

**International
Comparative
Legal Guides**



Practical cross-border insights into FDI screening regimes

Foreign Direct Investment Regimes 2022

Third Edition

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1 Foreign Investment Policy

1.1 What is the national policy with regard to the review of foreign investments (including transactions) on national security and public order grounds?

Since 2017, several policies have been aimed at Angola's economic reform in order to overcome the oil price crash as well as the hurdles posed by the lack of foreign currency in the country; efforts have also been undertaken to combat and deter corruption and money laundering. The openness of the Angolan market and economy, which implies the movement of people, goods and capital, has been considered crucial for the growth of economy.

The Private Investment Law ("PIL"), which has been recently amended and republished by Law no. 10/21, of 22 April 2021 and its Regulation (approved by Presidential Decree no. 250/18, of 30 October 2018) are aimed at promoting growth and specialisation of production, both at the level of the domestic production and exports, through stimulating domestic and foreign private investment. In 2018, the Competition Law, approved by Law no. 5/18 of 10 May 2018 was introduced, encouraging the creation of a more favourable environment that promotes and defends free enterprise, competitiveness and healthy competition in order to safeguard consumer's rights.

1.2 Are there any particular strategic considerations that apply during foreign investment reviews?

Investors usually consider at an early stage the sectors and locations where they will invest, as this may have an impact on the granting of benefits as per the particular favourable strategy of the State. We note that the PIL provides some benefits depending on the sectors in which the investment is made. There are also four development areas in which certain benefits may be granted, which are listed below. These benefits may be of a fiscal or financial nature. In terms of tax benefits, adjustments to the applicable rates or the amount over which the tax is calculated may apply, among other measures, whereas the financial benefits provide easier procedures to obtain necessary approval, a licence, or access to funding.

According to the PIL, the priority sectors include:

- education, technical and professional training, scientific research and innovation;
- agriculture, food and agro-industry;
- specialised health units and services;
- reforestation, industrial transformation of forest resources and forestry;
- textile, clothing and footwear;

- hotel business, tourism and leisure;
- construction, public works, communications and infrastructures;
- power production and distribution; and
- basic sanitation, waste collection and waste processing.

The four development areas in which investments may benefit from incentive measures encompass:

- Zone A: Province of Luanda and the municipalities that are the headquarters of the Provinces of Benguela, Huíla and the Municipality of Lobito;
- Zone B: Provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and other municipalities of the Provinces of Benguela and Huíla;
- Zone C: Provinces of Cuando Cubango, Cunene, Lunda-Norte, Lunda-Sul, Malanje, Moxico, Uíge and Zaire; and
- Zone D: Cabinda Province.

1.3 Are there any current proposals to change the foreign investment review policy or the current laws?

As referred to above, the PIL has been recently amended and republished, introducing (in addition to the prior declaration and the special regime) the contractual regime, described in question 3.3 below. Some of the tax incentives provided under the new PIL are established by reference to the Tax Benefit Code, which has yet to be approved. This important part of the foreign investment review is therefore currently expected.

2 Law and Scope of Application

2.1 What laws apply to the control of foreign investments (including transactions) on grounds of national security and public order? Are there any notable developments in the last year?

The most relevant legislative acts applicable to foreign investment in Angola are the following:

- Private Investment Law approved by Law no. 10/21 of 22 April 2021, which amended and republished the previous Private Investment Law approved by Law no. 10/18 of 26 June 2018;
- Regulation of PIL approved by Presidential Decree no. 25/18 of 30 October 2018 ("RPIL" or "Regulation"); and
- Presidential Decree no. 81/18 of 19 March 2018, amended by Presidential Decree no. 96/19 of 25 March 2019, Presidential Decree no. 342/19 of 21 November 2019 and Presidential Decree no. 8/20 of 24 January 2020, which approves the Organic Statute the Agency for Private Investment and Export Promotion ("AIPEX").

We further note that in Angola, national security is exercised by State entities, according to Law no. 12/02, of 16 August 2002, in order to guarantee the order, security and public peace. The grounds on which the competent authorities may deny the approval of an investment project are identified in the RPIL, as mentioned below in question 4.3, and there is usually little discretion at this stage. We rarely see in practice investment projects rejected on the grounds of national security and public order. The main developments in the last year are the introduction of the contractual regime, as described above, arising from the new PIL and the creation, by Presidential Decree no. 167/20, of 15 June 2021 of the “Single Investment Desk” (*Janela Única de Investimento* or “JUI”), a platform aimed at simplifying the contact between the investor and the public entities involved in the approval of foreign investment projects. The JUI is expected to become, in what concerns the procedures for obtaining approvals and licences required for its investment project, the only entity with which the investor contacts.

2.2 What kinds of foreign investments, foreign investors and transactions are caught? Is the acquisition of minority interests caught?

The PIL is applicable to all private investment projects: there is no longer a minimum threshold required for internal and external investments, unlike in the previous legal framework.

The investment can be foreign, domestic or mixed. The PIL defines several types of foreign external investment operations, as follows:

- the introduction of freely convertible currency into national territory;
- the introduction of technology and knowledge, if they represent an added value to the investment and are susceptible to pecuniary evaluation;
- the introduction of machinery, equipment and other tangible fixed assets;
- the conversion of credits arising from the execution of contracts for the supply of machinery, equipment and goods, provided that they are evidently subject to payments abroad;
- the acquisition of shareholdings in existing Angolan companies, including minority interests;
- the incorporation of new companies;
- the conclusion and modification of consortium agreements, association in partnership and other forms of business cooperation permitted in international trade, even if it is not provided for in the commercial legislation in force;
- the acquisition of commercial or industrial establishments;
- the entering into agreements of leases or exploitation of land for agricultural, livestock and forestry purposes;
- the exploration of real estate, whether for tourism purposes or not, regardless of their legal nature;
- the provision of supplementary capital contributions, advances to shareholders and loans linked to profit sharing;
- the acquisition of real estate located in national territory, when this acquisition is integrated in private investment projects; and
- the incorporation of subsidiaries, branches or other forms of social representation of foreign companies.

Investment involving rental or chartering of cars, boats, aircraft and other means that may be hired or chartered, leased or otherwise temporarily used in national territory will generally not be considered a foreign investment.

On the other hand, investment can be direct, indirect, or a mix (in which direct and indirect investments are integrated in the

same investment), according to the PIL, direct investments mean any internal or foreign private investment, which consists of the use of, in the national territory, capital, technology and knowledge, equipment goods and others in economic projects, or the use of funds aimed at the creation of new companies, groups of companies, either domestic or foreign, and the total or partial acquisition of existing Angolan companies, aiming at the creation or continuation of an economic activity and direct participation in its management, in accordance with its corporate purpose; whereas indirect investments mean any internal or foreign investment carried out by companies governed by private law which do not qualify as direct investment and, alone or cumulatively, includes capital movements and other financial instruments, such as the acquisition of shares, securities of public debt, loans, supplies, supplementary capital, patented technology, technical processes, secrets and industrial models, franchises, registered trademarks and other forms of access for their use in exclusive or restricted licensing schemes by geographical areas or fields of industrial or commercial activity, among others.

2.3 What are the sectors and activities that are particularly under scrutiny? Are there any sector-specific review mechanisms in place?

Usually, sectors that refer to natural resources owned by the State, such as oil and gas, energy and mining are subject to special scrutiny and specific legislation, including regarding foreign investments. Contrasting with investment projects approved under the PIL, where there is no mandatory obligation for foreign investors to enter into partnerships with Angolan individuals/companies, these sectors have historically included local content rules that should be considered prior to investing in Angola.

According to the Petroleum Law, approved by Law no. 10/14 of 12 November 2014 and amended by Law no. 5/19 of 18 April 2019, petroleum operations, including prospecting, exploration, appraisal, development and production of crude oil and natural gas, can only be carried out through a prospecting licence issued by the Ministry of Petroleum or according to an oil concession awarded by the Government. On the other hand, development of exploration and production activities can only be conducted by private sector companies when they associate with the Nacional Concessionaire.

The Mining Code, approved by Law no. 31/11 of 23 September 2011, provides that mineral resources are owned by the State and the mining rights of prospecting and exploration, processing and marketing of strategic minerals throughout the national territory, including the territorial sea, the continental platform and exclusive economic zone, can be assigned exclusively to a specific public entity which assumes the role of national concessionaire of these rights.

2.4 How are terms such as ‘foreign investor’ and ‘foreign investment’ specifically addressed in the law?

The PIL defines:

- a “Foreign Investor” as any person, individual or corporate entity, who is a foreign exchange non-resident that carries out a foreign investment (as defined by the PIL); and
- “Foreign investment” as carrying out investment projects by means of introducing into or using in national territory freely convertible currency; technology and knowledge or equipment assets and others, by foreign exchange non-residents.

2.5 Are there specific rules for certain foreign investors (e.g. non-EU / non-WTO), including state-owned enterprises (SOEs)?

The PIL is applicable to private investors, regardless of whether these are natural persons or companies. It does not, however, apply to investments made by SOEs. We further note that there may be some special conditions arising from bilateral investment treaties.

2.6 Is there a local nexus requirement for an acquisition or investment to fall under the scope of the national security review? If so, what is the nature of such requirement (existence of subsidiaries, assets, etc.)?

No. Companies incorporated in Angola are treated equally regardless of the nationality of the shareholders, except in certain sectors in which special local content policies are applicable under the PIL.

2.7 In cases where local presence is required to trigger the review, are indirect acquisitions of local subsidiaries and/or other assets also caught?

The PIL applies to either direct investment or indirect investment. However, indirect acquisitions of local subsidiaries are not included. Indirect investment instead includes, for example: franchising agreements; loans; shareholder loans; and IP rights (see response to question 2.2 above for further information).

3 Jurisdiction and Procedure

3.1 What conditions must be met for the law to apply? Are there any monetary or market share-based thresholds?

The PIL applies to private investments regardless of any thresholds. However, investments must take one of the following forms:

- the introduction of capital into Angola;
- the application of capital which may be repatriated (pursuant to the forex legal regime) in Angolan or foreign currency held in Angolan bank accounts by non-residents;
- the application, in Angola, of funds as reinvestment; and
- the transfer of machinery, equipment, accessories and other fixed tangible assets.

The amount of shareholder loans aimed at funding external investment may not exceed 30% of the amount of the investment made by the incorporated company and may only be repaid three years after its registration in the company's accounts.

3.2 Do the relevant authorities have discretion to review transactions that do not meet the prescribed thresholds?

Investors are free to not submit their investment projects to review, the only consequence being not benefitting from any potential incentives the PIL could provide. This means that transactions that do not meet the prescribed thresholds are outside the scope of the PIL and, therefore, relevant authorities are not competent for such review.

3.3 Is the filing voluntary or mandatory and is there a specific filing form? Are there any filing fees?

As described in question 3.2 above, it is not mandatory for investors to apply for an investment approval. If an investor does not intend, for example, to be granted tax incentives/benefits, nor does it have the intention of repatriating funds and/or profits abroad, then no approval is needed nor is there a sanction for not filing. However, it is common practice and advisable for foreign investors to submit a foreign investment project under the PIL and register it with AIPEX.

Investment projects may follow one of three regimes: prior declaration; contractual; or special regime. Investors may choose either of the procedural regimes.

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 ("CRPI") 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 and development areas as provided in the PIL, as referred to above in question 1.2.

The contractual regime may be elected for investment in all sectors and allows investors to negotiate the specific conditions of their investment with the State, including any potential incentives from which they may benefit.

All three regimes may grant financial and tax benefits.

Fees and administrative costs are charged by the AIPEX and governed by the RPIL; the filing fee is 40,000 Kwz and the fee for issuance of CRIP is 300,000 Kwz.

Common practice is for foreign investors to submit a foreign investment project. We note further that the transfer or repatriation of funds originating from the proceeds of investments from Angola to abroad by investors must be processed through a commercial bank or licensed by the Angolan central bank – see question 3.11 below. These banks will in principle not license payments out under these circumstances where the investment in question was not approved by AIPEX.

3.4 In the case of transactions, who is responsible for obtaining the necessary approval?

The request for registration of the private investment project is always submitted by the investor/sponsor or its representative.

3.5 Can foreign investors engage in advance consultations with the authorities and ask for formal or informal guidance on the application of the approval procedure?

Foreign investors may informally consult with the competent authorities concerning the application or approval procedure. Although this practice is common, it does not grant the foreign investor with any rights or warranties considering the advice informally provided is not binding. Foreign investors are advised to seek a legal local counsel to assist with navigating and presenting the foreign investment project.

3.6 What type of information do investors have to provide as part of their filing?

The private investment procedure starts with the registration of the private investment by submitting the following documents:

- a letter requesting the registration of the private investment project and the respective issuance of the CRIP;
- an Investment Project Declaration Form, duly completed; such form can be obtained in the AIPEX's service counters or through the electronic means available for this purpose;
- a copy of the identification document, in the case of individuals;
- a copy of the Commercial Registry Certificate, in the case of corporate entities;
- resolution that approved the decision to register the private investment project;
- a document proving the existence of funds or other forms of carrying out the declared investment project;
- a professional training programme and workplan for the gradual replacement of foreign employees by the national ones, pursuant to paragraph 3 of article 46 of the Private Investment Law; and
- Power of Attorney, in the case of representation of the applicant.

Please note that the company through which the private investment project is implemented must be previously incorporated. However, given the incorporation of a company is merely one of the methods of investment, there are other types of investment operations, as mentioned in question 2.2 above, which do not require the company to be incorporated before the presentation of the investment project.

All documents drafted in a foreign language shall be presented alongside an official translation into Portuguese which must be provided.

Additionally, please note that when presenting documents issued abroad before any public or private entity in Angola, these documents must go through a legalisation process. Angola is not a party to the Hague Convention, and as such documents usually must be notarised in the country of origin, legalised before the Ministry of Foreign Affairs or similar entity and finally be recognised by the Angolan Consulate or Embassy in the country of origin or in the country with jurisdiction over the country of origin.

3.7 Are there sanctions for not filing (fines, criminal liability, unwinding of the transaction, etc.) and what is the current practice of the authorities?

No – please see the answer to question 3.3 above. Given that it is not mandatory for investors to register their investment project, there is no sanction for failing to do so. The PIL establishes a sanctioning framework which is applicable only if the presentation of an investment project took place according to PIL. Therefore, the main consequence of not applying the foreign investment framework is that the foreign investors will not be permitted to repatriate profits or dividends generated by such investment. In theory, although rarely relied upon in practice by the Angolan authorities, if investors do not satisfy their investment obligations under an approved investment contract, the approval can be revoked.

3.8 Is there a filing deadline and what is the timeframe of review in order to obtain approval? Are there any provisions expediting the clearance?

The request for the registration of an investment project is only deemed as submitted when AIPEX notifies the applicant or its representative through an official receipt indicating all the documents indicated above in question 3.6 have been presented. Upon receipt of the request for registration, AIPEX has a period of 5 (five) working days to communicate the decision of the request. It is common for some delays to occur, however, and there has been progress in making the investment process less time-consuming.

3.9 Does the review need to be obtained prior to or after closing? In the former case, does the review have a suspensory effect on the closing of the transaction? Are there any penalties if the parties implement the transaction before approval is obtained?

As indicated above, there are three investment regimes: prior declaration; contractual; and the special regime.

The parties may freely choose between the prior declaration, the contractual and the special regime (although the last one applies only to the priority sectors and development areas as mentioned above).

In principle, if the parties undertake the investment operation before the review takes place, they waive the benefits provided by the PIL. As referred to in question 3.3 above, it is not mandatory to apply for an investment approval, thus there are no penalties besides the consequence of not being able to repatriate profits or dividends generated by such investment. Although the law does not provide for a suspensory effect on the transactions, an investment project shall not be carried out before the approval of AIPEX otherwise the benefits provided by the PIL will be waived. It is, however, possible to close international transactions and have the obtainment of regulatory approvals including for investments dealt with as a condition subsequent.

3.10 Are there any penalties if the parties implement the transaction before approval is obtained? Can the parties close the transaction at global level prior to obtaining local clearance?

Please see our answer to question 3.9 above.

3.11 Can third parties be involved in the review process? If so, what are the requirements, and do they have any particular rights during the procedure?

The applicable legal framework does not specifically provide for the intervention of third parties who are not granted participation rights.

3.12 What publicity is given to the process and the final decision and how is commercial information, including business secrets, protected from disclosure?

The investment project is deemed as approved when the CRIP is issued. The CRIP is the correct document for the purpose of performing acts before public bodies, which proves the granting of incentives and tax benefits and the registration of private investment, it is also a document proving the status of a private investor, containing the following information:

- complete identification of the investment promoters, with emphasis on the quality of the investor;
- nationality;
- investment vehicle company;
- the purpose of the investment project's main activity;
- the investment amount;
- the type of investment operation;
- a form of carrying out the investment;
- sites of implementation of the project;
- the headquarters of the investment project vehicle company;
- rights and obligations of the investor;
- a deadline for the beginning and conclusion of the investment project's implementation operations;
- the investment regime;
- incentives and facilities granted to the project;
- the registration date of the project; and
- the Taxpayer Number ("NIF").

The PIL expressly establishes that the Angolan State respects and protects the private investors' business secrets.

3.13 Are there any other administrative approvals required (cross-sector or sector-specific) for foreign investments?

Some investment projects may require further approvals, namely related to import and export operations and other sector-specific approvals, to be assessed on a case-by-case basis. These, however, are not related to the procedure of approval and registration of the investment project as such, but rather to its implementation.

In addition, according to the Notice no. 15/19 of 30 December 2019 of the National Bank of Angola ("BNA"), which introduced a new procedure regarding foreign exchange operations by non-resident entities, the following operations of non-resident foreign exchange are subject to prior licensing by the BNA:

- the purchasing of public debt securities;
- export of capital that requires the purchase of foreign currency, when it is a direct foreign investment, resulting in:
- the transfer, in part or in whole, of an investment not listed on the stock exchange, regardless of the type;
- the dissolution of the participated entity; and
- any other corporate action that results in the reduction of the capital of an entity not listed on the stock exchange.

Otherwise, the foreign investment operations are punishable by fines and may result in the relevant entity not being authorised to export profits abroad or re-export the invested capital once the project is concluded.

4 Substantive Assessment

4.1 Which authorities are responsible for conducting the review?

AIPEX is the entity which monitors and supervises the implementation of investment projects. The monitoring and supervision of an investment project can be carried out jointly with representatives of the Ministerial Department based on the object of the investment project and/or representative of the Provincial Government of the place of implementation of the project.

4.2 What is the applicable test and who bears the burden of proof?

Investors should submit documentation and information mentioned in question 3.6 above for the assessment of an investment project for the approval of investment projects and registration with AIPEX.

4.3 What are the main evaluation criteria and are there any guidelines available?

According to the RPIL, AIPEX can reject the request of registration of a private investment project on the following grounds:

- for public policy reasons;
- if there are reasonable grounds to believe that the investor does not have the human, financial or technical means to fulfil its obligations, such as insufficient proof of the ability to carry out an investment project, or evidence that the investment is being used to cover up illegal practices; or
- if the investor appears on the lists of sanctions of the international organisations of which Angola is a member, or if information about the same is required from the security and internal order organisations of which he is a fugitive from justice in Angola or abroad.

We note that receiving approval for an investment project is relatively straightforward. If investors present the correct documents and the proposed investment in the country is in line with the types of investment foreseen and established in the private investment legal framework there is, in principle, no reason for their requests to be rejected. The review of an investment project is more objective than subjective.

If the project is approved, the investors must then present a set of documentation concerning, for example, the project workforce, including:

- documents on the company's salary policy;
- up-to-date insurance;
- proof of payment of social security;
- proof of compliance with the training programme for the national workforce; and
- proof of compliance with the expatriate workforce replacement programme by the national in accordance with the Project schedule.

During the implementation phase of the project, the investment company is required to prepare and present on a quarterly basis a monitoring report of the implementation phase of investment projects by filling out a specific form that is obtained from AIPEX or by submitting it electronically. This report must be sent within 15 business days after the end of the quarter to which it refers.

In the exploration phase of the investment, the investor may need to provide information requested by AIPEX which sometimes undertakes visits to registered enterprises.

4.4 In their assessment, do the authorities also take into account activities of foreign (non-local) subsidiaries in their jurisdiction?

This is not common.

4.5 How much discretion and what powers do the authorities have to approve or reject transactions on national security and public order grounds?

The grounds on which the competent authorities may deny the approval of an investment project are identified in the RPIL, as mentioned above in question 4.3, and there is usually little discretion at this stage. We rarely see in practice investment projects rejected on the grounds of national security and public order.

4.6 Can a decision be challenged or appealed, including by third parties? Is the relevant procedure administrative or judicial in character?

Investors may challenge the decision pursuant to administrative rules of procedures, either through a claim addressed at the entity who made the decision, or a hierarchical appeal addressed to the hierarchical superior of the entity who made the decision. The investors are also granted rights to seek remedies from civil and administrative courts. The Angolan judicial system is very bureaucratic, resulting in very lengthy procedures. This is also the case of administrative procedures, which are usually very time-consuming. Court decisions may take months or, more often, even years to reach a conclusion.

4.7 Is it possible to address the authorities' objections to a transaction by providing remedies, such as undertaking or other arrangements?

The applicable legal framework is silent on the possibility to address the authorities' objections to a transaction. What often happens in practice is that prior to approving/rejecting requests, authorities address applicants to, for example, provide additional documents or clarifications.

4.8 Are there any other relevant considerations? What is the recent enforcement practice of the authorities and have there been any significant cases? Are there any notable trends emerging in the enforcement of the FDI screening regime?

We note that in our experience, it is not usual to see disputes with authorities regarding foreign investments in Angola. Also, we are not aware of any notable trends emerging in the enforcement of the FDI screening regime.

The Angolan Privatisation Programme ("PROPRIV"), approved by Presidential Decree no. 250/19 of 5 August 2019, aiming to restructure the Angolan public business sector, diversify the economy, and ensure the public finance sustainability policy, undertaken by the Angolan government, has been developing, despite some delays caused by the pandemic. This programme identifies 195 state-owned enterprises to be privatised during a period of originally four years (2019–2022), covering diverse sectors such as oil and mineral resources, telecommunications, finance, transport, hospitality, tourism and agriculture.



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Morais Leitão, Galvão Teles, Soares da Silva & Associados in conjunction with its integrated network law firms in Angola (ALC Advogados), Cabo Verde (VPQ Advogados) and Mozambique (HRA Advogados) – through the Morais Leitão Legal Circle, a team based in Portugal dealing with Lusophone transactions – ensures a seamless service to international clients investing in Lusophone Africa. The team advises clients on both cross-border inbound and outbound investments into Lusophone Africa, very often in respect of large-scale project finance deals and is jointly led by André Sousa Vieira and Claudia Santos Cruz, together qualified in four different jurisdictions. The teams combine international experience of best practice backed up with expert local knowledge and support of the whole network, enabling each firm to maximise the resources available to its clients, as well as members qualified in civil and common law jurisdictions in the most complex and large-scale deals in Portugal and Lusophone Africa.

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Cartels & Leniency	Lending & Secured Finance
Class & Group Actions	Litigation & Dispute Resolution
Competition Litigation	Merger Control
Construction & Engineering Law	Mergers & Acquisitions
Consumer Protection	Mining Law
Copyright	Oil & Gas Regulation
Corporate Governance	Patents
Corporate Immigration	Pharmaceutical Advertising
Corporate Investigations	Private Client
Corporate Tax	Private Equity
Cybersecurity	Product Liability
Data Protection	Project Finance
Derivatives	Public Investment Funds
Designs	Public Procurement
Digital Business	Real Estate
Digital Health	Renewable Energy
Drug & Medical Device Litigation	Restructuring & Insolvency
Employment & Labour Law	Sanctions
Enforcement of Foreign Judgments	Securitisation
Environment & Climate Change Law	Shipping Law
Environmental, Social & Governance Law	Technology Sourcing
Family Law	Telecoms, Media & Internet
Fintech	Trade Marks
Foreign Direct Investment Regimes	Vertical Agreements and Dominant Firms