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## Legal problems faced by small and medium-sized businesses in Tajikistan and recommendations to address them



In Tajikistan, the State Committee on Investment and State Property Management is currently working on the Program for the Development of the private sector for the period of 2021-2030, which will define the key directions for the state enhancement of the business environment, in particular in relation to small and medium-sized enterprises, by way of improving the regulatory environment, increasing business competencies, strengthening the business support infrastructure and improving access to financial resources.

Moreover, the President of Tajikistan signed the Program of Tax Administration for 2020-2025 and judicial reforms in the Republic of Tajikistan for 2019-2021, which includes several changes to improve the structure and strengthening activities in tax and judicial bodies, however, certain problems frequently arising among our clients remain open:

### **1. Lack of regulations on non-judicial means for settling economic disputes**

In our webinars, we divided tools for the resolution of economic disputes into judicial and non-judicial ones. In Tajikistan there are currently no laws regulating the non-judicial means for the settlement of disputes, however, we believe the environment is right and the need for such instruments exists. Particularly, the process of initiating legal claims in economic courts of Tajikistan is protracted, involves high state fees, and, something that is worth noting – may disrupt business relations, while mediation as an alternate approach proved to be impactful. The mediation process may offer parties more favourable and mutually satisfying terms.

According to the Chamber of Commerce and Industry of the Republic of Tajikistan, as part of the EBRD project titled *Commercial Mediation in Tajikistan*, a group of mediators was trained with the aim of relieving the load on the economic courts, and helping parties effectively resolve disputes on amicable terms.

*Recommendation: The adoption of the appropriate Law on Commercial Mediation, which will define the terms for mediator reference, and range of their authorities, should positively contribute to the implementation of the above-mentioned institute in the country, and the improvement of daily practices of representatives of small and medium-sized businesses.*

### **2. Burdensome taxes for small and medium-sized business representatives**

In Tajikistan, small and medium-sized enterprises pay overall seven taxes, which is very high in comparison to other countries in Central Asia and Europe. The time spent on the payment of such taxes and the relevant tax calculations is also twice as high compared to that indicated in the abovementioned regions, due to procedural difficulties and regulatory gaps that are interpreted differently by tax officers. In accordance with some official data, on average, an entrepreneur spends almost 220 hours per year for tax calculations, which if spent for business administration, would positively impact business conduct. The total rate of taxes payable from profits may come to 67%<sup>1</sup>, which precludes private sector development and may lead to tax evasion. The amount of tax burden undermines incentives for business representatives, makes investment unprofitable and slows down economic growth in the long term.

Another issue that representatives of small and medium-sized businesses are facing is that in most court cases, disputes between tax authorities and business representatives, the courts are making decisions in favour of tax authorities despite the obvious violation of material and procedural laws by tax officers.

*Recommendation: We assume it would be reasonable to reduce the number of taxes paid by small and medium-sized enterprises. Also, Tajik courts, in particular economic courts, shall observe the adversarial principle and the principle of equality of parties in trials involving tax authorities, as well as follow the principle of uniformity of judicial awards.*

### **3. Inspections distracting small and medium-sized businesses**

In accordance with Presidential Decree dated 16 January 2018, #990 and the Law on the Moratorium on Inspecting Entrepreneurs in the Production Sector dated 21 February 2018, #1505, a moratorium was introduced whereby inspections of entrepreneurs in the production sector by authorized inspectorates were suspended for 3 years, until 1 January 2021. The moratorium was aimed at generating employment, strengthening industrial and export capacity of the country and creating favourable conditions for

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<sup>1</sup> [https://www.doingbusiness.org/en/data/exploreconomies/tajikistan#DB\\_tax](https://www.doingbusiness.org/en/data/exploreconomies/tajikistan#DB_tax)

entrepreneurship and investment. The benefits of such measures prove to be impactful, as, in accordance with the Agency of Statistics under the President of Tajikistan, the production and quantitative indicators during the moratorium increased demonstrably.

*Recommendation: Since the moratorium expired on 1 January 2021, we consider it as a positive measure of state influence and think that announcing a new moratorium on conducting inspections for a period of 2-5 years for entrepreneurs in all spheres would be a good contribution for the support of the private sector.*

#### **4. No regulation of electronic commerce**

Electronic commerce is a new possibility for improving the efficiency of business transactions and decreasing expenditures related to commerce procedures providing wide competitive advantages.

Despite the fact that some businesses already launched their activity online, no appropriate regulations were adopted by state-authorized bodies to govern electronic commerce. As for now, electronic commerce is being regulated through a range of existing laws, including the Law on Protection of Consumer Rights, the Law on Electronic Documents, and the Law on Electronic Digital Signature, as well as civil legislation, which is not comprehensive and leaves significant regulatory gaps.

Many of our clients in their daily business activities face difficulties due to lack of awareness about their rights and obligations, while conducting business through websites. As a result, tax officials or other inspectorates may abuse their powers and authorities, forcing business representatives to conduct business in conditions of uncertainty and in an inconsistent environment, where any tax or other official might choose to impose fines on their own accord.

*Recommendation: We believe that it would be useful to adopt a separate law on electronic commerce that would define the rights and obligations of parties and set the rules for making electronic transactions with the use of electronic documents as a legitimate manner of conducting business, and would meet the requirements of the current business environment.*

#### **5. Lack of transparency in economic courts**

In Tajikistan, parties can apply to economic courts for the settlement of economic disputes, with the possibility to appeal against the decisions made by the courts of first instance in courts of cassation and supervisory instances. At present, there is no single publicly accessible database where all court decisions can be found and reviewed. This leads to a high degree of uncertainty in the decision making of the courts, undermining the reliability of courts for participants of legal proceedings. Cases with similar conditions might have different results, due to inconsistency, and are often dependent on the convictions and views of judges.

*Recommendation: We consider that introducing a database of decisions made by economic courts of all three instances is likely to lead to a higher degree of responsibility among judges in their decision making, and parties to a dispute will have more credits toward judicial bodies.*