



**REPUBLIC OF
MOLDOVA**

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Due to its regional position between the EU and the Ukraine and its attractive investment conditions, the Republic of Moldova, also called Moldavia, is an interesting location for foreign companies. The Republic of Moldova is a parliamentary democracy. In spite of continuing internal political disputes and the unresolved situation with Transnistria, Moldovan economic policy is stable and friendly to investors. The Moldovan currency is the Leu. The country has a very small economy dependent on agriculture, whereby many Moldovans try to emigrate to the EU. After entry to the WTO and intensive negotiations with the EU, Moldova has clearly decided to follow the path to integration in the EU. As a result, Moldova benefits from the granted trading advantages of being able to unilaterally export numerous goods from Moldova to the EU without customs duties.

Moldova also offers investors excellent possibilities through the provision of numerous free trade zones and favourable tax rates such as a flat tax rate for companies of 12 %. Further on-going negotiations with the EU will cover the elimination of duties and non-tariff trade barriers for goods and other trading aspects such as services, investments, public procurement, competition and sustainable development which means that in future the business prospects for German companies should continue to improve.

Legal forms of business and founding a company

Moldovan corporate law is similar to German law. The legal forms which exist are comparable with the legal forms known in Germany. Although business partnerships also exist, joint stock companies are most common and here especially the S.R.L which is comparable to the German GmbH.

Joint stock companies

Societate cu Raspundere Limitata (S.R.L)

The form of S.R.L mostly chosen by foreign investors is a joint stock company comparable to a German GmbH. As such it is able to conclude contracts in its own name, own property, acquire rights and may be a party to legal proceedings. The personal liability of the shareholders is limited to the extent to which the shareholding owned by the shareholder is not fully paid up, whereby the liability is limited to the outstanding amount. Furthermore, the personal liability for liabilities of the company is excluded. The company acts as legal entity through its organs (managing director und shareholders' meeting). The operative business is managed by one or more managing directors who also represent the company externally. There is a difference to German law with regard to the founding phase. The S.R.L cannot be founded as a "sole trader" when the founder also only has one shareholder. In order to avoid problems

it must also subsequently be observed that the number of shareholders is sufficient for this requirement. In contrast to German law, a company with only one shareholder is not possible. The registration begins with the reservation of a company name and the submission of the foundation document with the registration authorities. In principle, the law does not define a minimum level of share capital. However, the registration process checks whether the registered capital is reasonable for the intended economic activity and can therefore be questioned.

Societate pe actiuni (S.A.)

In contrast the S.A. is based on the German AG and designed for a wide public distribution of shares. It is comparable to a German joint stock company. The transactions of the S.A. are managed by an executive board. If the number of shareholders exceeds 50, a supervisory board is obligatory. The executive board members represent the company also externally. The founding of the S.A. can be made by a natural person or a legal entity, whereby these need not be of Moldovan nationality. The company acquires its legal existence with the conclusion of the registration process. In comparison to an S.R.L there are increased obligations with regard to the balance sheet and financial accounting.

Business partnerships

Business partnerships are in principle possible, e.g. in the form of the open trading company, the trading company with limited liability (corresponds to the GmbH & Co KG) and the cooperative. Basically a number of partners bind themselves contractually to realise a certain purpose and promote this by contributions in the form of money, payment in kind or services. Unless otherwise regulated in a memorandum of association all contributions are basically valid as being equal. The shareholders must be natural persons. The company purpose is not subject to further legal requirements and the founding is also subject to limited formalities without an obligation of disclosure. However, registration with the Moldovan public registration office is required.

One difference is that in Moldova business partnerships in terms of tax are treated in the same way as joint stock companies and are subject to corporation tax.

Joint ventures

In Moldova legal entities are deemed to be foreign if at least half of the company capital is in foreign hands. However, there is a ban on discrimination for "foreign" investments which means that the question of how the joint venture is developed is of secondary importance.

Foreign exchange law

Foreign exchange trading is controlled by the national bank of Moldova. The transfer volume from and to Moldova is not restricted. Natural persons and legal entities may maintain accounts and foreign exchange accounts with registered banks.

Payments in a foreign currency between Moldovan residents in Moldova are not allowed. Legal entities resident in Moldova are only entitled to acquire foreign currencies for special legal purposes (e.g. external payments to non-residents, travel expenses, repayments on loans in a foreign currency, etc.). The acquired foreign currency must only be maintained in current accounts (not in deposit accounts) for a maximum of seven working days.

After that the foreign currency not used for payments must be converted back to MDL.

Payments and transfers between Moldovan residents and non-residents can be made in Moldovan Lei or in a foreign currency.

The following payments may only be made in Moldovan Lei:

- › Payments in connection with trade in goods and/or performance of services in shops, restaurants, hotels, petrol stations or other similar businesses in Moldova but not including businesses with international traffic operations, duty-free businesses in national airports, on aeroplanes with international routes or at international points for crossing the Moldovan border;
- › Payments in connection with the execution of municipal public services and other services for buildings and premises by legal entities who are resident in Moldova;
- › Payments in connection with trade and transport documents by representatives of transport companies who are not resident in Moldova;
- › Wage payments and payments of other remuneration by employers who are resident in Moldovan to employees who are not resident in Moldovan for work carried out in Moldova.

Non-residents may transfer amounts in foreign currency abroad which they have previously received from other non-residents or received in the course of their usual business operations in Moldova.

Moldovan and foreign legal entities are only entitled to receive and make payments and transfers in a foreign currency via their bank accounts. The law also foresees some situations when these legal entities can use cash to fulfil transactions in a foreign currency. In that case the law stipulates that the amount in the foreign currency which a legal entity in Moldova can receive in cash for sold goods or performed services must not exceed 2,000 euros per day.

Liquidation of the company

The S.R.L is dissolved by a time period fixed in advance, by the establishing of insolvency or by a corresponding shareholders' resolution. Furthermore, it can be ordered by a court of law if the registration authority in formal proceedings cannot determine a business activity of the company or if there is an infringement of the prohibition of a "two-layer structure".

The same is valid for the S.A. But the company remains in existence and capable of acting for the duration of the liquidation phase under the management of a liquidator, whereby it is important before liquidation takes place that an obligatory tax and social security audit is carried out. The duration of liquidation can even last longer than a year.

Real estate and acquisition of land

According to Moldovan law, it is in principle possible for foreigners – natural persons and legal entities – to acquire real estate in Moldova. There are, however, exceptions to this principle. For example, it is not possible for a foreign natural person to acquire agricultural and forestry areas. This can only be done by the state, a Moldovan citizen and Moldovan companies without foreign participation. Foreigners can, however, lease agricultural land at any time.

Licensing

In Moldova the pursuit of certain types of activity require a licence. The complete list of these activities is stipulated by law. There are currently 41 types of activity which require a licence including but not limited to auditing, construction of buildings and (or) engineering plant and networks, reconstruction, reinforcement, restoration, banking and currency exchange activity, insurance, activity of professional participants in the securities market and others.

For most of the activity types licences are issued by the state licence office (Camera Licentierii de Stat). For regulated markets such as banks, insurance, energy and communication licences are issued by the respective regulatory authorities.

Labour law and dismissal protection

Due to a strong exodus of young people to Western Europe, the Moldovan labour market unfortunately does not have a sufficient supply of human resources in all fields and lines of business especially for skilled workers and management staff. However, in comparison to the European standard labour costs can still be described as low. According to the regulations of the labour code, the regular working time must not exceed 8 hours a day and 40 hours in the

week. In addition to Moldovan public holidays, the employee must be released from work for one day in the week. The claim to holidays for recuperation amounts to at least 28 days per year. Overtime hours on normal working days are remunerated with the factor of 1.5 of the normal rate, work on public holidays with a factor of 2 and overtime on public holidays with a factor of 0.5.

The employment of workers who are not of Moldovan nationality basically depends on the issue of a work permit. Applicants must be in possession of a special visa or a residence permit. A decisive criterion for the issue of a work permit is the possibility of filling the position with a Moldovan employee. There are usually no complications regarding the filling of management posts.

An employment relationship can be ended on the initiative of one of the parties and under certain circumstances regardless of the will of the parties.

Notice of termination is only permissible under certain conditions which are strictly regulated by law, e.g. a lack of qualification for this position, non-compliance of regulations and requirements and legal restructuring of the employer. The notice of termination of an employee must be motivated and made according to legal procedures determined by law. On application of the dismissed employee, a notice of termination made without observation of the stipulated procedure could be interpreted by a court as a ground to rule that the employee be reinstated.

An employee is entitled to give notice of termination of the employment relationship with or without reasons with a period of notice of 14 calendar days.

Income tax

The income of resident and non-resident natural persons and legal entities in Moldova is subject to progressive income tax:

- › 7 % of the annual income which does not exceed 25,200 MDL (approx. 1,573 euros),
- › 18 % of the annual income above 25,200 MDL.

Income tax is withheld from the gross pay of an employee, whereby the gross pay includes the basic wage, remuneration for overtime hours, additional remuneration, rewards, bonuses and settlements for unused holidays and payments in the form of money or goods and other benefits received from the employer. Income tax is transferred by the employer to the tax office at the same time as the wages are paid.

Sales tax

The basic tax rate amounts to 20 %. The reduced tax rates of 8 %, 6 % and the zero tax rate are valid for delivery and import of certain categories of goods. The reduced tax rate of 8 % is mostly valid for bakery products, dairy products, medicines, sugar, plants and garden products. The reduced tax rate of 6 % is valid for imports and delivery of natural and liquid gas. The zero rate is in particular foreseen for export goods and services. Certain businesses are exempt from sales tax. An exemption means that the sales tax for such businesses is not withheld and that the input tax for such businesses cannot be deducted.

A company is obliged to register as subject to sales tax if within twelve consecutive months it has supplied goods or services to the value of MDL 600.000 (approx. 35,502 euros). A company is entitled to register itself as subject to sales tax when within twelve consecutive months it has supplied goods or services to the value of MDL 100,000 (approx. 5,917 euros).

Special economic zones

In Moldova a special economic zone is a certain part of the area of Moldova where Moldovan and foreign investors can carry out certain activities with certain tax concessions. Goods and services imported into a special economic zone from abroad or from the rest of the Republic of Moldova or exported to outside Moldova from the special economic zone or delivered within the special economic zone are taxed with the sales tax rate of 0 %.

Practical examples

Law

Background facts:

The German X GmbH operates a production facility in Moldova. The local partner would like to “modernise” the plant and requests a bank transfer of 4 million euros to be made from Germany. At the same time the X GmbH in Germany carries out restructuring through mergers and consolidation in the group. The partner is not informed in writing but only informed verbally on the fringe of the annual meeting that the “old” shareholder, the X GmbH no longer exists in the same form, but that there is a legal successor. All documents were written from a German perspective without consultation with local lawyers. However, the articles of association foresee that the partner must be notified in writing. The partner who at the same time is the managing director now acts as a sole shareholder and does not approve the changes to the register. He uses the money for his own purposes. He generates fictitious claims, opens insolvency proceedings and thus attempts to take “lawful” control of the whole company.

What can be done now?

First of all the application of the insolvency proceedings has to be contested. After that an application must be made for a special audit in order to clarify the fictitious claims. In parallel, the authorities must receive notification that no shareholder change has taken place but that the legal successor has stepped in.

What should one have done differently from the beginning?

If a German investor is not sufficiently able to look after a foreign company, it is first necessary to separate the company management and the financial accounting. After that a co-ordination of company documents must take place in order to take into account changes made to the register abroad.