

# 2017 BUSINESS CHALLENGES REPORT

AmCham Moldova



**AmCham** Moldova  
fighting for your business



2017

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 afterwards to come up with recommendations to address the challenges of the business community.

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

The advocacy activities are performed mainly within two flows: (i) bringing investment and business issues into the spotlight of the Moldovan public authorities; (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.

**2017 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 AmCham current advocacy agenda.



## **I. INVESTMENT CLIMATE FUNDAMENTALS**

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

## **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**
- **Energy**

## 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 investments, but also to maintain existing investments in the long run. Actions, such as: last minute decisions on postponement of entrance into force of the law on renewable energy sources, the exclusion of the ceiling for the individual contribution to social insurance, exclusion of key provisions from the waste management legislation, diminish investors' trust in national public authorities.

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.

## 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, electronic services, and elimination of redundant or duplicative authorizations.

- **Tax policy**

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

AmCham Tax Committee stays actively involved with Ministry of Finance for 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 Moldovan business climate for job creation and economic growth. Thus, AmCham saluted and supported lately: i) the initiative of implementation in Moldova of meal tickets; ii) the implementation of individual anticipated fiscal solution; iii) special taxation regime for unqualified seasonal workers; iv) implementation of deferred customs duties payment; and, of course AmCham saluted and contributed to Government efforts to simplify reporting procedures.

In the same time, AmCham membership is highly concerned about and actively opposes to such initiatives as: i) exclusion of ceiling for individual contribution for social insurance; ii) increase of withdrawal tax on goods procured from natural persons; iii) unexpected increase of the tax imposed on various packages; iv) latest initiative to impose a tax of 1,5% on all services rendered by communication companies.

- **Labor market and education 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 (i) excessively long parental leaves, (ii) extensive involvement from labor unions in the activity of enterprises, (iii) unduly rigid grounds for contract termination, (iv) restrictions on determined duration contracts, (v) prohibition on trial periods for young specialists. The administrative burden imposed on employers is amplified by the large amount of mandatory documentation and reporting obligations, which need to be optimized for purposes of eliminating redundant or duplicative requirements.

The negative effects of such an interventionist regulatory approach are exacerbated by the current situation on the national labor market, in particular the scarcity of qualified human resources.

Although these are long-standing issues, AmCham's efforts on labor reform have intensified due to the openness of the Government to, on one hand, amend the existing labor legislation, and on the other hand, to draft a new Labor Code as a long-term objective.

A draft law amending the national Labor Code had been finally approved by the Parliament this summer and AmCham had been an active participant of the whole afferent legislative process.

Besides the effort of improving the Labor Code, the common effort of the Government and business community was to elaborate some amendments to the **legislation on migration**. Thus, through the proposed amendments the procedures and terms of granting the right to work and stay had been revised and optimized. This also simplified the list of necessary documents to obtain the above-mentioned rights.

- **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, payment of damages incurred by their competitors or customers due to anti-competitive behavior, or may be exposed to contractual risk, as most of anti-competitive agreements are illegal and therefore unenforceable. Not to be ignored also 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 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 –systematically reviews competition legislation and comments on newly elaborated normative acts, but also delivers a training course to business representatives to improve compliance to competition requirements.

- **Customs policy**

Customs regulation issues continue to be on the frontline of advocacy agenda of the 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 lack of designated lines, and proper management of the trucks queues.

*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 the imported goods and the transportation costs. Non-acceptance of certificates of origin is another significant procedural obstacle related to 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**

The draft amendments to the legislation on Personal Data Protection, which set high fines for businesses (up to 5,000,000 MDL) and a number of regulatory requirements, could have had significant unintended impacts on business activity. AmCham alerted the Prime Minister and Parliament about the draft legislation submitted to the Parliament and the need to revise and consult it with major stakeholders. Following negotiations and debates on the legislative amendments, AmCham contributed to the recalling of the law from the Parliament for further consultations with the business community.

Currently, AmCham is being actively involved in discussions with the Center on a series of very important amendments to the Law on Personal Data Protection.

- **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 an 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 detecting 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.

### 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 the BASEL I to BASEL III regulations, combined with on 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 the banks' activities. This fact is amplified by limited possibilities to grant long-term credits, as well as by the long-term resources deficit.

- **Insurance**

The insurance sector is underdeveloped and continues to fight against unfair competition. This competition is characterized in particular by the peculiarities of joint liability of the insurers for claims payments under the Green Card insurance scheme, the use by insurers of confusing company names that are easily mistaken for world-renowned insurance companies and the neglect of regulations on price policy on compulsory insurance and prudential rules.

Although there are commitments to implement the Solvency II measures, some action has already been taken to restore and strengthen the capacity of the regulator. Those regarding the transparency of shareholder structures are expected to enter into force in 2018; however, there remain 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.

- **Microfinance**

The microfinance industry is characterized by a non-prudential regulatory framework that encouraged the steady development of the non-banking credit market, thus facilitating access to finance for both non-bankable households and enterprises. However, the positive trend is hindered by a poor legal regime covering lending operations, which provides leeway for unethical practices from bad-faith clients.

Currently a new law on non-banking credit organizations is under public consultations; it imposes stricter regulations towards shareholders and administrators, as well as sets capital requirements.

- **Leasing**

The development of the leasing market is significantly hindered by the fact that the sector does not benefit from the same facilities as those available to the banking and microfinance sectors, such as import facilities, deductibility, subsidies, etc. Although the institutional regulation of leasing companies is generally liberal, the market recovery from the 2008 crisis has been slowed down by the foggy legal framework governing the contractual aspects and frequent court litigations. All these factors combined have taken their toll, and as a result, the Moldovan leasing market has developed a strong focus on auto market products. Moreover, a current trend is the migration of leasing companies towards the lending services spectrum.

- **Healthcare**

- **Pharmaceutical Legislation**

The state regulation of the pharma sector is still not meeting the requirements of transparency, predictability and dialogue between public authorities and civil society. Although a comprehensive Roadmap on pharmaceutical sector policies has been approved by the current Government, the implementation process is slow and inefficient.

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

The constant supply of drugs to the national market is jeopardized by the vaguely regulated and deficient mechanism for reimbursement of medicines from public funds. Another problem in this regard consists in the disproportionately high penalties for delays, imposed on suppliers of pharmaceutical products and medical devices under public procurement contracts, making business reluctant to engage in the public acquisition system.

AmCham continues to address these matters through consistent position papers and meetings with authorities, following the common goal to ensure a population with proper access to qualitatively approved medication.

- **Private healthcare services**

One of the significant constraints affecting today's healthcare system is the lack of a legal framework that would enable patients to benefit from state mandatory medical insurance in private hospitals that charge higher prices for insurance-covered services. In this, the national legislation does not allow patients to share the cost of a medical service by paying directly to the provider the part of the price that exceeds the state approved fee, while still benefiting from the insurance funds for the remainder of the cost.

- **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, a 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 of expired food products need to be put in place before Moldovan meat and milk producers are allowed to export their goods in EU.

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

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

- **Energy**

Without holding necessary public talks and consulting economic operators, the public authorities decided to postpone, until the end of 2017, the entry into force of the Law on Renewable Energy, the reason being the lack of proper secondary legislation, thus interfering brutally and endangering the investments and legitimate confidence of entrepreneurs,

The Law on renewable energy is still in its infancy and it will take the Moldovan authorities doing their best to see serious energy players from the EU coming in. Some of the open questions left are: What will the capped price approved by the Government be? How will the awarded prices and approved tariffs be adjusted by ANRE? What will the quality of the governmental regulations to be adopted in accordance with Law? The answers to these questions are still to be adopted and applied in practice.