

Angola



Catarina Levy Osório
ALC Advogados



Claudia Santos Cruz
Morais Leitão, Galvão Teles, Soares da
Silva & Associados



Population: 26.3m (UN estimate – January 2017)
GDP per capita: US\$6,800 (CIA Factbook – 2016)
Average GDP growth over previous [3] years: Average 2.6% (CIA Factbook – 2014-2016)
Official languages: Portuguese
Transparency International rating: Ranked 164/176 (2016 Report)
Ease of doing business ranking: Ranked 182/190 (2017 Report)

Type of legal system	Based on Portuguese civil law and African customary law
Signatory to NY Convention	Yes (12 August 2016)
Signatory to ICSID Convention	No
Member of COMESA, OHADA, SADAQ, EAC	SADC
Signed up to OECD Transfer Pricing Guidelines	Generally consistent with the OECD Guidelines
Bilateral investment treaties	Angola is a party to several BITs/TIPs including with the EU, Germany and Italy

Catarina Levy Osório and Claudia Santos Cruz discuss the regulatory environment in Angola which governs foreign investment and highlight forthcoming legislative changes likely to affect foreign investors.



Real Estate

1. Are there restrictions on foreign entities holding interests in land, and if so, how are they expressed?

In Angola, land originally belongs to the state, and may, if consistent with public interest, be transferred to individuals. The relevant statutes on this issue are the Land Law approved by Law no. 9/04 of 9 November 2004 and Decree no. 58/07 of July 13 2007, which enacted the General Regulation on the Concession of Land. According to the former, the state may transfer land to natural or legal persons. However, and although it is possible to transfer ownership of land, ownership is rarely transferred; usually the state transfers minor land rights, the most common of which being the lease.

The land rights provided for by law are: (a) ownership; (b) customary *dominium utile*, or title (c) civil *dominium utile*, or title (d) lease; and (e) temporary occupation.

The state may transfer the right of ownership of urban property to Angolan citizens as individuals, while rural land may not be transferred to private entities, regardless of their nationality.

Employment

2. Are there any conditions placed on the hiring of a foreign worker (e.g. local minimum quotas which must first be met)?

For the purposes of Angolan labour law, a non-resident foreign employee is a foreign citizen with professional, technical or scientific qualifications (which are lacking in Angola), contracted in a foreign country to carry out their professional activity in Angola during a predetermined period of time.

Hiring foreign employees is subject to a work permit. In accordance with Presidential Decree no. 43/17 of 6 March 2017, foreign employees have to be, *inter alia*, scientifically or technically qualified, physically and mentally apt in accordance with a medical certificate issued in their country of origin, and have no criminal history in order to be hired in Angola. Furthermore, companies are subject to a quota of at least 70% of employees being Angolan or foreign residents.

The same statute provides for a maximum contractual term of 36 months between the

employer and the foreign worker to be sequentially renewed. The foreign worker has to be paid in the national currency (Kwanzas) (AOA).

Non-compliance with the abovementioned requirements could make an employer liable for a fine amounting to 7-10 times the average monthly salary of the company if related to the quota, or 5-10 months' salary if related to the salary being paid in Kwanzas.

3. What are the restrictions on redundancies and any applicable compensation?

Angolan law allows employers to terminate employment contracts in the following circumstances: (a) termination during a trial period; (b) disciplinary dismissal; (c) objective dismissal of individual employees; and (d) collective dismissal. Compensation due by the employer to the employee dismissed via the abovementioned procedures depends on the size of the company:

- large companies: one base salary per year of service up to the limit of five years, plus 50% of the base salary per year of service exceeding five years;
- medium companies (100-200 employees and/or net annual revenue between 3,000,000 USD and 10,000,000 USD): one base salary per year of service up to the limit of three years, plus 40% of the base salary per year of service exceeding three years;
- small companies (10-100 employees and/or net annual revenue between 250,000 and 3,000,000 USD): two base salaries per year of service up to the limit of two years, plus 30% of one base salary per year of service exceeding two years; and
- micro companies (0 to 10 employees or a net annual revenue of up to 250,000 USD): two base salaries per year of service up to the limit of two years, plus 20% of one base salary per year of service exceeding two years.

Investment and local content

4. Are there any general regulations on foreign investment, including any investment requirements for foreign companies to invest in conjunction with local entities or people, and if so, to what effect?

Foreign or external investment is defined by the Private Investment Law (Law no. 14/15 of 11 August) as a project developed with the use of capital held by non-residents. The definition of

capital, besides financial means, also encompasses technology, know-how, property and equipment. This instrument sets out the requirements which investors need to comply with, authorises the repatriation of profits and dividends, but also creates an additional, progressive tax rate applicable to profits generated by investment projects.

The statute sets out several economic sectors where the joint investment with Angolan nationals is compulsory, namely: electricity and water; hotels and tourism; transport and logistics; construction; telecommunications and information technologies; and social media. In these sectors, investment is only authorised if conducted jointly with Angolan natural or legal persons who have to hold at least 35% of the participation which has to be reflected on management; the joint investment requirements also extend, by virtue of other laws, to oil and gas, mining, security, civil aviation and fishery.

In the terms of the Commercial Companies Law, the shareholders appoint the directors, and there are no restrictions on appointing foreign citizens as such.

5. Are there any specific legislative requirements, and if so, what are they?

A project with foreign investment of up to AOA 1 to which that economic sector belongs; if the investment exceeds AOA 1 billion, the Ministry needs to approve the project, but further approval is required by the President.

The procedure starts with the submission of an investment proposal, which lays out the business plan of the respective project, to the Ministry which oversees the economic sector which pertains to the investment. The projects are then evaluated on a case-by-case basis; however, the authorities tend to favour projects which stimulate exports and which promote the integration of the national workforce, as well as their training and qualification.

In other sectors which are not subject to the joint investment requirement, foreign investors are allowed to have investments totally owned by them.

6. Are there any restrictions on the importation of goods or raw materials into the country, including requirements that local produce is utilised rather than products bought outside the country?

The Ministries of Economics, Commerce and Industry are the authorities responsible for deciding, supervising and enforcing Angolan trade policies.

Joint Executive Decree 22/15 of 23 January 2015 established importation quotas for certain food products where domestic production amounts to 60% of domestic consumption. Products affected were *inter alia* flour, salt, sugar, rice, water, meat, fish, eggs,

fruit and vegetables. As part of the quota's implementation, all importers sending food to Angola were required to obtain new licences. Although the present instrument only established the quotas for 2015, the Decree has not been expressly revoked, nor has there been a similar instrument legislated. Recent reports seem to indicate that the quota regime was suspended.

Finance

7. Are there any restrictions on the purposes for which money may be lent?

Foreign and domestic investors may obtain credit from Angolan banks; however, the former are considered, for the purposes of the Foreign Exchange Act, to be non-residents and, as such, the requirements of the Foreign Exchange Act are applicable and have to be observed. According to this statute, loans maturing at more than one year are considered capital operations. All capital operations are subject to the authorisation of the BNA (the Angolan Central Bank). (See question 16.)

Under the anti-money laundering regulations, commercial banks and other financial institutions have to observe *inter alia* the duties of customer identification and due diligence, identifying and reporting suspicious transactions, refusal to carry out suspicious operations and record-keeping and cooperation obligations.

8. How does the law work in relation to security interests in this jurisdiction, and over which classes of assets may security be granted? Does your jurisdiction recognise the concept of a trust and the role of a Security Trustee?

The debtor's assets are available as payment of debts arising out of credit agreements. There are personal guarantees, namely: bail, mandate of credit, endorsement, autonomous guarantees, comfort letters, letters of credit and promissory notes, and *in rem* guarantees mortgage and pledge.

A mortgage may be provided in respect of immovable property, or movable property subject to registration. It is possible to provide a generic mortgage, or a mortgage without a maximum amount, as well as one for guaranteeing of future debts, insofar as the amount of the debts are determinable at the moment of the issuance of the mortgage and therefore mentioned in the registry. When related to immovable property, mortgages shall be established by means of a notarial deed or a will, subject to registration.

The pledge may cover assets or rights which are

not subject to a mortgage, such as: financial investments, shares, receivables and bank accounts.

The trustee figure is provided for in the instrument of the mandate of credit, whereby someone charges another to grant credit to a third party. The credit is provided on behalf of the trustee and not the principal. The mandate of credit is revocable until the provision of credit occurs.

Procurement/PPPs

9. What laws, regulation and guidance are in place to manage the procurement and management of infrastructure projects (including PPPs) and is this regime overseen by a special unit, division or department (such as a PPP unit) within Government?

Law no. 2/11 of January 14 2011 approved the Public-Private Partnerships (PPP) Law which sets out the general legal framework applicable to this contractual regime. The public partner is responsible for monitoring and controlling the execution of the project, as well as guaranteeing the prosecution of the public interest while the private partner's main function is the funding of the project and its management.

Additionally, the Ministerial Commission for Evaluation of PPPs (*Comissão Ministerial de Avaliação das Parcerias Público-Privadas, "CMAPP"*), is the competent authority to: decide the procurement procedure applicable for the public partner's participation, which is subsequently approved by the relevant ministry; approve PPP projects which have obtained a favourable opinion from the Ministry in charge of the economic sector to which the project belongs; direct the procurement procedure after consulting the Court of Auditors and following the President's approval; and evaluate the execution reports of the project which are presented by the relevant Ministry.

If the outcome of the procurement procedure is so that the negotiations with tenderers do not seem to satisfy or be consistent with public interest, the procurement process may be suspended or cancelled, with no right to compensation for the tenderers.

Competition

10. Is there a merger control regime? If so, what are the thresholds for notification?

Angola does not yet have a formal Competition Law. Nonetheless, Presidential Decree no. 199/15, of 26

October 2015 sets out the regulations governing the Price and Competition Institute ("PCI"). The PCI is intended to be responsible for controlling the market structures through the issuance of economic opinions regarding the mergers of companies. Presidential Decree no. 199/15 further establishes that the department for the control of the market structures and competition (the executive services) is responsible for analysing the mergers, setting criteria to define dominant position, and analysing the vertical integration of companies.

Although the PCI has in theory already been created, to the best of our knowledge it is not yet operational and it will only be able to fully perform its functions as a market regulator once the Competition Law is in force.

11. Is there a competition/anti-trust law that prohibits items such as abuse of a dominant position, cartel behaviour and exclusivity arrangements, and if so, how actively is it enforced?

As mentioned, Angola has not yet passed a specific Competition Law, although draft competition and against unfair market practices legislation is due to be approved. The Angolan legal system also foresees a Legal Pricing Framework:

1. Presidential Decree no.206/11, of 29 July, which enacts a general framework for the organization of the national price system ("Price System Framework") as amended by Presidential Decree no. 113/16 of 30 May 2016. (The Price System Framework coexists with an older general framework for the organization of the national prices system, enacted by Decree no.20/90, of 28 September, which was not expressly revoked and so both legal instruments must be taken into account.) This instrument lays out three different price regimes (free, supervised and fixed prices), regulating the market and competition between producers, and aims to generate lower prices.
2. Decree no.14/96, of 1 July, which establishes the maximum prices which may be practised by producers, wholesalers and retailers, and sets out the margins for the trading of goods and services.
3. Executive Joint Decree no.34/96, of 1 July, which establishes the maximum profit margins in each transaction within the free price system.

Intellectual Property

12. What protections does the local law provide for intellectual property rights?

The principal statutes in this ambit are:

- Law no.3/92, of February 28 - Industrial Property Law; and
- Law no. 15/14, of July 31 - Law of Copyright and related rights (the 'Copyright Law').

According to the Copyright Law, the Court may order the seizure of copies of a works that are presumed to have been reproduced without the author's authorisation; the authors may claim compensation from the offender for the damages caused by the violation of the copyright, which is also subject to criminal liability.

In turn, the Industrial Property Law also provides for criminal liability for the breach of the industrial property rights enshrined therein; for instance, manufacturing products without the authorisation of the patent holder. Other breaches are also punishable by fines (the illegal use of a brand is punished with a fine up to AOA 50,000 and/or imprisonment for up to three months).

The illegal use of trademarks, violation of patent rights and of the rights granted by the deposit of designs and models, as well as the violation of the rights granted in relation to symbols, awards and names of an establishment are subject to prosecution and may give rise to a fine or imprisonment.

Tax and Foreign Exchange

13. What taxes are businesses subject to in this jurisdiction? Please include, for example, corporate tax, VAT, stamp duty, tax on share issues, etc. and the applicable rates. What transfer pricing rules apply, and are any withholding taxes in force in your jurisdiction?

Personal income tax: rates range from 7% to 17%. Individuals carrying on industrial and commercial activities are also subject to personal income tax at rates of between 6.5% and 30%, depending on turnover.

Consumption tax: has a standard rate of 10% and specific rates for listed goods and services ranging between 2% and 30%. Consumption tax rates on imports vary between 2% and 30%.

Capital gains tax: levied on dividends, interest from financial investments and royalties, with rates that range from 10% to 15%.

Stamp duty: levied over certain specific acts, documents, agreements and transactions in securities. Interest on treasury bills, treasury bonds and central bank securities and marketable securities sold over regulated markets are exempt from stamp duty.

Corporate income tax (industrial tax): has a rate of 15% for agriculture, aquaculture, poultry, fishing

and forestry, and 30% for all other activities. A 6.5% industrial withholding tax is levied on services provided by non-residents without a permanent residence. A 2% industrial withholding tax is levied on provisional assessment on income from the sale of goods.

In accordance with the Law on Private Investment, tax benefits and incentives are determined on a case-by-case basis.

14. Are there any foreign exchange rules that control repatriation of funds out of this jurisdiction?

In this regard, the principal instrument is the Foreign Exchange Law approved by 5/97 of 27 June 1997, and the principal authority is the Angolan Central Bank – the BNA.

The Foreign Exchange Law applies, inter alia, to the liquidation of transactions related to goods, capital or current invisibles.

The notion of operations related to goods incorporates the payment of the importation, exportation and re-exportation of goods. These operations are subject to the prior licensing of the Ministry of Commerce, unless the goods in question amount to less than 5,000 USD.

Capital operations are contracts and other legal instruments which establish rights or obligations between residents and non-residents; these include, for instance, the purchase of real estate, the acquisition of shares and the incorporation of new companies. All capital operations are subject to the BNA's approval.

Current invisibles encompass any current account transactions that are not related to goods, particularly those related to travel and transfers between the country and abroad, and between residents and non-residents. These payments are divided between: (a) travel and transfers; and (b) service and income. These operations can only be concluded with the authorisation of the BNA.

Dispute Resolution

15. What is the courts' approach to enforcement of foreign judgments or arbitral awards?

Any decision on private rights taken by a foreign tribunal may not become effective in Angola and subsequently subject to enforcement without prior review and confirmation by Angolan courts.

Similarly, in order for a foreign court decision to be confirmed, the following matters are subject to review by the Angolan Supreme Court and must be satisfied:

1. authenticity of the document setting forth the

- decision and the reasoning of the decision;
- 2. the decision must be final;
- 3. competence – according to Angolan provisions on conflicts of law;
- 4. the same case cannot have been submitted to, or not already decided by, an Angolan court;
- 5. the defendant must have been served to defend itself, except where Angolan law would waive service;
- 6. the decision cannot include a provision that is contrary to the Angolan public order principles; and
- 7. that, in the case of a decision against an Angolan person or entity, such decision does not contravene Angolan private law, if applicable.

Accordingly, before recognition, i.e. registration and enforcement of a foreign award is permitted, the Angolan courts may review the case and judgment on its merits which will be a lengthy and unpredictable procedure in respect of the possible outcome.

16. Are the local courts generally supportive of arbitration proceedings (for example, in granting interim relief in support of such arbitrations)?

Please note, however, that at the time of writing Angola has, on 6 March 2017, deposited its instrument of accession to the New York Convention, making it the 157th contracting state. The Convention will enter into force in Angola on 4 June 2017, which in theory means that a review of the merits will no longer occur.

In many business transactions, the choice of arbitration as the method for dispute resolution is encouraged by Angolan authorities. Examples of this are distribution contracts, such as agencies and franchise agreements, where, by law, the parties may choose to have their disputes resolved by international arbitration.

Arbitral tribunals may, unless otherwise agreed by the parties, grant interim relief if requested by one of the parties. Such measures should be related to the object of the dispute, for instance, providing guarantees deemed to be appropriate.

not required to be signed before a notary; however, when a foreign party is involved, we recommend that these documents are signed before the notary.

18. Are there any current legislative or policy developments that companies investing in this jurisdiction should be aware of?

Firstly, they should be aware of the aforementioned accession to the New York Convention, which comes into force on 4 June 2017, and secondly, they should note that Angolan commercial banks are currently experiencing an extreme shortage in foreign currencies, therefore, the expatriation of capital is, at the moment, an extremely difficult process, not only due to the administrative hurdles provided by law, but also due to the absence of supply of such currencies in the Angolan market. ■

General

17. In order for a foreign company to sign a document under local law are there any signing procedures that must be followed?

This will depend on the document. Certain documents are required under Angolan law to be executed before a notary. One example being when a director is representing a foreign company, proof of the director's powers will have to be shown before the notary before the document can be executed. Another example are loan agreements, which are

Catarina Levy Osório
ALC Advogados



Catarina Levy Osório joined the firm in 2010 and became partner in 2016. She is a founding partner at ALC Advogados, the Angolan member of the network MLGTS Legal Circle. Catarina is a member of the Angolan and Portuguese Bar Associations and has relevant experience in Angolan law, having advised clients on private investment, tax and labour law in this jurisdiction.

Catarina provides assistance to clients from different sectors on VAT and other indirect tax matters, acquiring relevant experience on the development of tax diagnostics and on the implementation of corporate structures following their tax impacts.

catarinaosorio@alcadvogados.com

Claudia Santos Cruz
Morais Leitão, Galvão Teles,
Soares da Silva & Associados



Claudia Santos Cruz joined the firm as a Consultant in 2015 assisting clients on the international and cross-border aspects of their investments in Portugal, Angola and Mozambique. Claudia has close ties to both Africa and England, having trained and practised as an English solicitor in London until 2005. She was born in Mozambique, grew up in South Africa and holds dual Portuguese and Mozambican nationality. She is a specialist in the areas of Energy and Natural Resources (Oil & Gas / Mining), international aspects of foreign investment into Angola and Mozambique, and in Shipping.

cscruz@mlgts.pt



We are a firm with tremendous potential in Angola due to our dynamism, innovative capacity and the quality of service we provide. Our team emphasises dedication and hard work as the keys to building a legal practice capable of meeting our clients' needs in the Angolan market.

Our office was created in the context of an association with Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS), a leading Portuguese law firm.

We are also members of the MLGTS Legal Circle, an international network created by MLGTS for a selected set of jurisdictions. We work very closely with the other member firms of the MLGTS Legal Circle, which allows our firm to maximise the resources available to our clients. ALC Advogados also benefits from the privileged relationship established by MLGTS with the leading Brazilian law firm Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados (São Paulo).

ALC Advogados
Masuika Office Plaza
Edifício MKO A
Piso 5, Escritório A,
Talatona, Município de Belas
Luanda - Angola

Tel: : +244 926 877 476 / 8 / 9
www.alcadvogados.com