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# Doing Business in...

Angola

Morais Leitão, Galvão Teles, Soares da Silva & Associados

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## Law and Practice

*Contributed by Morais Leitão, Galvão Teles, Soares da Silva & Associados*

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**Morais Leitão, Galvão Teles, Soares da Silva & Associados (Morais Leitão)** is a leading full-service international law firm, with a solid background of decades of experience. In keeping with its broad strategy of growth and international presence, and addressing the increasing needs of clients throughout the world, Morais Leitão has created the Africa team, which assures legal support in jurisdictions of Portuguese-speaking African countries. The Africa team guarantees in close co-operation with the associated offices in Angola (ALC Advogados) and Mozambique (Henriques, Rocha & Associados), as well as the other member firms of the MLGTS Legal Circle, personalised assistance to cli-

ents in those jurisdictions, ensuring the provision of legal services of the highest quality. The multidisciplinary Africa team is composed of lawyers covering several practice areas, such as banking and finance, corporate/commercial contracts, energy, insurance, labour, life sciences, litigation, oil and gas, private investment, public law, real estate and tax.

The authors would like to thank the Morais Leitão tax team, in particular Bruno Santiago and João Miguel Fernandes, for contributing to the tax section of this chapter.

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## 1. Legal System

### 1.1 Legal System and Judicial Order

Angola is a civil law jurisdiction. In Angola the following categories of Common Jurisdiction Courts exist:

- the Supreme Court;
- Appeal Courts (*Tribunais da Relação*); and
- District Courts (*Tribunais da Comarca*) – these can be divided into courts with specialised competences or minor crime courts, whenever the volume, nature and complexity of the proceedings justifies it.

Law No 2/15, of 2 February 2015, which approved the Law on the Organisation and Functioning of Common Jurisdiction, includes the maps that establish the geographical competence area for each of the courts that exist in each of the categories indicated above.

The Supreme Court has jurisdiction over the entirety of the national territory.

## 2. Restrictions to Foreign Investments

### 2.1 Approval of Foreign Investments

Investors intending to repatriate profits and dividends abroad shall present a foreign investment procedure before the competent authorities. Currently there is no mandatory minimum foreign investment amount.

There are certain local content requirements that apply to specific areas of business governed by a different legal framework, such as the oil and gas industry. Notwithstanding this, the Private Investment Law (PIL), approved by Law No 10/18, of 26 June 2018, and its Regulation (approved by Presidential Decree No 250/18, of 30 October 2018) apply generally to all sectors.

The PIL provides for two procedural regimes – the prior declaration regime and the special regime – whose main features are described hereunder.

In the prior declaration regime, the investor is entitled to incorporate the local company prior to the submission of the investment proposal before the competent authorities and before the Certificate of Registration of Private Investment is obtained. Notwithstanding this, rights and benefits can only be granted to the investor pursuant to the approval of the investment project.

The special regime applies to investment in priority sectors, which are (i) education, technical-professional training, college education, scientific investigation and innovation; (ii) agriculture, food and agro-industry; (iii) specialised health units and services; (iv) reforestation, industrial transforma-

tion 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. rights and benefits can only be granted to the investor pursuant to the approval of the investment project.

Some events (eg, share capital increases, assignment/transfer of shareholdings) shall also be communicated to *Agência de Investimento Privado e Promoção de Exportações* (the Agency for Foreign Investment and Promotion of Exports, or AIPLEX) pursuant to being carried out.

### 2.2 Procedure and Sanctions in Case of Non-Compliance

The procedure for the preparation and approval of an investment project can be summarised as follows.

- Preparation and follow-up of a foreign investment project registration procedure with AIPLEX, including the documentation preparation phase: (i) preparing and drafting of the documents required, including the respective application forms that must be electronically submitted in the Portuguese language; and (ii) gathering, preparing and/or reviewing documentation to be submitted with the registration form.
- Submission of the investment project documents and request with AIPLEX.
- Although formally there have been several changes in what was previously referred to as the negotiation phase, there may still be room for negotiation of a few aspects with AIPLEX.
- Issue of the Private Investment Registration Certificate (CRIP) to import the investment.

It is not mandatory to apply for an investment approval. If an investor does not wish to repatriate profits then no approval is needed or sanction for not applying for one. The PIL encompasses a sanctioning framework but all the infractions included therein imply that the presentation of an investment project took place. As such, the main consequence of non-compliance with the foreign investment regime is that foreign investors will not be allowed to repatriate profits or dividends generated as a consequence of such investment.

### 2.3 Commitments Required from Foreign Investors

The PIL provides for both general and specific duties. Under the first category, private investors are obliged to respect the Constitution, the PIL and remaining legislation applicable in the Republic of Angola, and are especially obliged to abstain from directly or indirectly carrying out any actions that interfere in the internal matters of the Angolan State.

With reference to the second category, private investors shall comply with the following duties:

- observe the deadlines established for the import of capitals and for the implementation of the investment project, pursuant to the commitments assumed;
- pay the taxes, fees and all other contributions that are legally due;
- constitute funds and reserves, and make provisions pursuant to the legislation in force;
- apply the account plan and the accounting rules established by law;
- respect the rules relating to protection of the environment, pursuant to the legislation in force;
- respect the rules relating to hygiene, protection and safety at work against occupational diseases, work accidents and other events foreseen in labour legislation;
- hire and maintain insurance against occupational accidents and diseases for employees; and
- hire and maintain liability insurance for damages caused to third parties or the environment.

## 2.4 Right to Appeal

Prior to resorting to courts, investors have the opportunity to challenge the decision in accordance with administrative rules of procedures, both by means of a claim (to the entity responsible for the decision) and of a hierarchical appeal (to the hierarchical superior of the entity responsible for the decision). The investors will then, generally speaking, be able to resort to the civil and administrative courts.

Both administrative procedures and court actions are extremely bureaucratic and time-consuming. Investors exercising their right to appeal should expect decisions to take months or even years (in the case of court decisions).

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entities

The most commonly used Angolan companies are limited liability companies, in respect of which there are two types: private limited liability companies (*sociedades por quotas*, or Lda) and public companies controlled by shares (*sociedades anónimas*, or SA). The choice depends on the desired corporate structure, as the first is preferred for less complex investments and structures, and the second for confidentiality conferred to the shareholders.

In terms of number of shareholders, Lda shall have a minimum of two shareholders (except in the case of a single-shareholder company), while SAs shall have a minimum of five shareholders (except in the case of a single-shareholder company).

An Lda's share capital is divided into 'quotas', a unitary measure of the current or potential rights and obligations of a shareholder. Each quota has its nominal amount expressed in kwanzas, corresponding to no less than AOA1.00. The share capital amount is freely fixed in the company's articles of association. Differently, an SA's share capital is divided into shares (nominative or bearer). The minimum share capital must correspond to the equivalent to USD20,000.00 expressed in kwanzas. The shares must have the same nominal value, which cannot be less than USD5 expressed in the national currency.

In terms of shareholders' liability, the main features for each of the companies are as follows.

- Lda:
  - (a) each shareholder is liable towards the company for the amount of its contribution as established in the articles of association;
  - (b) each shareholder is jointly and severally liable towards the company for the capital to be invested in the company up to the amount established in the articles of association; and
  - (c) shareholders are not liable for the company's debts. Only the company's property is liable for the company's debts;
- SA:
  - (a) shareholders' liability towards the company is limited to the amount of the shares they subscribed; and
  - (b) only the company's property is liable for the company's debts.

### 3.2 Incorporation Process

The main steps for incorporating a company are as follows.

- Obtaining a certificate of availability of the chosen corporate name – the availability of the corporate name must be verified at the commercial registry (*Ficheiro Central de Denominações Sociais*), part of the Ministry of Justice.
- Depositing the share capital – the share capital must be deposited by the shareholders and documentary proof of the deposit must be produced at the incorporation deed before the notary.
- Setting up the company – a notarial deed is required to incorporate the company (certain registries now accept incorporating companies by private contract; however, the main registry in Luanda still requires a notarial deed). The documents needed for this are:
  - (a) share capital deposit;
  - (b) draft incorporation deed;
  - (c) articles of association; and
  - (d) shareholder documents and those of its representatives at the incorporation deed; namely, (a) the Commercial Registry Certificate for shareholders and an updated version of the articles of association; evidence of powers to bind the company of the rep-

representative who will attend at the deed and his or her identification documents as well; and (b) identification documents for representatives.

- Registration with the Commercial Registry – the company will be registered at the relevant Commercial Registry Office.
- Official publication – the incorporation of the company must be published in Series III of the Angolan Official Gazette (*Diário da República*).

Despite efforts for lessening the bureaucracy of this process over the past few years, it is still quite bureaucratic and time-consuming. In order for all steps to be concluded, investors shall expect the process to take around 30 days.

Once the company is incorporated, registration with the Tax Authority, the National Institute for Statistics and the National Institute for Social Security, and licensing procedures (both general and sectorial) shall be sought.

### 3.3 Ongoing Reporting and Disclosure Obligations

Angolan law establishes several reporting and disclosure obligations regarding the main features of commercial companies. According to the Commercial Registry Code, the following are subject to mandatory registration before the Commercial Registry Offices: alterations to the articles of association and appointment, reappointment, exoneration and resignation of members of corporate bodies.

### 3.4 Management Structures

For private limited liability companies, the general shareholders' meeting (*Assembleia Geral*) is the main deciding body, gathering all the shareholders. With reference to the managing body, such companies shall appoint one or more directors (*gerentes*) who are not necessarily shareholders. Directors are appointed to undertake all necessary and convenient acts in accordance with the corporate interest and should follow the general shareholders' meeting resolutions. The appointment of a supervisory board is optional for this sort of company.

For public companies controlled by shares, the board of directors (*Conselho de Administração*) runs the activities of the company and shareholders may only discuss and approve matters in connection with a request from the board of directors. The general shareholders' meeting has a less stringent role than the one it has in the Lda. The public limited company is supervised by a supervisory board or a sole supervisor (a mandatory requirement).

### 3.5 Directors', Officers' and Shareholders' Liability

As in many other countries, referring to 'limited liability companies' does not mean that companies themselves are liable in full; ie, what is limited is the liability of the shareholders before the company and its creditors. In public companies controlled by shares, the liability of the shareholders

is limited to the amounts corresponding to the shares they have subscribed, while in private limited liability companies, the liability of the shareholders may also exist in a joint and several manner with reference to the redemption of capital contributions of other shareholders.

In broad terms, other exceptions to the principle of limited liability may be found in the company's articles of association or pursuant to the law; the latter includes: (i) liability due to a reduction of the number of shareholders to a number under the legal minimum, if the company is declared bankrupt and if it is proven that, during the period subsequent to the concentration of shareholdings, the legal provisions that establish the allocation of the corporate assets to compliance with the respective obligations have not been respected; and (ii) certain resolutions that focus on shareholder(s) obtaining advantages/benefits may become void and the shareholders that voted in favour may be held liable towards the company/ other shareholders for the damages that are caused.

To the extent of this firm's knowledge, Angolan courts have not yet given judgments based upon the institute 'piercing the corporate veil' in order to make the parent companies and/or shareholders liable for actions/omissions of its subsidiaries/companies where they hold shareholdings.

In reference to directors' liability, Angola has established a very strict regime for directors that have caused harm to the company due to their acts or omissions. Generally, directors may be unlimitedly liable for the damages caused to the company, if they act with fault. Additionally, they may incur criminal liability for their acts.

## 4. Employment Law

### 4.1 Nature of Applicable Regulations

The General Labour Law (*Lei Geral do Trabalho*, or GLL), approved by Law No 7/15, of 15 June 2015, establishes that the following constitute sources of labour law:

- the Constitution of the Republic of Angola;
- international labour conventions ratified by Angola;
- laws and their regulations;
- collective bargaining agreements;
- employment contracts; and
- practices and customs, professional and of the company (these only apply if there are no legal or conventional provisions, or if referred to by such provisions).

In the event of conflict between the various sources, the solution that, in its whole and in what refers to quantifiable provisions, appears most favourable to the employees shall apply, except if the provisions of a higher level are mandatory.



## 4.2 Characteristics of Employment Contracts

Pursuant to the GLL, the execution of employment contracts shall have the form chosen by the parties, unless the law expressly determines that the written form shall be used (eg, apprenticeship contract).

Generally, when in writing, employment contracts shall include the full name and usual address of the parties; the professional classification and occupational category of the employee; the workplace; the weekly duration of regular work; the amount, manner and period of salary payment, and reference to supplementary or additional benefits, and to those granted in kind, with indication of the respective amounts and basis of calculation; the date of commencement of the activity; the place and date of execution of the contract; and the signature of both parties. They shall also comply with Presidential Decree No 40/17, of 6 March 2017, which approved employment contract models.

The duration of employment contracts is regulated in Angola: fixed-term employment contracts may be successively renewed for equal or different periods of time up to a maximum limit of five years. For medium, small and micro-companies, the limit is increased to ten years. Once those deadlines are surpassed, the GLL establishes that the contracts shall be deemed indefinite-term employment contracts.

## 4.3 Working Time

As a general rule, the GLL establishes that normal working hours shall not exceed eight hours per day and 44 hours per week. Usually, normal daily working hours shall be interrupted for a rest and meal break of a duration of no less than 45 minutes and no more than one and a half hours to prevent employees from providing more than five consecutive hours of normal work.

Also, between the end of a working period and the start of the next there shall be a rest interval with a duration of no less than ten hours. The employee is entitled to a full day of rest per week, generally on Sunday.

Overtime hours are allowed pursuant to the provisions of the Law, namely in cases of work provided in shifts, modulated work schedule and availability regime. Overtime hours are accounted for in the remuneration of the employees.

## 4.4 Termination of Employment Contracts

The Angolan Constitution and the GLL enshrine the right of employees to employment stability, prohibiting and severely sanctioning termination of employment contracts based on grounds other than those referred to in law or in breach of its provisions.

The most common forms of termination of employment contracts at the initiative of the employer are as follows: (i)

termination during the trial period; (ii) dismissal for disciplinary reasons; and (iii) individual dismissal on objective grounds.

- During the trial period, either party may terminate the employment contract without requirement of notice, compensation or presentation of justification.
- Dismissal for disciplinary reasons has to be based on a serious disciplinary offence by the employee or on the occurrence of objective and verifiable reasons that make it impossible for the employment relationship to be maintained. The law lists several examples of situations that may cause a termination for disciplinary purposes (eg, unjustified absences exceeding three days a month or 12 a year, or, regardless of their number, that cause serious losses or risks to the company, these being known to the worker; failure to comply with working hours more than five times per month; and drunkenness or drug addiction with negative repercussions on the work).
- Individual dismissal on objective grounds is based on the need to extinguish or transform substantially jobs due to duly-proven economic, technological or structural reasons, involving reorganisation or internal conversion, reduction or termination of activities.

The compensation due to workers in the event of individual dismissal on objective grounds is calculated depending on the size of the company, under the following terms:

- large enterprises – one base wage for each year of work up to a maximum of five, plus 50% of the base wage multiplied by the number of years of work in excess of that limit;
- medium enterprises – one base wage for each year of work up to a maximum of three, plus 40% of the base wage multiplied by the number of years of work in excess of that limit;
- small enterprises – two base wages plus 30% of the base wage multiplied by the number of years of work in excess of the limit of two years; and
- micro enterprises – two base wages plus 20% of the base wage multiplied by the number of years of work in excess of the limit of two years.

All these types of dismissal must be preceded by the procedure laid down in the GLL for each of them.

Collective redundancy may occur whenever the extinction or transformation of the jobs – determined by duly-demonstrated economic, technological or structural reasons involving reorganisation or internal conversion, reduction or termination of activities – simultaneously affects the employment of 20 or more employees (if the number is smaller, the individual dismissal on objective grounds mechanism should be used).

The compensation due to workers in the event of collective redundancy is the same as indicated above, applicable to individual dismissal on objective grounds.

### 4.5 Employee Representations

The Trade Union Law (*Lei Sindical*), approved by Law No 21-D/92, of 28 August 1992, grants employees, without any discrimination, the right to form trade unions and to free exercise of union activity. In the exercise of union rights, employees are entitled to form trade union associations freely, to enrol in them or not, to withdraw from the trade unions and to pay fees just to the trade union in which they are affiliated, to participate in those trade unions and, in particular, to be elected to their governing bodies, and to carry out trade union activities at the workplace.

Employee representatives are entitled to justified absences while exercising functions as union representatives or delegates, or members of the body of representation of the employees.

There are several instances where the GLL provides for mandatory consultation/duty to inform the representative of the employees (eg, termination of employment contract procedures, when establishing the work period and when disciplinary measures are applied).

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

Income earned by individuals in the pursuit of an activity as an employed person is subject in Angola to Employment Income Tax; it is sufficient that the income is obtained for services rendered in the country for this tax to apply. Accordingly, residents and non-residents are subject to taxation, despite limits/exclusions applying pursuant to a double tax treaty.

Employment income consists of any remuneration earned and received as payment of wages, salaries, fees, covenants, bonuses, allowances, commissions, attendance fees, participation in fines, costs, margins, commercial and industrial earnings, as well as other additional remunerations such as allowances for failures, representation allowances and, since late 2014, the remuneration paid by political parties and other organisations of a political and social nature.

Excluded from taxable income, in particular, are social benefits paid by the Social Security National Institute under the mandatory social security system, holiday and Christmas bonuses, representation allowance, home rent allowance up to a maximum of 50% of the value of the lease and travel costs up to the limit stipulated for civil servants.

Generally, for Employment Income Tax purposes, employees are included in taxation Group A, which includes the salaries received pursuant to an employment relationship, whether the latter results from a contract entered into under the General Labour Law or under the regime for civil servants.

The determination of this group's taxable amount is made by deducting from the gross income of the taxpayer the mandatory social security contributions and the remuneration elements that are not subject to or exempt from Employment Income Tax.

Group A is taxed at progressive rates: a tranche of income (AOA35,000.00) is exempt from tax and the remaining income is subject to rates varying between 7% and 17%.

The amount of tax due shall be collected by means of withholding tax, to be made by the employer. The amounts withheld should be delivered to the State before the end of the month following the one in which the employment income is paid.

Before the end of February of each year, the employer shall submit an annual tax statement containing the following information with reference to each employee: full name and address, taxpayer number, social security number, and global amount of income paid during the last financial year.

Social security contribution rates are 8% (paid by the employer on monthly wages/any additional remuneration paid in cash) and 3% (paid by the employee). Foreign employees may be exempt from social security contributions if they provide proof that they are registered in a foreign social security system.

### 5.2 Taxes Applicable to Businesses

Angola does not have a single tax on corporate income. There is, in fact, a Business Income Tax (*Imposto Industrial*), an Investment Income Tax (*Imposto sobre a Aplicação de Capitais*) and an Urban Real Estate Income Tax (*Imposto Predial Urbano*). Along with these general income taxes, Angola also has special sector taxation (mining, oil and construction agreements). Companies are also subject to Stamp Duty in certain transactions, as well as to Real Estate Transfer Tax (*Sisa*) in the acquisition of real estate property. Finally, Law No 7/19, of 24 April 2019, was recently approved and introduces Value Added Tax in the Angolan tax system.

#### Business Income Tax (BIT)

Both resident companies and individuals (who earn income from industrial or commercial activities) are subject to BIT on their worldwide income. A company is considered resident in Angola if it has a domicile, a registered office or effective management therein.



Non-resident companies or individuals are taxed only on income obtained in Angola. Branches, permanent establishments or any form of representation of non-resident companies in Angola are subject to taxation on income obtained therein as well as on income of a similar nature to the income obtained by the permanent establishment.

Taxation of residents is divided into two groups.

Group A includes State companies, public limited companies and partnerships by shares, as well as other civil and commercial companies. The following entities are mandatorily taxed under Group A: public companies and equivalent bodies, companies that have a share capital equal to or higher than AOA2 million or with a total annual income equal to or higher than AOA500 million, civil societies, foundations and co-operatives whose activity generates additional revenues beyond the funds and allowances received from its members, co-operators and patrons, and branches of non-resident companies in Angola.

Group B includes individuals and corporate entities not taxed under the rules of Group A or who/that owe tax in respect of an isolated act or transaction of a commercial or industrial nature.

For taxpayers included in Group A, BIT is levied on annual income computed on the basis of profit and loss incurred during the year. The concept of income or gain in Angolan tax law is a broad one, including extraordinary gains, income from core activities or ancillary activities, rents (excluding real-estate rents as they are taxed under Real Estate Income Tax), income from foreign sources, dividends, interest and royalties.

Notwithstanding the above, the income that is generated by financial operations (such as interest, dividends, premiums on bonds, etc) is subject to this tax only if not liable for other tax or taxes.

The current rate is 30%, but there is a reduced rate of 15% for income generated in the context of agricultural, fish farming, poultry farming, fishing, forestry and livestock activities.

The BIT due for the provision of services is withheld at the source, at the rate of 6.5%, regardless of the nature of the service. Specific rules are also established for taxpayers whose activity is subject to the supervision of the National Bank of Angola, the insurance supervisory authority, the supervisory body of games or the Capital Market Commission.

The tax rate may be reduced in the context of a private investment project as referred to in **5.3 Available Tax Credits/Incentives**.

**Taxation of non-residents with a permanent establishment (PE)**

A non-resident company in Angola that carries on its economic activity in this territory through a branch, agency or any other form of PE is subject to taxation in Group A, for profits attributable to the PE and for profits (i) made by the company (not resident in Angola) on the sale in Angola of goods similar to those sold by the PE and (ii) on other activities carried out in Angola in an economic activity similar to the one that is carried on by the PE.

**Taxation of non-residents without a PE**

The provision of services of any kind (carried out in Angola or on behalf of entities that are domiciled or have their effective management or PE in Angola) by non-resident entities without a PE in Angola is taxed at a rate of 6.5%, payable by withholding tax.

**Investment Income Tax (IIT)**

This tax is levied on income derived from the “simple investment of capital”. The earnings thereof are divided into two categories.

**Section A**

- Objective basis of taxation – interest on capital lent, not taxed in Section B and interest resulting from the deferral over time of an instalment or from late payment.
- Territorial basis of taxation – owed on interest “produced in the country” or interest assigned to a person (natural or corporate) having domicile, effective management or permanent establishment in Angola.
- Exemptions – income of financial institutions and co-operatives; interest on credit sales by tradespeople, default interest on payments by tradespeople; interest on loans embedded in life insurance policies (made by insurers); and interest on financial products directed at promoting savings (approved in advance by the Ministry of Finance).

**Section B**

- Objective basis of taxation – interest on bonds; interest on loan capital; profits attributable to shareholders of whatever nature, kind or description; royalties, including income derived from operational lease of goods; capital gains; compensation for the suspension of activity; and prizes from games of chance. The following gains are also subject to this tax:
  - (a) the repatriation of profits attributable to permanent establishments of non-residents in Angola;
  - (b) the amortisation or reimbursement premiums and other forms of remuneration of bonds, equities or other similar securities issued by any company;
  - (c) the amortisation or reimbursement premiums and other forms of remuneration of treasury bills and treasury bonds;
  - (d) the amortisation or reimbursement premiums and

other forms of remuneration of central bank securities; and

- (e) the positive balance between capital gains and capital losses incurred with the disposal of shares or other instruments that generate any income that is subject to tax (taking into account that only 50% of this balance will be subject to tax, if such disposal is made on a regulated market).
- Territorial basis of taxation – the source of income must have a connection with Angolan territory (that is, the income shall be paid by a person with residence/effective management in Angola; made available through a PE in Angola; be received by a person having residence/effective management in Angola or be attributed to a PE in Angola).
- Exemptions – dividends distributed by an entity having its registered office/effective management in Angola to a corporate or equivalent person having its registered office in Angola that has a holding of not less than 25% for a period exceeding one year prior to the distribution of profits ('participation exemption'), interest in financial instruments that encourage savings and interest on housing-savings accounts.

The IIT rate is 5% in cases of (i) income earned from interest, amortisation or reimbursement premiums and other forms of remuneration of bonds, equities or other similar securities, treasury bills and bonds, and central bank securities, with maturity equal to or greater than three years; (ii) the profits attributable to shareholders of companies and the repatriated profits attributable to permanent establishments of non-residents in Angola, when the shares of the concerned company are traded on a regulated market, as well as (iii) amounts awarded to companies or entrepreneurs as compensation for the suspension of its activity; 10% in the case of most of the income included in Section B and 15% in the case of interest and the balance of interest on current accounts, compensation for suspension of activity, game of chance prizes whatever their provenance and any other income on investment of capital not included in Section A.

For Section A, the tax assessment is made, generally, by withholding at the source, carried out by the payor of the income. However, the tax assessment is made by the beneficiary of the income, whenever the payor does not have a head office, effective management or permanent establishment in Angola to which the payments are attributable. The rules that govern the assessment of tax in Section B are similar to those for Section A earners.

### Urban Real Estate Income Tax (UREIT)

UREIT is a hybrid of income tax and wealth tax due from individuals and corporate entities, resident or non-resident in Angola, provided that they are entitled to urban property rents, or due on their possession if the properties are not rented, as follows:

- for rented buildings – levied on the annual amount of the rent, expressed in local currency (minus the percentage allowed for maintenance and repair expenses incurred by the landlord); and
- for not rented properties – levied on the asset value or on the value stated in the property tax records.

The income of urban property rents taxed under UREIT is not subject to BIT.

The tax rate is 25% for rented properties and 0.5% for properties not rented (properties of an asset value exceeding AOA5 million). Buildings used as hotels may benefit from a tax reduction of 50% for up to 15 years.

### Stamp Duty (SD)

All acts, agreements, documents, securities, books, papers, transactions and other facts set out in the table appended to the SD Code are subject to SD, including the following:

- guarantees of obligations (a variable rate between 0.1% and 0.3%, depending on the life of the guarantee, of the value), which are considered accessories to the contract specially referred to in the table provided that the guarantees are entered into within 90 days after entering into the contracts;
- financing operations (a variable rate between 0.1% and 1%, depending on their life and value), except when subject to and not exempt from VAT);
- acquisition of ownership of real estate (at a rate of 0.3%);
- any agreement not specifically provided for in the table (AOA1,000.00); and
- receipts for the actual receipt of invoices (at the rate of 0.1%), excluding receipts of rents received under a rental agreement for housing purposes if individuals enter into a rental agreement and the receipts relate to invoices subject to VAT.

Resident entities are responsible for the assessment, delivery and payment of SD that under the general rules would be the responsibility of non-resident entities.

### Value Added Tax (VAT)

As indicated, the VAT Code recently introduced VAT in the Angolan tax system. It also revoked the pre-existing Consumption Tax, as well as the SD on imports and exports. Being inspired by the EU VAT Directive, it works on the basis of an assessment of tax at every stage of the economic chain and a deduction of the same amount of tax by all agents involved, except for the final consumer.

It was expected to enter into force on 1 July 2019 but has been postponed to October 2019, when it shall mandatorily apply to registered large taxpayers and to the imports of goods. The remaining taxable persons may choose to be

submitted to this regime pursuant to its entry into force if some requirements are met.

During the financial years of 2019 and 2020, the taxable persons that have reached, in the previous financial year, a turnover or an amount of imports higher than USD250,000.00 (pursuant to a reference to Law No 30/11, of September 13, which approved the Micro, Small and Medium Enterprises Law) should be subject to a transitory VAT regime that foresees a simplified taxation method.

The VAT regime shall be mandatorily applicable to all taxable persons from 1 January 2021.

The taxable persons subject to VAT shall be exempted from SD on receipts for the effective receipt of credits. Additionally, the financing transactions subject to and not exempt from VAT shall also be exempted from SD.

As a rule, the onerous transfer of goods and the rendering of services made by a taxable person acting within the scope of its activity in Angolan territory, as well as the import of goods, shall be subject to VAT.

The following individuals or corporate entities are taxable persons for VAT purposes:

- those that perform a business activity in an independent manner, including the production, trade and/or rendering of services; liberal professions; extractive, agricultural, aquaculture, apiculture, poultry, livestock, fishing and/or forestry activities;
- those that import goods in accordance with the customs law;
- those that improperly mention VAT in an invoice or similar document;
- those that acquire services to a non-resident entity without a PE in Angola; and
- within certain circumstances, the Angolan State and other public entities, as well as political parties, labour unions and religious institutions may also be considered taxable persons.

VAT is chargeable when the goods are made available to the purchaser or when services are provided. As far as imports are concerned, VAT is due when the custom duties obligations are complied with.

The VAT tax base is the value of the supply irrespective of its nature.

Notwithstanding, there are a number of specific rules for certain types of transactions, such as assets sold in legal auctions or second-hand goods.

There is a single VAT rate of 14%, except for those covered by the transitory VAT regime (subject to a 7% rate).

The Angolan VAT regime establishes certain exemptions, which may be full (or 'zero rate') or partial.

With reference to the payment of the amount of VAT due, certain entities (eg, banks) shall withhold 50% of the amount of VAT included in invoices or equivalent documents issued by taxable persons for the supply of goods or rendering of services. Special withholding rules also apply to the Angolan State and other public entities, as well as to oil-investing companies.

Notwithstanding, as a general rule, the entity liable for the delivery to the Angolan State of the VAT charged is the taxable person that performs the supply of goods and/or the rendering of services. The amount of tax due shall be paid before the end of the month following the one for which the transactions are reported.

There is an obligation to submit a monthly VAT periodic return, before the end of the month pursuant to the one to which the transactions refer to.

### 5.3 Available Tax Credits/Incentives

The Private Investment Law foresees tax benefits with reference to Business Income Tax, Investment Income Tax, Real Estate Income Tax, Sisa and Stamp Duty, which may consist essentially in deductions to taxable value; accelerated depreciation and reintegration of assets; tax credits; exemption and reduction of taxes, contributions and import duties; and deferred payment of taxes.

According to the PIL, there are two investment regimes (prior declaration regime and special regime), which were analysed in **2.1 Approval of Foreign Investments**. Tax benefits may be granted in accordance with these regimes.

Benefits granted under the prior declaration essentially include:

- a reduction of the Business Income Tax rate by 20% for a period of two years;
- a reduction of the Investment Income Tax rate applicable to dividends by 25% for a period of two years;
- a reduction to half of the Sisa due for the acquisition of real estate for an office and an establishment of the investment; and
- a reduction to half of the Stamp Duty due for a period of two years.

With reference to the special regime, tax benefits are granted considering the priority sector where the investment is made and vary according to the region where it is made (Region A, B, C, and D), as follows.

- Region A (the province of Luanda and the municipalities that are the capitals of the provinces of Benguela and Huíla, and the municipality of Lobito):
  - (a) a 20% reduction in the final assessment rate and the provisional assessment rate of Business Income Tax for a period of two years and an increase of amortisation and reintegration rates by 50% for a period of four years;
  - (b) a 25% reduction in the Investment Income Tax rate over distribution of profits and dividends for a period of two years; and
  - (c) a reduction of the Sisa rate for the acquisition of real estate for an office and an establishment of the investment by a half.
- Region B (the provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and other municipalities of the provinces of Benguela and Huíla):
  - (a) a 60% reduction in the final assessment rate and the provisional assessment rate of Business Income Tax, and an increase of amortisation and reintegration rates by 50%;
  - (b) a 60% reduction in the Investment Income Tax rate over the distribution of profits and dividends;
  - (c) a 50% reduction of the Real Estate Income Tax rate for the ownership of real estate for an office and an establishment of the investment (for a period of four years for the first to third points for Region B); and
  - (d) a reduction of the Sisa rate for the acquisition of real estate for the office and an establishment of the investment by 75%.
- Region C (the provinces of Cuando Cubango, Cunene, Lunda-Norte, Lunda-Sul, Malanje, Moxico, Uíge and Zaire):
  - (a) a 80% reduction in the final assessment rate and the provisional assessment rate of Business Income Tax, and an increase of amortisation and reintegration rates by 50%;
  - (b) an 80% reduction in the Investment Income Tax rate over the distribution of profits and dividends;
  - (c) a 75% reduction of the Real Estate Income Tax rate for the ownership of real estate for an office and an establishment of the investment (for a period of eight years for the first to third points for Region C); and
  - (d) a reduction of the Sisa rate for the acquisition of real estate for an office and an establishment of the investment by 85%.
- Region D (Cabinda Province):
  - (a) the Business Income Tax rate shall correspond to half of the rate that is applicable to Region C and an increase of amortisation and reintegration rates by 50% is also established;
  - (b) the Investment Income Tax rate to be levied on the distribution of profits and dividends is half of the rate applicable to Region C;
  - (c) the Real Estate Income Tax rate is half of the rate applicable to Region C (for a period of eight years for

- the first to third points for Region D); and
- (d) the Sisa rate is half of the rate applicable to Region C.

The above-mentioned tax benefits may expire in several instances (eg, the term of the period for which they were granted and cancellation of the investment registration).

### 5.4 Tax Consolidation

At the end of 2013 the Statute of Large Taxpayers (*Estatuto dos Grandes Contribuintes*, approved by Presidential Decree 147/13, of 1 October 2013) was created to establish a special taxation framework for entities that qualify as large taxpayers.

Under this framework, taxpayers are required to have audited and certified accounts as well as to give notice of any changes in their shareholding structure, management and headquarters or place of effective management.

The qualification as a 'large taxpayer' is made in accordance with the criteria deemed appropriate by the Angolan tax authorities and a list of these entities shall be published pursuant to an order by the Ministry of Finance.

This regime (i) established a tax group regime applicable to groups of companies and (ii) provides that all entities deemed as large taxpayers, and that are part of a group of companies, may opt to be taxed according to it, through the sum of their positive and negative results.

Pursuant to this framework, a group of companies is deemed as existing if the parent company holds, directly or indirectly, a participation of at least 90% in another company (if this participation corresponds to at least half of the voting rights).

Additionally, the group of companies must meet the following requirements:

- all companies must have their tax residence in Angola;
- the dominant company must hold its participation in the subsidiaries for more than two years (there is an exception for subsidiaries incorporated by the dominant company); and
- the dominant company cannot be a subordinated company of any other company with tax residence in Angola.

The following companies cannot benefit from this framework:

- those that have not performed any business activity for more than one year or are subject to a pending insolvency, dissolution, liquidation or tax enforcement procedure;
- those that have registered tax losses during the preceding two financial years; and

- those that have been granted tax benefits under the Private Investment Law (through tax exemption or through nominal reduction of the Business Income Tax rate).

In order to benefit from this regime, the group of companies shall yearly submit a form (Modelo 5) to the Large Taxpayers Unit, at least three months prior to the deadline for submitting the annual Business Income Tax return.

Failure to comply with any of these requirements shall lead to termination of the tax group option.

### 5.5 Thin Capitalisation Rules and Other Limitations

There are no thin capitalisation rules in Angola.

### 5.6 Transfer Pricing

As a rule, resident entities that have a 'special relationship' with other entities, resident or non-resident, subject or not to Business Income Tax, shall implement conditions similar to those that would normally be agreed between independent persons.

The tax authorities may make the corrections deemed necessary to determine the taxable income whenever it finds that the conditions applied were different from what would normally be agreed between independent persons.

The law does not define extensively what 'special relationships' are but considers that these occur between two entities when one has control over the capital of the other or has, directly or indirectly, significant influence over the management of the other.

The transfer pricing regime is regulated to a more in-depth level for the 'large taxpayers' category. Thus, for the purposes of this framework, the concept of associated enterprises is fulfilled when an entity has the power to exercise, directly or indirectly, a significant influence on the management decisions of the other. This is deemed to occur when:

- the directors or managers of a company (also their spouses, ascendants and descendants) hold at least 10% of the capital or voting rights in the other company;
- the majority of the members of the statutory boards, or their spouses, unmarried partners, ascendants or descendants are the same persons;
- the entities enter into a subordination agreement;
- the entities are in a group relationship or the entities are bound by a subordination agreement of a parity group, or other of equivalent effect, according to the Commercial Companies Law;
- the commercial relations between the two entities represent more than 80% of the total turnover of one them; or
- an entity finances the other in more than 80% of its credit portfolio.

This regime only recognises the traditional transactional transfer pricing methods (ie, the comparable market price method, the resale price method and the cost-plus method).

Companies reporting annual revenue in excess of AOA7 billion must prepare a transfer pricing file.

### 5.7 Anti-evasion & Anti-avoidance Rules

The Angolan tax system does not contain any general anti-abuse clause, nor thin capitalisation or controlled foreign company (CFC) rules. Notwithstanding, there are some specific anti-evasion rules, such as the above-mentioned transfer pricing regime.

Moreover, the Business Income Tax Code regulates the terms pursuant to which expenses may be deducted for tax purposes, excluding certain categories of expenses.

Within this scope, three major categories of expenses are not deductible:

- improperly documented expenses;
- non-documented expenses; and
- confidential expenses.

Additionally, costs borne with interest due to shareholders as a result of shareholders' loans are also non-deductible for this purpose.

Lastly, Angola entered into a double tax convention with Portugal that foresees a principal purpose test rule to avoid the abuse of the convention.

## 6. Competition Law

### 6.1 Merger Control Notification

The Competition Law (*Lei da Concorrência*), approved by Law No 5/18, of 10 May 2018, defines concentration of companies as the long-lasting change in control over the totality or part of one or more companies as a result of (i) the merger between two or more companies, or parts of companies, previously independent; and (ii) the acquisition, whether directly or indirectly, of the control of the totality or of parts of share capital or of the assets of one or several companies by one or more companies or by one or more persons that already have control of at least one company.

The concentration operations shall be communicated to the Regulatory Authority for Competition (RAC) when they meet one of the following conditions:

- as a consequence, a quota equal to or higher than 50% in the national market of a given good or service, or in a substantial part thereof, is acquired, created or reinforced;



- as a consequence, a quota equal to or higher than 30% but lower than 50% in the national market of a given good or service, or in a substantial part thereof, is acquired, created or reinforced, as long as the turnover individually accomplished in Angola in the previous fiscal years by at least two companies that participate in the concentration operation is higher than AOA450,000,000; and
- the set of companies that participate in the concentration has accomplished in Angola, in the previous fiscal year, a turnover of more than AOA3,500,000,000.00 directly related to these.

The Competition Law establishes that non-compliance with the obligation to communicate the act of concentration is an infraction punishable with a fine that shall be of no less than 1% and no more than 5% of the turnover of the previous year.

### 6.2 Merger Control Procedure

When any of the conditions referred to in **6.1 Merger Control Notification** is met, the concentration operations are subject to previous notification to the RAC, which is made by means of the submission of a form, to be presented (i) jointly by the parties that intervene in the merger, in the acquisition of joint control or in the creation of a common company, or (ii) individually by the party that acquires the exclusive control of the totality or part of one or more companies. Within 20 days from the submission referred to in the previous paragraph, the RAC shall promote the publication in the most widely read newspaper in the country of the essential elements of the operation. The RAC shall provide its opinion with a maximum deadline of 120 days under penalty of a tacit approval occurring.

### 6.3 Cartels

The Competition Law establishes a list of practices that harm competition irrespective of fault by referring to their effects. Restrictive practices are thus those that result in:

- abuse of dominant position;
- abuse of economic dependence; and
- collective forbidden practices, namely competition-restricting agreements, concerted practices and decisions or resolutions of associations of companies that harm competition (these are deemed as void by the Competition Law).

The Competition Law includes specific provisions defining what is deemed as dominant position, abuse of dominant position, economic dependence, abuse of economic dependence, horizontal agreements and vertical agreements. The statute also includes a provision that governs the cases where those agreements and practices are deemed as justifiable.

The legal framework focuses completely on the Angolan national market; the Regulation of the Competition Law (approved by Presidential Decree No 240/18, of 12 October 2018) states that concentrations of companies that do not create significant hurdles to effective competition in the national market or in a substantive part thereof are authorised. However, concentrations of companies that are susceptible to creating significant hurdles to effective competition in the national market, or in a substantial part thereof, especially if those hurdles arise from the creation or reinforcement of a dominant position, are forbidden.

### 6.4 Abuse of Dominant Position

The Competition Law establishes that the abuse of dominant position by one or more than one company is forbidden.

For the purpose of the Angolan framework, there shall be a dominant position with reference to the market of a given good or service if (i) a company acts in a market where it does not deal with significant competition or where it assumes a preponderant role in respect of its competitors; or (ii) two or more companies concertedly act in a market where they do not deal with significant competition or where they assume a preponderant role in respect of third parties.

There is a criterion that establishes when a dominance is deemed as existing: when companies (individually or jointly) have a share that is higher than 50% of the relevant market.

Economic dependence is specifically regulated and occurs when one or more companies use the market power, or the ascendancy they have over another company or client that is in a state of dependence in relation to such company/companies because it does not have an equivalent alternative for the supply of goods or provision of services at issue.

On the other hand, abuse of economic dependence takes place when there is an unlawful use of the situation referred to above, namely in the following cases:

- direct or indirect imposition of purchase, sale prices or other conditions in a non-equitable manner;
- subordination of the execution of contracts to the acceptance by the counterparties of ancillary provisions that, according to their nature or agreement with normal commercial practice, have no connection with the object of such contract; and
- unjustified rupture, whether total or partial, of an established commercial relation, considering the previous commercial relations, the normal commercial practice in such area of economic activity and the contractual conditions established therein.

## 7. Intellectual Property

### 7.1 Patents

The framework governing IP is mainly governed by the Industrial Property Law (*Lei da Propriedade Industrial*, approved by Law No 3/92, of 28 February 1992), which is somewhat outdated, and the Copyright Law (*Lei de Protecção dos Direitos de Autor e Conexos*, approved by Law No 15/14, of 31 July 2014).

As a general note, Angola does not recognise protection to registration granted abroad or under international treaties; those intending to obtain protection in Angola shall register before the Angolan competent authority, the Angolan Institute of Industrial Property (*Instituto Angolano de Propriedade Industrial*, or IAPI).

The Industrial Property Law defines patent as the legal title granted to protect inventions and granting its holder with the exclusive right to explore it. Invention is defined as an inventor's idea that allows, in practice, the solving of a specific problem in the technology area, whether referring to a product or process.

An invention patent request shall be made in an application in Portuguese that includes the name of the holder of the invention, the nationality and other information pertaining to the applicant; the title that summarises the object of the invention; a copy of the patent request that has been filed in another country; the clear and complete description of the object of the invention in a way as to allow it to be executed by a person with regular competency on the matter; the designs (when necessary for the comprehension of the invention); and a summary intended for technical information purposes.

The patent invention shall be in place for 15 years, counted from the date of deposit of the application. Once that period ends, the patent object shall fall into the public domain.

The violation of rights conferred by the patent is punishable with imprisonment for up to six months and a fine.

### 7.2 Trade Marks

The Industrial Property Law states that all those who adopt a trade mark to distinguish the products of their economic activity shall enjoy the property and its exclusive use as long as it is registered in accordance with its provisions. There are industrial, commercial and service trade marks.

A trade mark request shall be made in an application in Portuguese that includes the name of the holder of the trade mark; the nationality, profession and residence; the products or services for which the trade mark is intended; the registration number that is indicated in the trade mark; the country where the first trade mark registration request

was lodged and its date; a reproduction of the trade mark; an authorisation from the holder of the foreign trade mark that the applicant is representing in Angola; and authorisation from a person whose name, corporate name, portrait or insignia is included in the trade mark (if such person is not the applicant).

The registration shall have the duration of ten years, counted from the date of deposit of the application. The registration may be renewed for consecutive ten-year periods.

Illegal use of trade marks is punishable with a fine, which may be compounded with imprisonment for up to three months.

### 7.3 Industrial Design

This section applies to utility or industrial designs or models.

A utility model is defined as all the new provisions or forms obtained or introduced in objects such as tools, work tools or utensils that improve or increase its utilisation or utility conditions. The protection is granted exclusively to the specific and new form.

The Industrial Property Law qualifies an industrial model as all the plastic form, associated to lines or colours (or not), that may be used in the manufacturing of an industrial or handmade product.

Industrial design is the new layout or set of lines or colours (or not) that, with an industrial or commercial purpose, may be applied in the ornamentation of a product by any process (manual, mechanic, chemical, simple or combined).

A design or model request shall be made in an application in Portuguese that includes the identity of the applicant, a copy of the object or a graphic representation of the design or model, the novelty and utility granted to the utility model/ the novelty of the design or industrial model and the indication of the type or types of products for which the design or model shall be used.

The registration of a design or model shall have the duration of five years, counting from the date of deposit of the registration request. The registration may be renewed for two consecutive five-year periods. Once that period ends, the patent object shall fall into the public domain.

The violation of designs or models is punishable by a fine.

### 7.4 Copyright

Copyright refers to the right that authors of literary, artistic and scientific works have to enjoy and use these works or to authorise their use and enjoyment. Rights of an economic and moral nature are encompassed. Copyright generally belongs to the creator of a literary, artistic or scientific

work. Notwithstanding this, there are special rules for how ownership is determined (eg, the case of work created under an employment or service contract, or in the performance of functional duties, in which the copyright belongs to the person who ordered its production). There are also specific rules for works created by more than one author (work done in collaboration or collective work).

The protection of the copyright and related rights occurs pursuant to the law and is not subject to registration.

As a general rule, copyright and related rights are maintained throughout the author's life and for 70 years pursuant to his or her death, counting from January 1st of the year following the death, in benefit of his or her heirs.

Infringement of copyright is subject to civil and criminal liability.

## 7.5 Others

The Industrial Property Law was enacted in the early 1990s and it is for that reason quite outdated in terms of IP rights applicable to matters such as software and databases.

The Industrial Property Law, other than the matters indicated above, also includes rules governing rewards (nominative, figurative, emblematic signs granted in Angola or abroad) to people in industry or trade, manufacturers and entrepreneurs, and establishment names and insignia (the nominative sign and the emblematic or figurative sign used to design or make known the establishments where a commercial, industrial or service activity is carried out).

## 8. Data Protection

### 8.1 Applicable Regulations

The Constitution of the Republic of Angola establishes the registration and handling of data regarding political, philosophical or ideological data, data relating to religion, party affiliation, ethnic origin and private life of citizens with a view to discriminate. The access to personal data of third parties, as well as the transfer of personal data from a file

to another that is the property of a given service or institution, is also forbidden, except in cases established by law or by court order. In a broader manner, the Constitution provides that the law shall establish effective guarantees against obtaining and using information relating to persons and families in a way that abuses or is contrary to human dignity.

The main statute is Law No 22/11, of 17 June 2011, which approved the Data Protection Law.

The Law establishes the legal framework applicable to the handling of personal data in order to ensure respect for civil liberties and the fundamental rights and guarantees of individuals. It applies to the handling of data protection carried out by fully or partially automated means contained in manual files or destined thereto.

### 8.2 Geographical Scope

The law includes a provision governing the subjective scope thereof, which states that any person and entity of the public and the private sector is subject to its provisions.

Specifically, it applies to the handling of personal data carried out by the following:

- an individual responsible for such handling based in Angola;
- within the activities of the individual responsible for the handling who is established in Angola, even if the individual responsible is not based in Angolan territory;
- outside the Republic of Angola, in a place where Angolan legislation is applicable pursuant to public or private international law; and
- by an individual responsible for the handling that, despite not being based in Angola, resorts, for the handling of personal data, to means located in Angolan territory.

For the purposes of the fourth point, to be deemed an individual responsible for the handling of data that resorts to means located in Angolan territory, the handling operations of the personal data shall be carried out with, or the personal data shall be lodged in, means located in Angolan territory. It is sufficient for the Law to apply that a mere use of such means occurs for the purpose of retrieving, registering or transferring personal data in Angolan territory.

Also, in the case of the fourth point, the individual responsible shall name, by means of communication to the National Agency for Data Protection (NADP), a representative who is established in Angola and who shall be a substitute for the purpose of all rights and obligations, his own liability notwithstanding.

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### **8.3 Role and Authority of the Data Protection**

#### **Agency**

Presidential Decree No 214/2016, of 10 October 2016, approved the Organic Statute of the NADP. Among others, the NADP has the following attributions:

- assisting the government with the regulation, oversight and supervision of the application of the legal provisions on data protection as well as with sanctioning their non-compliance;
- supporting the government in drafting policies, studies, programmes and projects regarding the application and control of legislation on data protection;
- ensuring the representation of the Angolan State in international organisations, conferences and other events regarding issues related with data protection;
- promoting the implementation of codes of conduct for data protection; and
- co-operating with other public authorities and providing them with adequate guidelines to allow them to handle data protection in accordance with the law.

It was reported in October 2018 that the NADP would be initiating its activity in the near future but to this day it is yet to be fully functional.