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Investing In... 2022

Angola: Law & Practice
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ANGOLA

Law and Practice

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1. LEGAL SYSTEM AND REGULATORY FRAMEWORK

1.1 Legal System

Angola is a civil law jurisdiction. The common jurisdiction courts include the following:

- the Supreme Court;
- the Appeal Courts (*Tribunais da Relação*); and
- the district courts (*Tribunais da Comarca*), which may be categorised as minor crime courts or courts with specialised competences. This categorisation is made in accordance with criteria such as the volume, nature and complexity of the relevant proceedings.

The maps establishing the geographical competence area for each of the above-mentioned courts or categories are provided in Law No 2/15, of 2 February 2015, which approved the Law on the Organisation and Functioning of Common Jurisdiction. This statute further provides that commercial matters – including issues related to bankruptcy, the exercise of corporate rights and claims concerning corporate resolutions – must be filed with the Commerce, Intellectual and Industrial Property Court (*Sala do Comércio, Propriedade Intelectual e Industrial*). This court is ranked as a district court but is specialised in the matters referred to above.

The jurisdiction of the Supreme Court covers the entire Angolan territory.

The key regulatory structure deals with matters such as foreign exchange, private investment, and sector-specific licensing procedures.

1.2 Regulatory Framework for Foreign Direct Investment (FDI)

The PIL

The legal framework applicable to private investment is provided by 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). These include the framework applicable to foreign direct investment (FDI).

The PIL defines "foreign investment" as the realisation of investment projects through the use of capital held by non-residents (defined as such in accordance with foreign exchange regulations). Direct investment (which may be foreign or domestic) is defined as the use in Angolan territory of capital, technology, knowledge, equipment and others in economic projects or in the creation of new companies; the partial or total acquisition of shares in existing Angolan companies aimed at the creation or continuation of an economic activity; and direct participation in its management, in accordance with its corporate purpose.

The AIPEX

The Agency for Foreign Investment and Promotion of Exports (*Agência de Investimento Privado e Promoção de Exportações* or AIPEX) is the competent authority with regards to the review and approval of investment projects, including those that constitute FDI. Its jurisdiction is the entire national territory.

In order to be able to repatriate profits and dividends abroad, investors must present a foreign investment procedure to the competent authorities. No minimum amount is currently required for foreign investments.

There are, however, some sectors which follow specific rules, such as the oil and gas industry. The Constitution of Angola provides that the state is the owner of all natural resources within Angolan territory. Therefore, the exploration of oil and gas fields is subject to specific licensing procedures and is usually undertaken within the framework provided by concession agreements, entered into in accordance with the Petroleum

Law, approved by Law No 10/04, of 12 November 2004.

Priority Sectors

The PIL provides some priority sectors. Investments in these sectors make the investor eligible for some special benefits. The sectors include, among others:

- agriculture, food and agri-industry;
- reforesting, 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 benefits may be of a financial or fiscal nature.

2. ECONOMIC/POLITICAL/BUSINESS CLIMATE

2.1 Outlook and FDI Developments

Holding reserves of almost eight billion barrels of crude oil, Angola is the second-largest oil producer in sub-Saharan Africa, after Nigeria.

Although Angola is rich in other natural resources, the oil sector plays a pivotal role in the Angolan economy, which is deeply dependent on the oil trade. The oil sector represents about a third of Angola's GDP and over 90% of the country's exports.

In the face of the COVID-19 pandemic, the Angolan government issued specific legislation and declared a state of emergency, but none of the regulations specifically affected FDI.

Although the COVID-19 pandemic has had an undoubtedly negative impact on the country, the real consequences of the pandemic are still difficult to assess.

Angola has recently launched a privatisation programme aimed at the privatisation of almost 200 of its most relevant companies throughout most sectors of activity, including oil and gas, telecommunications, transport, and industry, among others. These privatisations may occur through public tenders, auctions held in stock exchanges, and initial public offerings.

In recent years, the National Bank of Angola has undertaken deep reform of the framework applicable to the execution of foreign exchange operations, making cross-border operations less burdensome, thus providing an incentive to foreign investment. Some effort has also been made in the fight against corruption and money laundering.

Some upcoming legislative changes show that the Angolan State is interested in promoting a more dynamic business environment, as highlighted by the following.

- The Law on the Legal Framework for Corporate Recovery and Insolvency was unanimously approved by the Angolan parliament. This new statute brings about a paradigm shift, overcoming an existing legislative lacuna, implementing a system to support companies in financial distress, and promoting the conditions to undertake business activities and investment.
- The Law on the Framework for Movable Securities, aimed at providing further legal certainty for those involved in taking and granting security in financing transactions was also unanimously approved. This new framework is aimed at facilitating the granting of finance through the reduction of risks

incurred by potential lenders, thus attracting investment.
- A new law that regulates the procedures for the incorporation of companies was also approved. This statute provides a simplified framework, eliminating formalities that were previously required, thereby reducing bureaucracy and promoting a more dynamic business and investment environment.

3. MERGERS AND ACQUISITIONS

3.1 Transaction Structures

Over the last few decades there have been significant developments in the M&A practice in Angola. However, despite having become a mature market, it is not yet an extremely sophisticated one. The following are among the most common M&A transactions.

- The acquisition of shareholdings in commercial companies (most commonly, limited liability companies) encompassing direct and indirect acquisitions.
- The acquisition of assets – eg, the acquisition of a business as a going concern (*trespasse*) and the transfer of assets and significant parts of the business as a whole – has become a common option. Foreign investors must make an assessment of the available options and choose the option that best suits their interest. Some of the key issues weighed when making such a decision include:
  (a) the consents required (which may vary depending on the relevant sector and may range from third-party consents to regulatory or government consents);
  (b) the restrictions on the transfer of the relevant contracts/licences in specific sectors; and
  (c) the framework applicable to the transfer of employees.
- Joint ventures and public acquisition offers may also be used.

Operations such as mergers and demergers, despite being legally provided, are not common.

When operating in the Angolan business landscape it is important to maintain good relations with the competent authorities and relevant public entities (such as registry services). This is especially important in the case of an attempt to use structures deemed as innovative in Angola, which is likely to prove not to be very efficient.

With regards to the acquisition of public companies or their business, the most common structures are public-private partnerships, entering into concession contracts with the public authorities, and privatisation offers.

It is not material to making this decision whether the acquisition is of a majority or minority of a business or company.

3.2 Regulation of Domestic M&A Transactions

Aside from the regulatory regime applicable to FDI, further described in **7. Foreign Investment/ National Security**, there are two key regulatory reviews and approvals which may be applicable to M&A transactions – those related to competition and foreign exchange regulations, respectively dealt with in further detail in **6. Antitrust/ Competition** and **8. Other Review/Approvals**.

4. CORPORATE GOVERNANCE AND DISCLOSURE/REPORTING

4.1 Corporate Governance Framework

Rules and Guidelines

Increased attention has been paid in recent years to issues regarding corporate governance

in Angola. For example, the National Bank of Angola issued Notice No 10/21, of 14 July 2021, which provides corporate governance rules and guidelines applicable to the banking sector.

The Capital Markets Commission (*Comissão do Mercado de Capitais* or CMC) has also published a guide for good corporate governance practices. This, however, includes only guiding principles and recommendations, and not mandatory rules.

With regard to commercial companies, there are some important rules in the Commercial Companies Code, most notably the limitation imposed on the granting of guarantees by one company to another, unless there is direct interest in the transaction or if the parties are part of the same group of companies. An entity specifically devoted to promoting corporate governance matters in Angola is the Angolan Centre of Corporate Governance or ACCG (*Centro de Corporate Governance Angolano*). The ACCG has also published a Corporate Governance Charter, providing guidelines and recommendations concerning these matters.

Limited Liability Companies

The most common type of company used in Angola is the limited liability company, which is divided into two categories: the private limited liability company (*sociedade por quotas* or Lda) and the public company controlled by shares (*sociedade anónima* or SA). The choice between these two categories depends on the corporate structure to be adopted. Ldas are usually used for simpler projects and investments, whereas SAs are often chosen for the confidentiality granted to their shareholders and for their greater dynamism.

The minimum number of shareholders (except for single-shareholder companies) is two for an Lda, and five for an SA.

An Lda's share capital is divided into "quotas", which must have a value of no less than AOA1.00. The shareholders may freely define the share capital in the articles of association of the company.

An SA's share capital is divided into shares (which may be bearer or nominative). The minimum share capital must be no less than the equivalent of USD20,000 expressed in kwanzas. The value of the shares must be equal to or higher than the equivalent of USD5 expressed in kwanzas.

Shareholders' liability and responsibility

In an Lda:

- shareholders are liable towards the company for the amount of their contribution in accordance with the articles of association; and
- only the company's property is liable for the company's debts.

In an SA:

- the number of shares subscribed by a shareholder is the limit of that shareholder's liability towards the company; and
- only the company's property is liable for the company's debts.

In Lda's, the general shareholders' meeting (*Assembleia Geral*) is the main deciding body and its management must follow the general shareholders' meeting's instructions. These companies must have one or more directors (*gerentes*) who may not be shareholders.

In SAs, the main deciding and acting body is the board of directors (*conselho de administração*). It is usually the case that the SA's general shareholders' meeting may only make decisions and discuss matters when requested to do so by the board of directors.

Supervisory bodies are optional for Lda's, whereas it is mandatory for SAs to have either a supervisory board or a sole supervisor.

4.2 Relationship between Companies and Minority Investors

The Commercial Companies Law (CCL), approved by Law No 1/04, of 13 April 2004, as amended by Law No 22/15, of 31 August 2015, provides some specific protection to minority shareholders in Angolan companies.

The CCL grants the following rights to minority shareholders:

- the right to summon a shareholders' meeting;
- the right to include items in the agenda of shareholders' meetings; and
- the right to access the company's records, including management reports and provision of accounts, minutes of shareholders' meetings, amounts paid to members of the management bodies, and the share register.

The first two examples may be exercised by any shareholder in an Lda and by shareholders holding at least 5% of the voting rights in an SA.

There do not appear to be any specificities of the relationship between a company and its minority investors which are not covered by the protection granted to minority shareholders.

Law No 11/13, of 3 September 2011, as amended, which provides the legal framework applicable to the state's corporate sector, establishes that if the state or any public entity holds a minority interest in a commercial company, such company will nonetheless be regulated by the CCL. However, special rights may be created in these situations, which will prevail over the rules provided by the CCL.

4.3 Disclosure and Reporting Obligations

Angolan law establishes several reporting and disclosure obligations regarding the main features of commercial companies. According to the Commercial Registry Code, approved by Decree-Law No 42644, of 13 August 1966, as amended, the following are subject to mandatory registration with the Commercial Registry Offices: alterations to the articles of association and the appointment, reappointment, exoneration or resignation of members of corporate bodies.

The PIL further provides that companies implementing investment projects are obliged to notify the AIPEX of any material corporate changes, such as an increase in their share capital, a broadening of their corporate purpose, and the transfer of their shares. This notification must take place within 15 days of the change taking place.

The CMC has approved Instruction No 06/CMC/05-21, of 27 May 2021, which provides rules regarding the disclosure of financial information by securities issuers.

5. CAPITAL MARKETS

5.1 Capital Markets

The Angolan capital markets are still in an initial stage. Despite being regulated by a recent legal framework, the capital markets are still not very developed in practice.

The key statutes regulating the Angolan capital markets are:

- the Securities Code, approved by Law No 22/15, of 31 August 2015, amended by Law No 9/2020, of 16 April 2020, which regulates the supervision and regulation of securities,

issuers, public offerings, regulated markets and respective infrastructures, prospectuses, services and investment activities relating to securities and derivative instruments, as well as the respective sanctions framework;
- Presidential Decree No 54/13, of 6 June 2013, which provides the framework for the entity responsible for supervising the capital markets – the Capital Markets Commission or CMC (*Comissão do Mercado de Capitais*); and
- Presidential Decree No 97/14, of 7 May 2014, which authorised the creation of the Angolan Stock Exchange (*Bolsa de Dívida e Valores de Angola* or BODIVA).

Between 2017 and 2020, BODIVA registered an increase in traded amounts but, at this stage, bank financing is still more common.

5.2 Securities Regulation

As referred to in **5.1 Capital Markets**, securities are regulated by the Securities Code and the supervising entity is the CMC.

The Securities Code is applicable if and to the extent that the situations, activities and acts to which it refers have a relevant connection with Angolan territory.

This statute further provides that this connection is deemed to occur in the following cases:

- orders addressed to members of regulated markets registered with the CMC and operations carried out on those markets;
- activities carried out and acts undertaken in Angola; and
- provision of information that is accessible in Angola and refers to situations, activities or acts regulated by Angolan law.

However, this list is not exhaustive, which means that other situations may be deemed by the relevant authorities as having such a connection.

5.3 Investment Funds

In Angola, investment funds are regulated by Presidential Legislative Decree No 4/15, of 16 September 2015. Article 3 of this statute provides that investment funds are subject to the supervision of the CMC. These entities are further regulated by CMC Regulation No 2/19, of 5 February 2019.

The undertaking of activities in Angola by investment funds is subject to prior approval by and registration with the CMC.

The above-mentioned statute provides the scope of activities that may be undertaken by entities deemed as investment funds under Angolan law.

Investment funds operating in Angola may be required by the CMC to provide information on issues such as the risks being incurred, management practices, asset valuation methods, and information regarding the fund's solvency, among others.

The CMC is also competent to regulate the activity of investment funds operating in Angola.

There do not appear to be any exemptions to the framework outlined above.

6. ANTITRUST/ COMPETITION

6.1 Applicable Regulator and Process Overview

Competition in Angola is ruled by Law No 5/18, of 10 May 2018 (*Lei da Concorrência* or CL), which provides the main applicable legal frame-

work, and is further regulated by Presidential Decree No 240/18, of 12 October 2018 (Competition Regulation) and Presidential Decree No 313/18, of 21 December 2018, which created the Competition Regulatory Authority or CRA (*Autoridade Reguladora da Concorrência*).

Meaning of a Concentration

The CL provides that the concentration of companies means an enduring change in control over part or the whole of one or more companies resulting from (i) a merger between two or more companies, or parts thereof, which were previously independent; and (ii) the acquisition, either directly or indirectly, of control of parts or the totality of the assets or the share capital of one or more companies by one or several companies or persons that already had control of at least one company.

Notification Requirements

The CL provides that merger operations and the acquisition of control over a company which surpass a certain threshold of market share, turnover or annual invoicing must be previously submitted to the CRA. These operations may not take place until the due notification is made to the CRA, through the submission of a form presented (i) jointly by the intervening parties; or (ii) individually by the party that is acquiring exclusive control of the totality or part of one or more companies. Within 20 days from the submission described, the CRA must promote the publication of the essential elements of the operation in the most widely read newspaper in the country. If the CRA does not issue its opinion within 120 days, its silence will be deemed as tacit approval of the operation.

Merger operations which meet one of the following conditions must be communicated to the CRA:

- a market share equal to or higher than 50% in the national market of a given good or service, or a substantial part of such market, is acquired, created or strengthened;
- a market share between 30% and 50% in the national market of a given good or service, or a substantial part of such market, is acquired, created or strengthened, as long as the turnover of the previous fiscal year individually accomplished in Angola by at least two participating companies is above AOA450 million; and
- the companies that participate in the merger have accomplished a turnover of more than AOA3.5 billion in Angola, in the previous fiscal year.

The CL further establishes that violation of the obligation to notify the CRA of the merger is punishable with a fine of no less than 1% and no more than 5% of the turnover of the previous year.

Exemptions

The Competition Regulation provides some exemptions to the merger control regime. These include those operations which do not surpass the above-mentioned thresholds and the acquisition of shares by credit institutions, financial or insurance companies in companies with corporate purposes different from those of the acquirer for resale, as long as the acquirer does not exercise the corresponding voting rights, unless such exercise is aimed at the sale of their shares.

6.2 Criteria for Review

The CL grants several powers to the CRA to help it undertake its investigations. These powers include the following:

- requesting relevant information from the authors of the notification;

- requesting relevant information from any public or private entities, and establishing deadlines for the provision of such information;
- questioning the representatives of the companies involved and requesting documentation and other elements it considers to be useful or necessary for the clarification of relevant facts;
- questioning representatives of third parties such as companies/groups of companies/persons whose statements may be deemed pertinent; and
- conducting searches of the facilities of companies involved, including the ability to seize relevant documentation.

The CL further grants the CRA general power to undertake the complementary investigative actions it may deem necessary.

6.3 Remedies and Commitments

The CL provides that the relevant authority – the CRA – may require that further information/documentation be provided by the authors of the notification, relevant public or private entities, and/or companies or persons that may be relevant to the operation under review.

Despite not providing specific examples of such commitments, the CL provides that the parties responsible for the notification of a merger operation may, at all times, undertake commitments aimed at safeguarding actual competition.

6.4 Enforcement

As referred to in **6.1 Applicable Regulator and Process Overview**, the early implementation of a merger subject to mandatory notification before (express or tacit) clearance, subjects the infringing undertakings to fines between 1% and 10% of the annual turnover of the previous year of the economic group of each undertaking concerned. Non-compliance with the provisions establishing the obligation to notify a merger operation subject to mandatory notification; the provision of false, incorrect or incomplete information; and the refusal to co-operate with the CRA in the context of its investigative powers, are punishable with fines between 1% and 5% of annual turnover. Merger operations which must be mandatorily notified to the CRA are suspended until the CRA gives its clearance.

The CL also provides for periodic penalty payments as well as ancillary sanctions with potentially serious consequences, such as exclusion from participating in public tenders for three years and even the possible break-up of the offending undertaking.

The CL does not provide the ability to appeal the imposition of fines or other penalties by the CRA. Nonetheless, it provides that allegedly non-compliant undertakings or persons may present evidence of their compliance at any time prior to the end of the proceedings.

7. FOREIGN INVESTMENT/NATIONAL SECURITY

7.1 Applicable Regulator and Process Overview

As referred to in **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, investors in Angola must have their investments approved and registered in order to be able to repatriate profits and transfer funds abroad.

The PIL's Principles, Benefits and Criteria

The PIL establishes the principles applicable to private investment in Angola, provides the benefits and incentives granted to private investors, and sets out the criteria for access to such benefits and incentives.

The PIL defines "private investment" as the "use of resources by private companies, wheth-

er national or foreign, through the allocation of capital, technology and know-how, equipment goods and others for the maintenance or increase of the capital stock".

External investment may be made through the transfer of own funds from abroad, and the transfer of machinery, equipment, accessories and other tangible fixed assets.

The PIL provides two procedural regimes for the approval of investment projects – the prior declaration and the special regime.

Both procedures include presentation to the AIPEX of an investment proposal, for the purpose of having the project registered.

The prior declaration regime

In the prior declaration regime, the investor incorporates a local company before submitting the investment proposal to the AIPEX and before the Certificate of Registration of Private Investment (*Certificado de Registo de Investimento Privado* or CRIP) is obtained. However, rights and benefits can only be granted to the investor pursuant to approval of the investment project.

The special regime

The special regime is applicable to investments made in sectors identified as priority sectors, which include:

- agriculture, food and agri-industry;
- reforesting, 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 procedure

Investment projects are prepared and approved in accordance with the following summarised procedure:

- preparation and follow-up of a foreign investment project registration procedure with the AIPEX, including the documentation preparation phase:
  - (a) preparing and drafting the documents required, including the respective application forms that must be electronically submitted in the Portuguese language; and
  - (b) gathering, preparing and/or reviewing the documentation to be submitted with the registration form;
- submission of the investment project documents and request with the AIPEX;
- possible room for negotiation of a few aspects with the AIPEX (despite several changes in what was previously described as the negotiation phase); and
- issuance of the CRIP to import the investment.

Some events (eg, share capital increases, assignment/transfer of shareholdings) must also be communicated to the AIPEX.

7.2 Criteria for Review

The applicable legal framework does not provide specific criteria for the review undertaken. It does, however, provide some principles to which investors and their investment in Angola are bound. These principles include the following:

- respect for the principles and goals of Angolan economic policies;
- respect for private property and other proprietary rights;
- respect for the market economy rules, based on the values and principles of healthy competition, morality and ethics among the economic agents;

- respect for the free economic and corporate initiative, except regarding the areas defined as being reserved by the constitution and the law for the state;
- guarantee of safety and protection of investment;
- guarantee of free movement of goods and capital, under the terms and within the limits provided by law; and
- respect for bi- and multilateral agreements and treaties on the subject to which the Angolan State is a party.

The criteria outlined above do not vary according to the business structure adopted for each investment.

7.3 Remedies and Commitments

The PIL provides for general and specific duties. Under the first category, private investors are obliged to respect the constitution, the PIL and remaining legislation applicable in 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. Concerning the second category, private investors must comply with the following duties, among others:

- 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;
- respect the rules on hygiene, safety and security at work and other issues provided for in labour law;
- contract and keep up-to-date insurance against work accidents and occupational ill-health of employees;
- contract and keep up-to-date civil liability insurance policies for damages caused to third parties or the environment;
- constitute funds and reserves, and make provisions pursuant to the legislation in force; and
- respect the rules relating to protection of the environment, pursuant to the legislation in force.

The CRIP may also include several commitments and obligations to which the investor is bound. These commitments and obligations may vary from one investment to another, most notably in cases where there have been negotiations between the AIPEX and the investor seeking the issuance of the CRIP.

7.4 Enforcement

The legal framework provided for investment in Angola is not designed to grant the AIPEX the authority to block or otherwise challenge FDI before it is made. Failure to comply with the procedures outlined in the sections above will result in the investor not being able to repatriate funds and profits, or to transfer funds abroad. This will not be the result of an active intervention by the AIPEX, but rather a consequence of the required procedures not having been complied with.

However, where an investment is approved, the AIPEX may have an active role during its implementation. As referred to in **7.3 Remedies and Commitments**, the PIL provides several duties to which the investor is bound and the CRIP may include several further obligations which are imposed on the investor.

The PIL provides a list of possible violations by the investor which enables the AIPEX to exercise oversight. The AIPEX may then enforce its powers through the imposition of fines; the decision to remove the benefits granted to the investor; and/or the cancellation of investment approval, among others.

8. OTHER REVIEW/ APPROVALS

8.1 Other Regimes

Foreign Exchange Matters

For the purposes of the legal framework applicable to foreign exchange (namely the Foreign Exchange Law, approved by Law No 5/97, of 27 June 1997) FDI is deemed as a capital operation, which may occur through one of the following means, among others:

- the incorporation of a new company or a branch of an existing company;
- participation in the share capital of existing companies;
- the acquisition of part of or of establishments as a whole;
- the acquisition of real estate;
- the transfer of funds arising from the sale of assets acquired in accordance with any of the above operations;
- the subscription, acquisition and sale of public debt securities, bonds issued by private entities or equivalent securities maturing at more than one year;
- the grant and repayment of loans and other credits with a term of more than one year.

All capital operations are subject to authorisation by the National Bank of Angola (BNA).

Notice No 11/21, of 23 December 2021, issued by the BNA, aims at making the undertaking of foreign exchange operations simpler, especially in relation to FDI. This Notice exempts several foreign investment operations from obtaining authorisation from the BNA, namely, investments made in the acquisition of shares in unlisted Angolan companies, or in securities and derivatives.

The income earned as a result of FDI is also exempt from authorisation by the BNA, as well as all foreign exchange operations relating to foreign investment projects which were previously approved by the BNA.

The oil industry has a special foreign exchange regime provided by Law No 2/2012, of 13 January 2012. Under this framework, the companies associated with the National Concessionaire must make all their payments through accounts domiciled in Angola, in accordance with a calendar established by the BNA.

Real Estate Considerations

Pursuant to the Land Law, Law No 9/04, of 9 November 2004, land is owned by the state and may not be sold/disposed of/encumbered. Despite this general principle, several rights which are not as strong as a property right may be granted to natural or corporate persons. These include:

- right of ownership;
- right of customary dominium utile;
- right of civil dominium utile;
- leasehold right; and
- the right to temporary occupation.

The most common of these is the leasehold right, which allows for the construction or maintenance of buildings on land belonging to others.

Land rights may be transferred, either onerously or not, and these transactions are regulated by the Land Law, the Civil Code (approved by Decree-Law No 47,344, of 18 November 1967) and the Land Registry Code (approved by Decree-Law No 47,611, of 30 December 1967, as amended).

The leasehold right is usually constituted through a concession contract between the state and the individual or corporate entity and is initially and provisionally granted for a maximum of five years. If the land is put to effective use, this

period may then be extended, but not for more than 60 years. This is, however, renewable for equal periods. The leaseholder may be a national or foreign individual or corporate entity and is required to make a contractually established annual payment.

Law No 26/15, of 23 October 2015, provides the framework applicable to urban rental agreements. The urban rental agreement may be used for residential, commercial, and industrial purposes, among others. Through this contract, a party grants the other the temporary use of an urban plot, in exchange for the payment of rent.

Rental agreements for commercial or industrial purposes, or for the purposes of exercising liberal professions, must be made in writing.

These agreements may not be concluded for more than 30 years and, if the parties do not determine a duration, the contract shall be considered to have a duration of 2 years.

The situations which trigger the termination of the rental agreement include the elapsing of the term agreed between the parties or established by law, and the occurrence of any event deemed by the parties to have that effect.

Commercial or Industrial Licensing – General

The Law on Commercial Activities, approved by Law No 1/07, of 14 May 2007 is applicable to those undertaking commercial activities and intending to undertake commercial operations.

Under this statute, the undertaking of commercial activities is subject to licensing, which is granted through the issue of a commercial licence (*alvará*), which is valid for a period of five years. The licensing procedure includes the registration of the economic establishments and activities. Changes made to the holder of the licence, the transfer of the establishment or the dissolution of the company, are also subject to commercial registration.

Presidential Decree No 193/17, of 22 August 2017, provides the rules applicable to the procedure for obtaining the required licence for the undertaking of commercial activities. This statute provides the documentation which must be submitted with the application for each type of activity, establishment and applicant.

Commercial or Industrial Licensing – Sectoral

Companies intending to undertake economic activities in Angola must, in many cases, apply for a licence specific to their sector of activity. The competent authority in these licensing procedures is usually the ministry overseeing the relevant economic area (eg, Fisheries, Mineral Resources and Energy, Tourism, etc).

This type of licensing usually requires the assessment of specific matters, such as the reputation and financial and technical capability of the applicant.

The means by which the licence is granted may differ between sectors and must be assessed on a case-by-case basis.

However, in most cases, the licence will be granted with a limited duration and will be subject to conditions. The violation of these conditions usually enables the competent authority to revoke the licence granted.

Environmental Licensing

Law No 5/98, of 19 June 1998, approved the Environment Framework Law, which provides the basic principles for the protection of the environment in Angola.

The process of environmental impact assessment is required for the licensing of public and private projects which may, due to their specifi-

cities, cause significant damage to the environment. This process is regulated by Presidential Decree No 117/20, of 22 April 2020.

The environmental impact assessment includes the following steps:

- the undertaking of an environmental impact study;
- obtaining a favourable opinion from the ministry responsible for environmental matters; and
- public hearings.

The concerned party then submits the application for an environmental licence to the Environment Integrated System (an online platform created for the purpose of organising this procedure), along with the environmental impact assessment.

If all the requirements are met, an environmental installation permit is issued, granting the licensed entity permission to set out its undertaking.

Upon compliance with all the measures indicated in the environmental impact assessment study, the environmental operating permit is granted for a period of five years, allowing the licensed entity to pursue its activity within certain environmental limits, such as the non-emission of pollutants.

This review is not exhaustive. The licensing requirements applicable to a specific FDI project must be reviewed on a case-by-case basis.

9. TAX

9.1 Taxation of Business Activities

There are several taxes in Angola applicable to corporate income. There is Business Income Tax (*Imposto Industrial*), Investment Income Tax (*Imposto sobre a Aplicação de Capitais*) and Urban Real Estate Income Tax (*Imposto Predial Urbano*). In addition, there are also special taxes applicable to specific sectors (mining, oil and construction agreements). Companies may be subject to stamp duty in certain transactions, as well as to Real Estate Transfer Tax (Sisa) in the acquisition of real estate property. Value added tax may also be levied in some situations.

No significant differences arise from the type of company on which the tax is being levied.

Business Income Tax (BIT)

BIT is applicable to resident companies and individuals and is levied on their worldwide income. A company is considered resident if it has a domicile, registered office or effective management in Angola.

Non-resident companies or individuals are taxed only on income obtained in Angola. Forms of representation of non-resident companies in Angola, such as branches and permanent establishments, are subject to taxation on income obtained in Angolan territory.

The applicable tax rates may be reduced in the context of a private investment project as mentioned in **9.3 Tax Mitigation Strategies**.

Investment Income Tax (IIT)

IIT is levied on income derived from the "simple investment of capital".

The rate of this tax ranges from 5–15%, depending upon the origin of the income.

Urban Real Estate Income Tax (UREIT)

UREIT is a combination of income and wealth tax levied on individuals and corporate entities, both resident and non-resident, whenever these are entitled to urban property rents or, if the properties are not rented, levied on their possession of the properties. If the property is rented, the tax is levied on the annual amount of rent at

25%. If, on the other hand, the property is not rented, the calculation of tax due is based on the value of the asset in accordance with property tax records at 0.5%. Hotels may benefit from a tax reduction of 50% for a maximum of 15 years.

The income derived from rents received for urban property taxed under UREIT is exempt from BIT.

Stamp Duty (SD)

All acts, agreements, documents, securities and other facts set out in the table appended to the SD Code are subject to SD, including the guarantees of obligations (between 0.1% and 0.3% of the value), which are considered accessories to the contract; financing operations (between 0.1% and 1%); acquisition of ownership of real estate (0.3%); and any agreement not specifically provided for in the table (AOA1,000).

Value Added Tax (VAT)

VAT in Angola is based on 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.

The VAT regime became mandatory to all taxable persons from 1 January 2021.

The taxable persons subject to VAT are exempt from SD on receipts for the effective receipt of credits.

In general, the onerous transfer of goods and the provision of services by a taxable person acting in Angolan territory within their scope of activity will be subject to VAT. This is also the case for the importation of goods.

Individuals who/which independently perform a business activity; those performing liberal professions; and those who/which undertake extractive, agricultural and/or fishing activities are taxable persons for VAT purposes, among others.

The value on which VAT is calculated is the value of the supply regardless of its nature.

VAT is levied at the single rate of 14%.

The VAT framework provides some full and partial exemptions.

Prior to the end of the month after the one to which the relevant transactions refer, taxable persons must submit a monthly VAT return.

9.2 Withholding Taxes on Dividends, Interest, Etc

Investment Income Tax (IIT)

Income generated by financial operations (such as interest, dividends, premiums on bonds, etc) is subject to IIT only if not liable for other tax. These earnings 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 of an instalment or from late payment.
- Territorial basis of taxation – owed on interest "produced in the country" or assigned to a person having domicile, effective management or a PE in Angola.
- Exemptions – income of financial institutions; 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 and loan capital, profits attributable to

shareholders, royalties, capital gains, among others. The following gains are also subject to this tax:

(a) the repatriation of profits attributable to the PE of non-residents;
(b) the remuneration of bonds or other similar securities issued by any company;
(c) the remuneration of treasury bills and bonds;
(d) the remuneration of central bank securities; and
(e) the positive balance between capital gains and losses incurred with the disposal of shares or other instruments that generate any income that is subject to tax (only 50% of this balance is 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 (ie, 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 applicable rate is 5% in the following cases:

- income earned from interest, 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;
- profits attributable to shareholders of companies and the repatriated profits attributable to PEs of non-residents, when the shares of the concerned company are traded on a regulated market; and
- amounts awarded to companies or entrepreneurs as compensation for the suspension of their activity.

The rate is 10% when most of the income is included in Section B.

The rate is 15% in the case of, among others:

- interest on current accounts;
- compensation for suspension of activity; and
- any other income on investment of capital not included in Section A.

The withholding tax rates on dividends, interest and royalties can be reduced if the investor resides in a double-taxation treaty country. These reductions have to be assessed on a case-by-case basis, given the requirements for benefiting from the advantages granted by such treaties may vary between treaties.

9.3 Tax Mitigation Strategies

PIL Tax Benefits

The PIL provides some tax benefits related to BIT, IIT, REIT, Sisa and SD, which may include deductions to taxable value; accelerated depreciation and re-integration of assets; tax credits; exemption and reduction of taxes, contributions and import duties; and deferred payment of taxes.

Benefits granted under the prior declaration include (see **7.1 Applicable Regulator and Process Overview**):

- reduction of the BIT rate by 20% for two years;

- reduction of the IIT rate applicable to dividends by 25% for two years;
- reduction to half of the Sisa due for the acquisition of real estate for an office and establishment of the investment; and
- reduction to half of the SD due for two years.

Regarding 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 or D). Each region provides specific benefits, which include reduced rates for certain periods of time.

Large Taxpayers' Framework

The Statute of Large Taxpayers (*Estatuto dos Grandes Contribuintes*, approved by Presidential Decree No 147/13, of 1 October 2013) establishes a special taxation framework applicable to entities deemed as large taxpayers.

Pursuant to this statute, taxpayers are subject to some requirements concerning their accounts and must notify any changes in their shareholding structure, management and headquarters or place of effective management.

A list of the entities which qualify as large taxpayers will be published pursuant to an order by the Ministry of Finance.

Group of companies

This regime further establishes a tax group applicable to groups of companies. A group of companies is deemed to exist under this framework when the parent company directly or indirectly holds a share of at least 90% in another company (corresponding to no less than half of the voting rights).

In order to benefit from this regime, the group of companies must comply with the following conditions:

- all members of the group must have their tax residence in Angola;
- the share held by the dominant company in the subsidiaries must be held 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.

Companies 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; have registered tax losses during the preceding two financial years; and/or have been granted tax benefits under the PIL (through tax exemption or through nominal reduction of the BIT rate) cannot benefit from this framework.

The group of companies shall further submit a form (Modelo 5) to the Large Taxpayers Unit every year.

9.4 Tax on Sale or Other Dispositions of FDI

As described in **9.2 Withholding Taxes on Dividends, Interest, Etc**, the positive balance between capital gains and losses incurred with the disposal of shares or other instruments that generate income is subject to tax.

The same section also describes exemptions to this tax, which do not include the disposal of shareholdings.

Tax benefits provided to investors are dealt with in **9.3 Tax Mitigation Strategies**.

9.5 Anti-evasion Regimes

Angolan tax law does not include any general anti-abuse clauses. No thin capitalisation or controlled foreign company rules are provided either.

However, there are some anti-evasion rules, such as the transfer-pricing regime described below.

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

In principle, conditions that would normally be agreed between independent persons must be followed between entities (resident or not) in "special relationships" with residents.

Large taxpayers are subject to a more deeply regulated transfer-pricing regime.

Two entities are deemed as associated for the purposes of this framework when one of them is able to directly or indirectly exercise significant influence on the management of the other. The situation described above is deemed in the following cases:

- 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 agreement 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 of them; or
- an entity finances another in more than 80% of its credit portfolio.

The methods recognised by this regime are the comparable market price method, the resale price method and the cost-plus method.

A transfer pricing file must be prepared by companies reporting annual revenue of over AOA7 billion.

10. EMPLOYMENT AND LABOUR

10.1 Employment and Labour Framework

The key statute providing the legal framework applicable to employment and labour is Law No 7/15, of 15 June 2015, which approved the General Labour Law or GLL (*Lei Geral do Trabalho*). The sources of labour law identified in this statute include the constitution and international labour conventions ratified by Angola.

Whenever two sources of labour law are in contradiction with one another, the criterion adopted by Angolan law is the application of the most favourable solution to the employee, except if the provisions of a higher level are mandatory.

Collective bargaining agreements are regulated by Law No 20-A/92, of 14 August 1992. Companies with more than 20 employees must negotiate with representative bodies of employees in order to enter into collective agreements, which is a common method used to regulate relationships between employers and employees.

The representative bodies of employees include unions and other entities negotiating with employers on the employees' behalf.

The maximum limit for the duration of employment contracts in Angola is five years.

10.2 Employee Compensation

The compensation awarded to employees in Angola is usually divided into a fixed salary and varying benefits, which may be paid in cash or in kind.

Employers are legally bound to pay the same wage for the performance of equal labour, being prevented from any kind of discrimination, namely, based on gender.

The GLL further provides that, when there is a collective agreement in place, the compensation may not be less than that provided under such collective agreement.

Presidential Decree No 89/19, of 21 March 2019, established a minimum wage of AOA21,454.10 per month. This amount is higher in sectors such as the extractive industry, transportation, services and the transformative industry.

Apart from the minimum wage, the Angolan state does not usually interfere with employee compensation.

Regarding the impacts of an acquisition, change of control or other investment transaction on the compensation of employees, see **10.3 Employment Protection**.

10.3 Employment Protection

Articles 68 and following of the GLL provide the rights and obligations applicable to both the employee and the employer in any event that could have an impact on the relationship between them.

Article 68 provides that a change to the employer's legal position does not terminate the labour relationship and does not constitute grounds for dismissal.

This Article further provides that the above-mentioned changes include, without limitation, the merger of the employer with another entity, as well as the sale of the business as a going concern.

In principle, the new employer must assume the position of the former employer, if the activity undertaken is not significantly different.

In the case of transfer of employees as a result of changes, such as those described above, the employees will be entitled to their years of service, professional category and other rights they were entitled to before the change occurred.

The new employer is further bound to observe any conditions granted to employees by existing collective agreements.

11. INTELLECTUAL PROPERTY AND DATA PROTECTION

11.1 Intellectual Property Considerations for Approval of FDI

Intellectual property is not a very important aspect in screening FDI in Angola. Nonetheless, the PIL includes in the guarantees provided by the state to investors the protection of intellectual property rights. The PIL further provides that the Angolan State must also ensure that the investor has access to intellectual property registrations when required.

11.2 Intellectual Property Protections

The framework governing IP is mainly governed by the Copyright Law (*Lei de Protecção dos Direitos de Autor e Conexos*, approved by Law No 15/14, of 31 July 2014). Angola is party to several international conventions and treaties on intellectual property, such as the World Intel-

lectual Property Organisation, the World Trade Organisation and the Patent Cooperation Treaty.

However, the Angolan jurisdiction is regarded as providing very poor protection to intellectual property. According to the 2020 International Property Rights Index, Angola is ranked in 126th place on the global ranking (out of 129) and 28th (out of 28) on the regional ranking (Africa).

The Copyright Law provides that protection is granted to intellectual property rights regardless of their registration.

Given the lack of sophistication of the protection granted under Angolan law to intellectual property rights, there are no particular sectors in which it would be more difficult to obtain intellectual property protection. Despite the violation of intellectual property rights being criminally sanctioned, the lack of adequate protection is present across the board.

11.3 Data Protection and Privacy Considerations

The use (including the registration and handling) of data regarding political, philosophical or ideological issues, data relating to religion, party affiliation, ethnic origin and the private life of citizens with the aim of discrimination is prohibited by the Constitution of the Republic of Angola. The Constitution further provides that effective guarantees will be put in place against abusive use of information regarding persons and families, or the use of such information contrary to human dignity.

Data protection is further regulated by the Data Protection Law, approved by Law No 22/11, of 17 June 2011, which also created the Data Protection Agency. Any public, private or corporate entities dealing with or handling personal data are subject to the Data Protection Law.

The Data Protection Law defines "responsible entity" as the entity responsible for defining the purposes and means of handling personal data. This statute is applicable to the handling of personal data:

- by "responsible entities" with their main office in Angolan territory;
- within the scope of activities undertaken by a "responsible entity" in Angola, even if their main office is abroad;
- outside of Angolan territory in places where Angolan legislation is applicable due to public and/or private international law; and
- by a "responsible entity" which, despite not having its main office in Angola, uses means located in Angola for the handling of such data.

It is not apparent how much focus is given to the enforcement of these laws and regulations. However, the Data Protection Law provides that violation of the obligations it provides may be sanctioned with fines ranging from USD65,000 to USD150,000 and, in some cases, may be punished with jail time ranging from three months to three years.

The Data Protection Law does not specify whether the penalties for violation can exceed the provable economic loss caused by such violation.

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