

**THE COUNTRY****All Electoral Competitors Promise Moldova to Gain EU Associate Status within One to Four Years**

We wrote in our last issue that Moldova is to elect a new Parliament on 5 April 2009, and that the Parliament will choose our country's next President. More than 10 Moldovan political parties are actively competing for 101 Parliamentary mandates. Each party needs to acquire at least 6% of votes in order to be allowed to participate in the sharing of this wanted "Parliamentary pie". General public perception is that about eight parties are to watch for, but only 4 to 7 are likely to pass the necessary 6% threshold. What we find to be interesting is that all these eight parties make an electoral promise that Moldova will sign an association agreement with the EU somewhere in the next one to four years, and many promise that Moldovans will obtain visa-free travel in the EU in the next one to two years. An EU Association Agreement (AA) is a treaty between the EU and a non-EU country that creates a framework for co-operation between them. Areas frequently covered by such agreements include the development of political, trade, social, cultural and security links. The EU typically concludes AAs in exchange for commitments to political, economic, trade, or human rights reform in a country. In exchange, the country may be offered tariff-free access to some or all EU markets, visa-free entry to EU for its citizens, and financial or technical assistance. AAs have to be ratified by all the EU member states, which is a major challenge...

Chisinau International Airport to Spend EUR 45.5 Million IFI Credit Funds for Modernization and Development

On 26 February 2009 the Moldovan Cabinet of Ministers has approved an agreement in support to a total EUR 45.5 million financing package provided by the European Bank for Reconstruction and Development (EBRD) and European Investment Bank (EIB) for the modernization of the Chisinau International Airport. Four Turcan & Turcan lawyers have worked along the EBRD and EIB on the Moldovan legal aspects of this important financing transaction.

THE FIRM**Partner Octavian Cazac on Advisory Council of Supreme Court**

This February T&T partner Octavian Cazac, upon presentation of the Civil Law Chair of the Faculty of Law of the Moldova State University, was appointed member of the Scientific Advisory Council of the Supreme Court of Justice of the Republic of Moldova. Our entire team is very proud of this responsible appointment, as the role of this Scientific Advisory Council is to provide the Moldovan Supreme Court expert legal advice on the most difficult legal issues arising in the Moldovan legal system. In particular, its members provide opinions to judges in cornerstone cases appearing before the Supreme Court, as well as participate in the drafting of various "explanatory" decisions which serve as guidance for judges of lower courts on various areas of the law. Two working meetings of the new Council with Supreme Court judges have already been held in February 2009.

International Award and Recognition Nominations

In February 2009 Turcan & Turcan has received several nominations for international awards and other symbols of leadership reputation on the Moldovan legal market. We will report about each such event in the forthcoming issues of our Newsletter.

New Rules of Moldovan Stock Exchange Adopted

Foreigners Can Now Buy Moldovan Shares Traded on the Local Stock Exchange Directly in Foreign Currency Avoiding Conversion Costs and Currency Risks

On 20 February 2009 the National Financial Market Commission has enacted the Rules of the Moldovan Stock Exchange ("Rules") replacing the old rules adopted in 2000. This enactment is largely cosmetic and updates the rules to the changes in the securities legislation adopted along the last years. The Rules specifically clarify that joint stock companies, which, before 1 January 2008, had the status of closed-type joint stock companies, do not have to record their shares with the Moldovan Stock Exchange ("MSE") and those shares will be traded out of the MSE on condition that the charters of such companies specify that shareholders enjoy a right of first refusal in case of sale of shares by another shareholder. In such cases the transaction shall be carried out under the requirements of Article II paragraph (3) of the Law No.163-XVI dated 13 July 2007.

A novelty of the Rules is that they address and allow the situations where a non-Moldovan resident intends to purchase shares against hard currency, and not Moldovan Leu (MDL). For acquisition purposes the MDL value of such hard currency shall be determined according to the official rate of exchange enacted by the NBM, and shall be readjusted by the parties in case of fluctuations between the offer and closing dates. The old rules contemplated only transactions settled with MDL so that foreign investors had to convert their funds in MDL before purchasing shares on the MSE.

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Relevant Communication Markets and Providers with Significant Powers

The National Agency on Regulation of Electronic Communications and Information Technologies (the "NARECIT") has approved the Regulation on Identification and Analysis of Relevant Market of Electronic Communications and Determination of Network and/or Communication Services Providers with Significant Power on such Markets (the "Regulation"). This Regulation entered in force on 17 February 2009.

The Regulation represents the first normative act determining special competition rules to be applied onto a specific market in Moldova. In particular the Regulation is intended to define the mechanisms and criteria to be used when determining relevant communications markets and assessing the market power of providers on such markets.

The Regulation stipulates that the NARECIT shall analyze the identified relevant markets at least once every two years in order to determine whether effective competition exists on such markets. Also, the Regulation states that NARECIT shall carry out its regulatory powers in collaboration with the National Agency for Protection of Competition. Despite such collaboration, NARECIT shall remain legally responsible for directing and carrying out analysis of relevant communications markets and for identification of providers with significant powers on such markets.

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Some Regulatory Issues in Light of New Contraventions Code

The new Contraventions Code, which shall enter into force on 31 May 2009, will deprive certain regulatory bodies of their current regulatory powers to independently impose fines and other sanctions for contraventions provided by the Code. Thus, under the new Code, both the telecom regulator NARECIT and the energy regulator National Agency for Regulation of Energy (the "NARE") would only be able to ascertain the commission of certain contraventions. The reports on contraventions completed by the officers of NARECIT and NARE will be further sent to the courts that will decide on imposing fines and other sanctions. A possible positive aspect of this reform is that the proceedings should ideally become less biased, because of such involvement of courts as an independent party. However, given the large workload of the courts and lack of specific knowledge on often complex regulatory issues, in practice this could sometimes create uncertainty for the businesses in the early years of practicing under these new rules.

Under the new Code it will be possible to impose fines on legal entities and/or to suspend their activities for commission of certain contraventions provided by the Code. The minimum and maximum amounts of fines to be imposed on the manager (or other decision making person) of a legal entity or on the legal entity itself, are established for each specific contravention, but generally cannot exceed MDL 10,000 and cannot be lower than MDL 200. Another important novelty is that the new Code does not provide any contraventions in the areas of competition protection and the audiovisual activity. Unlike the old Code of Administrative Violations (1985), the new Code does not establish the right of the competition agency and of the Audiovisual Coordinating Council to impose any contraventional sanctions. Still, the two above-mentioned regulatory agencies will be able to impose regulatory sanctions under the special laws governing their activities (i.e. the Audiovisual Code (2006) and the Law Protection of Competition (2000)). However, such an approach could raise serious issues in practice, given the fact that these special laws do not provide sufficient procedural rules and safeguards in order to ensure fair and transparent procedures (e.g. there are no rules on the statute of limitations for regulatory breaches, and the Law on Protection of Competition does not provide for any clear rules and limits for the fines to be imposed by the competition agency).

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New Tariff Methodology for Renewable Energy

In February 2009, the NARE's Council of Administration passed the Methodology on Establishing, Approval and Application of Tariffs for Electricity produced from Renewable Sources of Energy and Bio-fuel (the "Methodology"). The Methodology establishes common principles for calculating tariffs for renewable energy sources, which will be valid for all electricity producers on this market. NARE will approve fixed tariffs for the electricity generated from renewable sources. As per NARE's comments, the Methodology will ensure establishing of adequate tariffs from the point of view of the state policy on renewable energy and will ensure recovery of all production costs and a reasonable level of return on investments. The methodology will be mandatory for the producers of bio-fuel and for the producers of electricity from renewable sources, which have generation capacities above 10kW and produce electricity for sale on the market. This Methodology will be valid for 15 years.

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Contraventions Related to Employment of Foreigners

Under the new Moldovan Contraventions Code, the employment of foreign citizens, including managers, of Moldovan companies without a work permit issued according to the applicable laws continues to be subject to contraventional penalty. Unlike the previous Code on Administrative Violations, the new Code imposes fines for such contraventions not only on the officers of the company, but also on the employing companies themselves. At the same time, the officers of a company may be subject to contraventional responsibility if they applied for and obtained a work permit for certain foreign workers, but subsequently failed to employ them. The authorities competent to examine contraventions related to the employment of foreigners are the police officers.

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New Labor Health and Safety Regulations and Sanctions for Breach

A new Law on Labor Health and Safety entered into force on 1 January 2009. To implement this law, on 12 February 2009 two new Government Regulations were enacted: (i) Regulation on the Manner of Organization of Labor Protection Activities and Prevention of Professional Risks and (ii) Framework Rules on Organization and Functioning of the Labor Health and Safety Committee. The new rules provide for minimum requirements in the area of labor protection (work safety) and prevention of professional risks within companies. These rules impose specific work safety steps which must be taken by employers, etc. Under the new Moldovan Contraventions Code, the violation of labor protection legislation is sanctioned. Violation of labor legislation, of labor hygiene and safety legislation, of other rules on labor protection shall be punished with fines in the amount of MDL 800 to MDL 1,000 applied to individuals, MDL 1,000 to MDL 1,500 – for company officers, and MDL 1,600 to MDL 2,400 – for legal entities. The sanctions are somewhat higher if these contraventions are found to have been committed in respect of working minors.

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New Rules for International and Domestic Commercial Arbitration and Mediation under Auspices of the Moldovan Chamber of Commerce

On 3 February 2009 the new Charter and Rules of the International Commercial Arbitration Court under the Moldovan Chamber of Commerce and Industry ("MCCI") were officially published.

For the first time separate procedural rules were established for:

- ◆ international commercial arbitration;
- ◆ domestic commercial arbitration; and
- ◆ commercial mediation.

A new fee was introduced – the filing fee: \$200 for international arbitration and mediation and MDL 1,000 for domestic arbitration and mediation. The filing fee is new and in addition to the arbitration and mediation fees that are dependant on the value of the dispute.

These documents will become effective on 1 April 2009 and will replace the now current 2001 regulations on MCCI international commercial arbitration.

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