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NEW PRIVATE INVESTMENT LAW IN ANGOLA

On 26 June 2018, the New Private Investment Law (N-PIL) was published, approved by Law no. 10/18, of 26 June 2018, which revoked the previous Private Investment Law (PIL), approved by Law no. 14/15, 11 August 2015. The N-PIL entered into force on the date of its publication.

This Briefing is not meant to be exhaustive, but rather to outline some of the features that appear most relevant to us.

The N-PIL applies to private investment projects regardless of their amounts, unlike the PIL, which required a minimum threshold for internal investments. Also with reference to its scope, the new N-PIL does not apply to sectors of activity whose investment framework is governed by a specific statute.

Under the N-PIL, investors may choose to undertake investment operations which are internal, external or mixed, the latter being a new type of investment which includes operations from the former two.

Unlike the PIL, the obligation for Angolan partnerships (share capital and management participation) in investment projects within so-called “strategic” sectors, such as Tourism and Hotel Business; Transportation and Logistics; Telecommunications and Information Technologies; and Social Media, ceases to exist.

Under the PIL, the granting of incentives (whether fiscal or of other nature) depended upon the amounts of the investment (namely USD 1.000.000 in case of external investment) and on its location. Differently, the N-PIL provides that the granting of incentives depends on the business sectors in which the investment is framed and on the Development Areas provided – see further below.

The N-PIL establishes that the granting of benefits is automatic as long as the investment complies with the criteria set forth therein; notwithstanding this, it also establishes that the tax and custom benefits are not guaranteed and if granted will be limited in time.

The priority trade sectors identified are the market segments where potential for replacing imports or to boost and diversify the economy, including exports, is identified. The list which is mentioned in the N-PIL is as follows: (i) Education, Technical-Professional Training, College Education, Scientific Investigation and Innovation; (ii) Agriculture, Food and Agro-Industry; (iii) Specialized Health Units and Services; (iv) Reforesting, Industrial Transformation of Forest Resources and Forestry; (v) Textile, Clothing and Footwear; (vi) Hotel business, Tourism and Leisure; (vii) Construction, Public Works, Telecommunications and Information Technologies, Airport and Railway Infrastructures; (viii) Power Production and Distribution; and (ix) Basic Sanitation, Waste Collection and Waste Processing. The identification of these priority sectors is welcome introduction. We have seen the Angolan government promote informally a number of sectors over the years but this is the first time a list of comprehensive and important sectors for the economy has been expressly identified in the private investment law.

In turn, the Development Areas established in the N-PIL are:

- Zone A – Province of Luanda, the main-municipalities of the Provinces of Benguela, Huíla and the Municipality of Lobito;
- Zone B – Provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and remaining municipalities in Provinces of Benguela and Huíla;
- Zone C – Provinces of Cuando Cubango, Cunene, Lunda-Norte, Lunda-Sul, Malanje, Moxico, Uige, and Zaire; and
- Zone D – Province of Cabinda.

Although some references to the word “exemption” can still be found in the N-PIL, it appears, in short, that the investors may now not expect actual tax exemptions, but rather only reductions in the tax rates.

The benefits to be granted vary according to the applicable procedural regime. In this matter, unlike in the PIL, the N-PIL has two investment regimes: the prior declaration regime and the special regime.

The Parties may freely choose between the two procedural regimes, however the special regime applies to investments within the aforementioned priority sectors and development areas, the reference to the development areas being somewhat redundant in our view because these encompass the entire Angolan territory. It seems we can therefore conclude that the special regime applies to investments in the priority sectors regardless of the location of the project.

The new framework is characterised by the simple presentation of an investment proposal to the competent entity of the Public Administration for the purposes of registration and granting of benefits established in the N-PIL. In this regime, the investment vehicle company must be incorporated in advance and the presentation of the private investment registry certificate (“CRIP”) is no longer necessary at the time of incorporation. The requirement to incorporate a company first under this investment procedure may need further clarification given the incorporation of an investment company is only one of the forms of investment, there are others such as, for example, acquiring shares and a business as a going concern, which do not appear to have this advance implementation before presenting the investment applications. The nature and details of the prior declaration procedure will be subject to specific regulations to be approved in the future.

The terms of the special regime are not detailed in the N-PIL and it is necessary to await the publication of the Regulation of the Law also for this purpose.

The prior declaration regime includes benefits regarding the following taxes: *(i)* Real Estate Transfer Tax; *(ii)* Industrial Tax; *(iii)* Capital Gains Tax; and *(iv)* Stamp Duty.

The special regime includes benefits regarding the following taxes: *(i)* Real Estate Transfer Tax; *(ii)* Real Estate Tax; *(iii)* Industrial Tax; and *(iv)* Capital Gains Tax.

The N-PIL establishes that under the special regime the tax benefits are generally higher than those foreseen for the prior declaration regime. The maximum duration for the reduction of tax rates and the percentages in which these may be reduced are expressly indicated for each tax and for each regime, in case of the special regime they vary in accordance with the Development Areas where the projects are located.

Specific benefits for special purpose investment vehicles are also foreseen and they include, amongst others, the regular assistance in resolving problems which may arise before public authorities in the implementation phase of the projects, regarding granting of visas; granting various types of licences and other operation needs of implementation of the private investments. It should be highlighted that the special purpose investment vehicles is exempt from payment of fees and administrative costs due by any requested service (including customs) by a public authority which is not a public company, for a period of no more than 5 (five) years.

Under the N-PIL, many of the changes in an investment company’s life such as increases in share capital, the broadening of the corporate purpose, the assignment of

quotas/transfer of shares are now exempt from prior authorisation from the entity which approves the project, without prejudice to the requirements to communicate these changes, under terms to be regulated.

The N-PIL and its regulation do not apply to Investment Projects approved prior to its entry into force, except in case the private investors expressly request the submission of their approved projects to its terms. The Investment Projects whose approval is pending at the date of entry into force of N-PIL shall be registered pursuant to its terms.

A final note regarding the regulatory authority responsible for approving and supervising private investment projects. Presidential Decree no. 81/18, of 19 March 2018, created the Agency for Private Investment and Promotion of Exports (*Agência de Investimento Privado e Promoção das Exportações* – AIPEX) which has powers, *inter alia*, to approve private investment projects. There has been some uncertainty since the start of the year and since the creation of AIPEX, because the revocation of the PIL was imminent, and we now await the new investment framework to become fully operational. The submission of new projects is also awaited to confirm how AIPEX will deal with ambiguities arising from the legal framework – especially once the Regulation of the N-PIL is approved.



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