

## LEGAL ALERT

### ANGOLA: FOREX TRANSACTION PAYMENTS

#### NEW RULES

Pursuant to the recent Notice no. 2/2020, of 9 January 2020 (Notice), which softened licencing rules relating to certain [foreign exchange current invisible operations](#), and as a result of the repeal of Presidential Decree no. 273/11, of 27 October 2011<sup>1</sup>, which established the framework for foreign services and technical assistance agreements, the National Bank of Angola (BNA) has issued, on 18 August 2020, Circular Letter no. 002/DCC/2020 (Circular Letter)<sup>2</sup>, which establishes the procedures which banks must observe in the validation of payments by resident entities to non-resident entities under services agreements<sup>3</sup> or invoices.

Economic agents dealing with Angola will recall that under the prior Foreign Technical Assistance Regulation, now revoked, technical assistance service contracts signed with non-resident service providers were subject to, depending upon their value, either a mandatory registration or a longer form approval procedure with the Ministry of Economy (MINEC). These contracts are now no longer subject to MINEC scrutiny or licensing procedures and are now governed instead by the Notice and Circular Letter resulting in all checks being undertaken by the commercial banks pursuant to the foreign exchange (forex) licencing procedures described below.

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<sup>1</sup> The Regulation on Contracting Foreign Technical Assistance or Management Services aimed at contracts for the provision of services entered into with non-resident entities (Foreign Technical Assistance Regulation).

<sup>2</sup> The full wording can be accessed [here](#).

<sup>3</sup> The Circular Letter does not encompass foreign exchange operations related to vehicle rentals, reinsurance and others.

These procedures were approved based on a number of factors:

- i) The hiring of services from abroad may represent a risk of (i) foreign exchange fraud and of (ii) facilitating the unlawful transfer of forex funds abroad;
- ii) The BNA has detected a high number of contracts where such risks existed;
- iii) The need to ensure the legitimacy of transfers in forex and also an adequate use of the scarce amounts of forex available.

The Circular Letter must be read in addition to and in line with the Notice, *i.e.*, only foreign exchange operations that fall within the Notice's scope are subject to these additional rules.

This represents further action from the BNA in trying to introduce safeguards to cover its compliance concerns, especially considering that since the Notice the commercial banks have been granted a greater role with reference to licensing these operations. KYC rules and reporting obligations to the BNA and to the Financial Information Unit are part of the framework approved by the Circular Letter.

We refer hereunder to some of the rules approved by the Circular Letter (reminiscent of rules included in the now repealed Presidential Decree no. 273/11, of 27 October 2011, referred above):

### **Regarding the hired services**

The hiring of services is limited to the hiring of specific services, namely technical assistance services and specialised services, that are not available in Angola. The following definitions are established:

- i) Technical assistance services – intended to maintain, repair or assemble specialised equipment; services related with hardware and software, telecoms and similar services;
- ii) Specialised services – professional services provided by qualified personnel in the following areas: law, medicine, engineering, architecture, accounting, training/education and similar.

### **In relation to the contracting entities**

Companies shall have a nature, dimension, complexity and activity that justifies hiring services abroad, which shall be consistent with the company's progress and financial results.

### **With reference the contracted entities**

Companies shall have proven technical capability in the sector and expertise area at issue and must have the adequate personnel for the provision of services.

There are also special rules applicable to cases where the hiring entity and the hired entity are part of the same company group, in order to avoid distortion of the foreign exchange framework.

### **Governing the agreements to be executed**

The Circular Letter approves specific rules regarding these agreements:

- i) Purpose – vague, undetermined and inaccurate purposes are forbidden;
- ii) Mandatory references to be included in the wording – e.g. detailed description of the services to be provided and their purpose; workplan; identification of personnel providing the services; possibility for termination pursuant to a notice period;
- iii) Duration – varies in accordance with the types of services to be performed, but the general rule is that they shall not exceed 24 months; although a single renewal might be approved, automatic renewal clauses are forbidden;
- iv) Amount – should be consistent with the purpose of the agreement and the services to be provided and comply with the guidelines approved by the Circular Letter.

On a final note, the Circular Letter grants the banks 90 days to carry out an assessment of the agreements currently in force, under which payments are being made, to ensure compliance with this framework.

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