at times, unpredictable and non-transparent procedures of getting permits, authorizations, licenses, and other documents required by Moldovan authorities for an enterprise to do business, imposes additional pressure on businesses. Therefore, AmCham continuously strives to improve and simplify the legal framework governing the issuance of permissive documents, by militating for one-stop shop procedures, the digitalization of public services, and elimination of redundant or duplicative authorizations.

- **Tax policy**

AmCham members consider it crucial to streamline, systematize and harmonize tax legislation through the development and adoption of a new Tax Code.

The AmCham Tax Committee stays actively involved with the Ministry of Finance for the yearly review of Tax & Customs Policy to ensure predictability, transparency, safety, and clarity of various business operations taxation.



AmCham is an active promoter of policy initiatives that aims at improving the Moldovan business climate for job creation and economic growth. The gradual transposition of EU Directives on VAT offers businesses a dose of comfort and predictability in adjusting their internal processes. Businesses also highly welcome the Government's efforts to simplify reporting procedures, and insist on the further optimization of the circulation of invoices.

In the summer of 2018, the Parliament approved a series of legislative packages regarding the single quota income tax, as well as several fiscal incentives targeting HORECA and the taxi industry, without any public consultations. Although it has an immediate positive impact on the private sector, without exercising a proper tax control on economic agents, concerns are shared, that in the long-term the Government may eliminate some other tax incentives.

- **Labor market regulations**

AmCham members continue to signal the need to modernize labor legislation, reduce the bureaucratic burden imposed on employers, and transpose best international practices.

The main problems include scarcity of qualified human resources on the national labor market linked to growing migration trends and the slow adaptability of education programs available in state institutions.

The degree of flexibility is also limited, given the lack of national regulations on temporary work agencies that would allow companies to cover their human resources needs during activity peaks by means of contracting temporary workers pre-selected and employed by the temporary work agency.



In the long run, Moldova's position in international investment rankings is affected by relatively rigid regulations on contract termination, allowances for layoff and reduction, long parental leaves, lack of regulation on non-compete clauses, and limited grounds on the use of determined duration contracts.

AmCham promotes the principle that legislative initiatives on described labor matters or even a new labor code should be balanced against the needs of both parties to the employment agreements, and based on best international practices.

- **Competition policy**

The risks implied by non-compliance to competition requirements may be very high. Thus, a non-compliant company may be subject to severe fines, the payment of damages incurred by their competitors or customers due to anti-competitive behavior, or may be exposed to contractual risk, as most anti-competitive agreements are illegal and therefore unenforceable. Also, not to be ignored is the reputation risk which usually surrounds any major competition case. Therefore, more and more businesses seek to elaborate and implement internal policies on competition compliance, that would enable them to duly organize their business in compliance to competition rules, as well as to react in due manner in case of any potentially harmful behavior from a competition point of view.

It has become clear that in order to maintain and carry out further positive developments, a market economy characterized by healthy competition must be strengthened. The adjustment of the competition law and policy of the Republic of Moldova to conform with EU standards is a complicated and long-lasting process, which must be adapted to local realities. While it is difficult to build a fully functional and modern legal system for competition overnight, some very





important steps have already been taken and AmCham was part of this effort.

For the immediate future, the Competition Council must increase its technical capacity and fortify inter-institutional coordination. The competition culture must also be improved within the business community and the public at large. Additional in-depth training courses for the legal professions and business representatives are needed and the training curriculum in higher education institutions should focus more on promoting a competitive environment.

AmCham is doing both – not only systematically reviewing competition legislation and comments on newly elaborated normative acts, but also delivering a training course to business representatives to improve compliance to competition requirements.

- **Customs policy**

Customs regulation issues continue to be on the frontline of the advocacy agenda of companies involved in cross border trade. Improper correlation between customs fines and damage caused, generates the strongest concerns of the business community.

*Export*

Although export customs procedures are considered to be more openly facilitated, companies experience delays and over-bureaucratization in the issuance process of certificates of origin. AEO status is not fully operational due to the lack of designated lines, and proper management of the trucks queues. The regulatory requirements and therefore accessory costs on export in postal consignments, discourage local manufacturers from actively promoting their products on foreign markets.



### *Import*

Among the main issues that importers complain about is the practice of applying an unjustified increase in customs value to imported goods by using reference values. This particularly concerns the invoice prices of imported goods and transportation costs. Non-acceptance of certificates of origin is another significant procedural obstacle related to the import of goods. Lack of proper regulations for customs terminals have a significant impact on costs related to the customs clearance procedure.

Currently the Customs Service is developing a new Customs Code by transposing the Union Customs Code; the new law is planned to enter into force in 2020.

- **Personal data protection policy**

Following a series of non-transparent attempts of the National Centre for Personal Data Protection on promoting a series of amendments to the law, a new draft of the law on personal data protection aimed at implementing the latest EU Regulation in this matter (GDPR) is under public consultations.

Currently, AmCham is actively involved in discussions with the Center on the new legislative initiative, as well as conducting a series of informative sessions aimed at raising awareness between businesses on the compliance peculiarities of the upcoming regulatory framework.

- **Environmental policy**

Although historically environmental legislation has not been considered as a concern for business, in the light of state commitments to implement the EU environmental law, principally new obligations are imposed on the private sector.



The implementation of extended producer's responsibility in packaging waste and electronic equipment waste dimensions generates substantial challenges for businesses, as it requires companies to allocate capital in order to establish infrastructure for waste collection and recycling.

Changing the rules of the game while still playing is also a common practice in this sector. Recent increases of costs for water sewage services led to the detection by AmCham of serious deficiencies of the regulatory framework such as the double-payment for discharges into the sewage system. The unexpected amendments of the provisions governing the tax on packages created significant losses for importers and some local producers, and put the existence of certain drugs on the domestic market at risk.

### **Foreign trade policy (with the USA)**

The Republic of Moldova shapes its foreign trade policy through free trade agreement. Businesses currently benefit from preferential import duty treatment with EU member state countries (via EU – Moldova Association Agreement), CIS countries, and CEFTA countries. Moldova benefits from a bilateral free trade agreement with Turkey, as well as having launched negotiations for the signing of another one with China. This trend makes US originated products less competitive on the Moldovan market, that is attested in the decreasing flow of US exports to Moldova, especially when it comes to delivering high value agricultural and IT equipment.

As the Moldovan organic products sector is continuously growing, representing a high value agriculture segment, some industry players may play unethically to get commercial benefits from the increasing demand of organic products on the US market. In order to avoid any ban of Moldovan organic products on the US market a stronger cooperation between local and US competent authorities is saluted.



### III. SECTOR PERSPECTIVE

- **Financial Sector**

- **Banking**

Since the revealing of the one billion-bank fraud, the banking sector is undergoing a fundamental reform process. The jump from BASEL I to BASEL III regulations, combined with on the one hand harsher legislation on anti-money laundering and combating the financing of terrorism and, on the other hand, the strict personal data protection law, negatively impact banks' activities. This fact is amplified by limited possibilities to grant long-term credits, as well as by the long-term resources deficit.

Following the adoption of the new Law on banking activity, the Central bank is at full speed developing new subsidiary acts. Although the National Bank of Moldova formally follows the provisions of the law on transparency in the decision-making process by publishing the draft acts, it rather seldomly launches meetings on these draft acts, and usually does not develop the table of objections and commentaries, discouraging industries to contribute to the improvement of the regulations.

- **Insurance**

The insurance sector is underdeveloped and continues to fight against unfair competition. As a series of insurance companies experience difficulties in complying with solvability requirements, there is a permanent risk on the country's membership in the international system of cross border motor liability insurance ("Green Card"). Due to ongoing turbulences on the financial market, the Republic of Moldova has remained under special monitoring practically for more than 20 years and risks to be excluded in case it cannot prove its financial stability as a reliable international partner.



Although there are commitments to implement the Solvency II measures (EU regulations), some action has already been taken to restore and strengthen the capacity of the regulator. However, there remains in place further concerns regarding the transposition into national legislation of the regulations on eligibility criteria for senior management, compliance with the price policy regulations for compulsory insurance products, prudential rules, corporate governance within insurance companies and asset quality covering insurance reserves.

- **Non-banking lending and leasing industry**

The new regulatory framework for non-bank credit organizations is characterized by a semi-prudential regime and grants the NCFM with an active supervisory role. It provides a stronger legal regime covering lending and leasing operations, that are anticipated to diminish unethical practices from bad-faith clients, as well as creating the basis for assuring a level playing field between the banking and non-banking sectors.

The implementation regulations proposed for public consultations by NCFM remain to be of poor quality; thus, AmCham is dedicating time and effort to bring them in line with the law, as well as to improve the legislative technique, thus excluding ambiguities.

• **Healthcare**

Although important amendments to the medicines' pricing and public procurement systems have been approved by the Government in 2018, the state regulation of the pharmaceutical sector is still lagging behind.

The absence of governmental regulation on ethical drug promotion creates leeway for abusive practices on the market since there is no framework to govern the interaction between pharmaceutical companies and healthcare professionals.



The constant supply of safe medicines to consumers is jeopardized by the vaguely regulated and deficient mechanism for the reimbursement of drugs. Although the budget for reimbursed medicines is constantly increased by the Government, the pervasive lack of transparency and procedural breaches on behalf of the National Health Insurance Company have generated a backlog of applications from manufacturers that had not been reviewed and duly included in the list of reimbursed drugs.

Moreover, there is no regulated mechanism for price-volume negotiations on reimbursed medicines available on the market, and necessary official information on access to medication is not made publicly available. This renders unpredictability to the operation of pharmaceutical companies in Moldova.

AmCham continues to address the described matters through consistent dialogue with the authorities, following the common goal to ensure the population with proper access to qualitative and approved medication.

- **Food safety regulations**

Within the past few years, food safety legislation has undergone an upgrade to EU standards by approximating the regulatory system to that of the European Union. Nevertheless, proper infrastructure to apply the new set of regulations is still missing on certain segments. Adequate laboratory facilities and a system for collecting and processing expired food products needs to be put in place before Moldovan meat and milk producers are allowed to export their goods to the EU.

On the other hand, the import of goods of animal origin is hindered by an inappropriate mechanism for the recognition of equivalence of sanitary and veterinary measures.



Thus, lack of harmonization is still being reported as an obstacle to trade by the business community, requiring permanent AmCham involvement. Besides this, AmCham strives to identify repetitive certifications imposed by ANSA (such as the Sanitary Veterinary Certificate (form 2) and advocate for its exclusion, thus optimizing the number of bureaucratic procedures carried out by companies.