

LEGAL ALERT

ANGOLA

MANDATORY REPATRIATION, LOSS OF ASSETS AND POTENTIAL EXTRA TERRITORIAL EFFECT

On 21 November 2018, the Proposal for a Law on the Mandatory Repatriation and Widespread Loss of Assets (“Proposal”) was submitted for discussion by the Council of Ministers of the Republic of Angola, at its 2nd Ordinary Session.

In line with several sectorial sweeping structural reforms being undertaken since the new Presidency took office in August 2017, we should like to highlight the following aspects:

1. The Proposal sets out new rules relating to the mandatory repatriation and loss of movable, immovable and financial assets in favour of the State, resulting from convictions in criminal proceedings, regardless of the location of those assets whether in the national territory or abroad;
2. The Law will be applicable to all situations that constitute crimes against property in which the State has been harmed;
3. This Proposal arises pursuant to the Law on the Repatriation of Financial Resources (approved by Law no. 9/18, of 26 June), which applies to both resident individuals and companies with their registered office in Angola, irrespective of the nationality of the individual or shareholders respectively; in summary established:
 - a) the terms and conditions for the repatriation of financial resources domiciled abroad;
 - b) the fiscal, foreign exchange or criminal consequences connected with the voluntary repatriation of such financial resources which in general terms imply a form of amnesty from any

liability connected to the repatriated assets. We note in particular that a 180 days period was established for voluntary repatriations and this period expires on 26 December 2018; and

c) After the period referred to at *b*), the Law provides that the State may forcibly repatriate unlawful resources held abroad. However, we do not consider that this has extraterritorial effect since the legislation merely provides that in order to achieve this mandatory repatriation that an entity will be created to identify and recover assets located abroad and that mechanisms for the cross-border exchange of information should be assured through bilateral treaties. However, we draw attention in this context to article 4 of the Proposal discussed further below at 7.

4. Pursuant to the Background Report attached to the Proposal, the new Law aims to contribute to the consolidation of the legislative framework on mandatory repatriation and the sanctions/penalties applicable to existing conduct and to act as a deterrent in the future to contribute to overcoming the existing shortcomings in the Angolan legal system;

5. Another main feature and objective of the Proposal is to create/reinforce the human, technical and technological means available in Angola to investigate these situations and obtain evidence of wrongdoing, in particular in relation to “serious and complex economic frauds”;

6. In what concerns the procedures underlying the criminal conviction and arrest/loss of assets in favour of the State, the Proposal states that the provisions of the Law on Preventing and Combating Terrorism (approved by Law no. 19/17, of 25 August) shall apply;

7. Finally, we draw attention to article 4 of the Proposal and a potential attempt to give extraterritorial effect to the same. Article 4 provides that upon a criminal conviction for an economic crime which has harmed the Angolan State, the offending party shall lose its assets (difference between the assets it owns and its declared income) independently of where these assets are located. It seems to us on a preliminary basis that potentially a criminal conviction based on assets unlawfully held abroad which are not then repatriated could, in theory, result in the loss of assets owned in Angola. Depending upon the circumstances and how the Proposal is applied in practice, this may suggest that the spirit of the legislator was to try and extend the effect of the legislation beyond the borders of Angola by attaching or arresting assets located in Angola where mandatory repatriation from abroad is not possible or does not take place.

To access the Proposal and respective attachments, please consult the [link](#).

Note: at the date of publication of this legal alert, it has been reported that the proposal was approved by the Council of Ministers. We await the publication of the Law in the Angolan Official Gazette.

Catarina Levy Osório
Luís Gagliardini Graça
Claudia Santos Cruz
Ana Corrêa Cardoso