

LEGAL ALERT

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF ANGOLA ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

We note this key moment in the bilateral relations between the Portuguese Republic and the Republic of Angola.

By means of a [Notice issued by the Portuguese Ministry of Foreign Affairs on 20 May](#), the fulfilment of all the necessary formalities for the entry into force of the Agreement between the Portuguese Republic and the Republic of Angola on Reciprocal Promotion and Protection of Investment, signed in Luanda on 22 February 2008, was made public (“Agreement”).

This Agreement, approved respectively by [Decree no. 40/2008, of 10 October 2008](#) (Portugal), and Resolution no. 34/2009, of 22 May 2009, and Presidential Decree no. 41/20, of 27 February (Angola), formalizes the special relationship that exists between these two countries and creates a set of opportunities for new investments by Portuguese and Angolans respectively in Angola and Portugal.

Under this Agreement, such investments will benefit from an increased protection framework for a period of 10 years (renewable automatically and successively). This is an important step for both Angola and Portugal in agreeing to provide protections for the other country’s foreign investments that they would not otherwise have. Investors seeking to incorporate holding companies or SPVs for projects in Angola can now look to Portugal as a jurisdiction offering major benefits including “most-favored nation”, protection from expropriation and performance requirements for investments, and access to neutral dispute settlement.

Objective Scope of the Agreement

The definition of “investment” set out in the Agreement is extremely broad and contains a non-exhaustive list, which we replicate hereunder:

- a) Ownership of movable assets and real estate, as well as other rights in rem such as mortgage, pledge, right of use and similar rights;
- b) Securities, shares, *quotas* or other forms of participation in companies and/or economic interests resulting from the respective activity;
- c) Credit rights or any other rights with economic value;
- d) Intellectual property rights, including copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets, know-how and clientele;
- e) Concessions with economic value granted by law, contract or administrative act a competent public authority, including concessions for prospecting, cultivation, extraction or exploitation of natural resources;
- f) Goods made available to a lessor in the territory of a Party, within the scope and under the terms of the applicable law and the respective lease agreements.

Subjective Scope of the Agreement

On this particular point, not only individuals but also corporate entities may be qualified as "Investors" for the purpose of the Agreement.

The chosen concept of corporate entity is also quite comprehensive, there being no requirements regarding the structure of the respective share capital. Thus, “corporate entity” means the «organization with legal personality which comprises a community of persons or a set of assets aiming to carry out common or collective interests, which has its registered office in the territory of one of the Parties and which has been incorporated pursuant to the law of such Party, including associations, foundations, corporations and commercial companies».

Main Commitments in the Agreement

Among other commitments and measures adopted in the Agreement, we highlight the following:

- Encouragement and creation of favorable conditions for investments in the respective territories;

- Fair and equitable treatment for investments carried out, which shall enjoy full protection and safety;
- Prohibition to subject the management, maintenance, use, among others, of investments to arbitrary or discriminatory measures;
- Effort to give favorable consideration to migration issues in relation to national employees of the other Party that work there within the investments carried out (this commitment being extended to their families);
- To offer to the investments, income¹ and revenues² covered by the Agreement, as well as to investors, a treatment no less favorable than those granted to investments, income and revenue of investors from other countries (except in cases where there are privileges arising from the participation in customs unions, common markets, etc.).
- Reciprocal protection so that each Party may apply the provisions of its tax law that establish a distinction between taxpayers that are not in the same situation with regard to their place of residence, registered office or to the place where the capital is invested.

Main Specificities of the Investments under the Agreement

Compensation for Losses	<ul style="list-style-type: none"> • In the event of losses due to war/armed conflict/state of emergency (and other similar situations), the affected investments will be entitled to restitution, indemnity, compensation or other form of reparation in terms as favorable as those granted to the respective national investors or investors from third countries. • In the event of a requisition of investments by the authorities of each Party, or destruction of such investments by the authorities without this occurring due to the situation, the affected investments will be entitled to restitution, indemnity, compensation or other form of reparation in terms as favorable as those granted to the respective national investors or investors from third countries.
Expropriation	<ul style="list-style-type: none"> • Expropriation/nationalization/similar acts of investment are only allowed for reasons of public interest and by means of a prompt, adequate and effective compensation, discrimination being prohibited, and the respective legal procedures will apply. • If that occurs, the compensation shall have the real market value of the expropriated investments (as stated in the Agreement), which shall include interest at the commercial rate and shall be made on terms as favorable

¹ All the amount generated by an investment, including but not limited to profits, dividends, royalties and respective interest and fees.

² Refers to the transfer of the values generated by the investments including, in particular, although not limited to, profits, interest, dividends and all kinds of charges.

Transfers	<p>as those granted to the respective national investors or third country investors.</p> <ul style="list-style-type: none"> • Investments under the Agreement are protected by a right to due process, which should be expeditious. • These rules apply in case of expropriation of assets of companies incorporated in accordance with the respective domestic law and in which investors of the other Party hold assets, bonds or other forms of participation.
	<ul style="list-style-type: none"> • The Parties shall guarantee to investors, once they have complied with the applicable tax obligations, the free transfer of the amounts related to their investments. • The Agreement foresees a non-exhaustive list of transfers covered by this provision, which includes, among others: <ul style="list-style-type: none"> <i>i)</i> Profits, capital gains, dividends, interests, charges and any other income arising from the investments; <i>ii)</i> Income arising from the sale or liquidation, whether partial or in full, of investments; <i>iii)</i> Initial capital amounts and additional funds necessary to maintain or develop the existing investments. • Transfers under the Agreement shall be made in a freely convertible currency at the market exchange rate prevailing on the date of transfer in the territory of the Party where the investment is made. • The Parties are however free (within certain terms) to prevent transfers from taking place in certain situations, such as bankruptcy and insolvency.

Dispute Resolution

Although prioritizing diplomatic negotiations in the event of disputes between the Parties and amicable negotiations in the event of investment disputes between one Party and an investor of the other Party, the Agreement establishes a set of rules that shall guide any disputes that may occur.

This Agreement give Portuguese incorporated companies better access to the Angolan market providing them with a better opportunity to expand in Angola. In addition, it also helps bring more foreign investment to Angola and create new opportunities. This coupled with the double taxation treaty between the two countries provides a more open and secure environment for investment as well as promoting private sector development.

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This document intends to present the main lines and virtues of this Agreement and as such it is not intended to be all-encompassing.

The review of this document does not waive the need to consult the full content of the Agreement, available in the Official Gazettes of Portugal and Angola.