

Doing business in Angola

1. Introduction

This memorandum sets out a summary of certain legal aspects which should be taken into account when doing business in Angola. It is not intended to be exhaustive and is provided for information purposes only. If further information or legal advice is required, the readers are invited to contact one of the lawyers of Clifford Chance LLP or FBL Advogados who are listed below.

2. General information

2.1 Political structure

<i>Official name</i>	<i>República de Angola</i>
<i>Form of state</i>	Unitary republic
<i>Legislative elections</i>	The next legislative elections are due in September 2012
<i>National government</i>	The government is comprised of members of the ruling <i>Movimento Popular de Libertação de Angola</i> (MPLA)
<i>National legislature</i>	<i>Assembleia Nacional</i> (parliament) with 220 seats
<i>Main political parties</i>	The MPLA has an absolute majority in parliament, with 191 seats; the main opposition party, the <i>União Nacional para a Independência Total de Angola</i> (UNITA), has 16 seats
<i>President & head of government</i>	José Eduardo dos Santos

2.2 Basic data

<i>Land area</i>	1,246,700 sq km
<i>Population</i>	19.1 million
<i>Main towns</i>	Population estimates in '000 (2009, <i>Ministério da Administração do Território</i>)
	Luanda (capital) 4,500
	Lubango 1,011
	Huambo 904
	Lobito 737
	Benguela 469
	Kuito-Bié 424
	Cabinda City 399
<i>Languages</i>	Portuguese (official), Umbundu, Kimbundu, Kikongo and other Bantu-group languages.
<i>Currency</i>	Kwanza (Kz).

Contents

1. Introduction	1
2. General information	1
3. Annual data and forecast	2
4. Investment regulation and procedure	2
5. Participation in international treaties and conventions	4
6. Setting up a business in Angola	5
7. Foreign exchange	6
8. Taxation	6
9. Import, export, and re-export licences	7

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3. Annual data and forecast¹

	2009 ^a	2010 ^b	2011 ^b	2012 ^c
Gross domestic product				
Nominal GDP (USD m)	75,493	84,546	103,337	127,397
Real GDP growth (%)	2.4 ^b	3.8	7.9	8.5
Population and income				
Population (m)	18.6	19.1	19.6	20.2
GDP per head (USD at PPP)	7,125 ^b	7,157	7,297	7,793
Prices and financial indicators				
Exchange rate Kz: USD (end-period)	89.40	92.64 ^a	93.40	95.00
Consumer prices (end-period: % change)	14.0	15.3 ^a	14.8	12.9
Lending interest rate (av; %)	15.7	22.7	21.4	18.2
Current account (USD m)				
Trade balance	18,168	32,252 ^a	46,011	37,753
Goods: exports fob	40,828	50,594 ^a	73,524	67,468
Goods: imports fob	-22,660	-18,342 ^a	-27,513	-29,714
Services balance	-18,546	-16,616 ^a	-24,053	-23,474
Income balance	-6,823	-8,086 ^a	-12,546	-12,112
Current transfers balance	-370.3	-347.8 ^a	-373.3	-407.1
Current-account balance	-7,572	7,202 ^a	9,038	1,760
External debt (USD m)				
Debt stock	16,715	18,110	21,212	22,416
Debt service paid	3,508	4,698	4,323	4,582
Principal repayments	3,088	4,026	3,606	3,762
Interest	420	672	717	820
Debt services due	3,609	4,699	4,323	4,582

^aActual. ^bEconomist Intelligence Unit estimates. ^cEconomist Intelligence Unit forecasts.

4. Investment regulation and procedure

Investment in Angola is subject to the Private Investment Law (*Lei do Investimento Privado*; the "PIL")².

4.1 Application

The PIL applies both to domestic as well as foreign private investment. The term "private investment" is in this context broadly defined and includes new activities as well as investments in existing enterprises or projects. The PIL only applies to investments (domestic and foreign) in Angola with a value equal to or more than USD 1 million (or the equivalent in other currency).

The PIL provides that its provisions do not apply to investments in oil exploration, diamond mining, financial institutions as well as other sectors which are subject to a different legal regime but only to the extent that the legislation regarding these sectors provide for different rules than those set out in the PIL.

4.2 General principles

The PIL both defines the regime to which investments are subject as well as the type of incentives that can be granted in connection with the investments. It contains a list of general principles and guarantees that are intended to safeguard and promote investments in Angola. More specifically, the PIL requires that the investment must contribute to a sustainable and sound economic development of Angola, and must be in conformity with the principles and objectives of the Angolan national economic policy and applicable law.

¹ Source: Economist Intelligence Unit

² Lei No. 20/11 de 20 Maio.

4.3 Responsible bodies

The Angolan National Private Investment Agency (*Agência Nacional para o Investimento Privado*; "ANIP") is designated in the PIL as the body that is responsible for the execution of the national policy in relation to investments. The Angola Executive (i.e., the Angolan President) defines and promotes this policy and may favour certain investments in particular sectors or economic zones.

4.4 Legal basis of investment

Investments to which the PIL applies will be subject to a contract between ANIP (representing the Angolan State) and the investor that sets out the conditions for the investment as well as the incentives (if any) granted to the investor in connection with the investment.

4.5 Repatriation of funds

In the case of foreign investments, it is permitted to export and repatriate:

- dividends and other profit distributions;
- liquidation proceeds;
- payments relating to indebtedness;
- indemnities (resulting from expropriation); and
- royalties.

The repatriation of the above funds has to be effected in accordance with the applicable foreign exchange laws and after payment of taxes due in Angola.

The PIL provides that the repatriation of dividends needs to be effected gradually and proportionally, taking into account the size of the investment and other criteria. The precise terms of the proportion and percentages of the profit and dividend distribution that can be repatriated are to be agreed as part of the investment contract between ANIP and the investor. However, according to the PIL, repatriation of dividends will in any event not be allowed if, as a result of such repatriation, the amount invested per investor is reduced to less than USD one million. The repatriation of profits is further restricted in time. Depending on the value of the investment and the region in which the investment is made, profits may not be repatriated earlier than two or three years after completion of the project.

4.6 Tax and customs benefits and incentives

The PIL provides the legal basis for the allocation of tax and customs benefits and incentives to investors. These benefits and incentives consist of, inter alia:

- tax deductions;
- tax payment deductions;
- accelerated amortisation and depreciation;
- tax credits;
- reduction or exemption of taxes, contributions and duties; and
- extension of tax payment deadlines.

The PIL contains detailed provisions about the conditions for allocating tax and customs incentives and the terms under which they may be granted. These conditions take into account, inter alia, the sector of activity³, the regional zone in which the investment is made and the value of the investment. The economic and social impact of the investment should also be taken into account when determining whether incentives are granted and their scope.

The allocation of tax and customs incentives is not automatic. It depends on a case by case assessment to be made by the body competent for approval (as further described below), taking into account the elements mentioned in the previous paragraph.

4.7 Procedure

As mentioned above, the investment arrangements are subject to a contract between the Angolan State, represented by ANIP, and the investor. The PIL describes the matters which the contract should address and provides that disputes can be resolved through arbitration in Angola. The contract will be governed by Angolan law.

Part of the procedure is conducted by the *Comissão de Negociação de Facilidades de Investimento* ("CNFI") a commission established by ANIP (of which there can be more than one) that negotiates the terms of the incentives granted

³ Sectors such as agriculture and cattle breeding, processing industry, road, railroad, port and airport infrastructure, fishing industry - construction of boats and fishing nets, energy and water, telecommunication, social housing, health and education, tourism, are considered of primary importance.

in connection with the investment. The CNFI is composed of representatives from the tax and customs authorities, as well as the Angolan Central Bank. For projects that exceed USD 50 million, the Angolan Executive can require the establishment of an ad hoc CNFI.

The procedure for approval of a proposed project can be summarised as follows:

1. The completed proposal is filed with ANIP (with all required documents).
2. If the file is incomplete or deficient, ANIP must inform the investor and the investor has a period of 15 days to complete or correct the proposal.
3. Once ANIP has received and accepted the proposal, it has 45 days to (i) consider the proposal, (ii) negotiate the terms of the investment contract and (iii) submit the file for approval to the competent authorities.
4. Simultaneously, the CNFI has 30 days to analyse and assess the proposal and negotiate with the investor the incentives and benefits that are being requested.
5. Ten days after the deadline mentioned in (4) above, the CNFI must issue its final opinion about the project.
6. After finalisation of the negotiations with the investor, ANIP has five days (but still within the 45-day term referred to in (3) above) to issue its detailed opinion to the CNFI.
7. If the negotiations cannot be concluded within the 45 days period referred to in (3) above, the proposal will be rejected.
8. If the negotiations are successfully concluded, the proposal (together with the investment contract and the opinions from ANIP and the CNFI) will be submitted for approval to the competent body. For investments of USD 10 million or less, the competent body is ANIP and for investments of more than USD 10 million the competent body is the Angolan Executive. The decision whether to grant approval has to be made by ANIP within 15 days, and by the Angolan Executive within 30 days, after receipt of the relevant documents by the board of ANIP or the Angolan Executive, respectively.
9. After the approval is granted, ANIP will sign the contract and issue a certificate that confirms the approved status of the investment (*Certificado de Registo de Investimento Privado*; "CRIP"). The contract will be published in the official gazette (*Diário da República*).
10. If the proposal is rejected, ANIP will inform the investor, giving the reasons for its rejection.

4.8 Implementation of the project

The project for which the investment is made must be implemented within the term set out in the investment contract and the CRIP. The term can be extended in exceptional circumstances. ANIP will monitor the implementation and development of the project on a regular basis. There is an obligation to employ Angolan nationals. It is possible to employ qualified foreign nationals but there must be an education and capacity building programme for Angolan nationals so that they can progressively replace the foreign nationals.

4.9 Companies

The companies that are used for the implementation of the project are also subject to the PIL. They should in principle be special purpose companies. There are particular formalities to be observed in the context of their establishment and there are restrictions on the scope of their objects and any change in shareholders is subject to approval requirements.

4.10 Sanctions

The PIL contains a number of measures that can be taken to enforce its provisions and the terms of the investment contract. They include fines, loss of benefits or incentives, as well as a revocation of the investment approval.

5. Participation in international treaties and conventions

Angola is a party to a number of investment related treaties and conventions:

- Angola is a member of the Multilateral Investment Guarantee Agency (MIGA), which provides private sector investment guarantees and dispute settlement assistance;
- Angola is a member of the World Intellectual Property Organization (WIPO) and adheres to its code of international classification of patent and trademark registration;
- Angola has approved the Paris Convention for the Protection of Industrial Intellectual Property for the protection of patents and trademarks;
- Angola has signed (but not ratified) bilateral investment treaties with Portugal, South Africa, the United Kingdom, Italy and Germany. A bilateral investment agreement with Cape Verde has been ratified. Angola has also entered into a letter of intent with the Netherlands expressing the intention to conclude a bilateral investment treaty with the Netherlands in the near future;
- Angola has adopted the Southern African Development Community (SADC) free trade protocol that will harmonize trade and customs regimes and reduce tariffs among the SADC member states; and
- Angola has signed customs cooperation agreements with Portugal and São Tomé and Príncipe.

6. Setting up a business in Angola

6.1 General

If a foreign investor wishes to conduct business in Angola through an establishment in Angola or an Angolan company, it can:

- set up a representative office of a foreign company;
- set up a branch of a foreign company;
- incorporate a new Angolan company;
- acquire shares in an existing Angolan company; or
- enter into a joint venture with an Angolan company.

Any of the above activities involving an investment of USD 1 million or more is subject to PIL.

6.2 Companies

An Angola company can be organised as:

- (a) a partnership (*sociedade em nome colectivo*);
- (b) a limited partnership (*sociedade em comandita*);
- (c) a limited partnership with share capital (*sociedade em comandita por acções*);
- (d) a limited liability company (*sociedade por quotas de responsabilidade limitada*); or
- (e) a public limited company (*sociedade anónima*).

The most common legal forms used by investors are sociedades anónimas and sociedades por quotas de responsabilidade limitada.

6.3 Sociedade anónima ("SA")

An SA must have at least five shareholders. If one of the shareholders is the state entity, only two shareholders are required. An SA must have a minimum capital equal to the Kwanza equivalent of USD 20,000. At least 30% of that amount must be paid up upon establishment. The corporate bodies of an SA are the general meeting of shareholders, the board of management (consisting of an uneven number of members, although in case of a small SA, it is possible to have a board with a single member) and the supervisory board or single supervisor. A shareholder is only liable for the payment of the subscription price of its shares. It is not liable for the debts of the company.

6.4 Sociedade por quotas de responsabilidade limitada ("sociedade por quotas")

A sociedade por quotas requires at least two members. The minimum share capital required for the establishment of a sociedade por quotas is the Kwanza equivalent of USD 1,000 of which at least 50% must have been paid in full on the date of its establishment. A sociedade por quotas has a general meeting of members and a board of management (of an uneven number of members, including a single board member). It can also have a supervisory board. If it does not have such a supervisory board, it may in certain circumstances be obliged to appoint a registered auditor. The members are jointly and severally liable for paying up the sociedade por quotas's capital. They are, however, not liable for the debts of the company.

6.5 Constitution

The constitution of an SA or sociedade por quotas requires a number of steps, which, if established in connection with an investment to which the PIL applies, can be summarised as follows:

- preparing the articles of association;
- obtaining a certificate from *Ficheiro Central de Denominações Sociais* indicating that the name of company is permitted;
- obtaining the investment approval under the PIL;
- obtaining a currency import licence from the Angolan Central Bank (*Banco Nacional de Angola*; "BNA");
- opening of a bank account;
- the execution of the notarial deed of incorporation;
- the publication of articles of association in the official gazette (*Diário da República*);
- the registration of the company with the commercial register (*Registo Comercial*);
- the registration of the company with the tax, planning and social security authorities;
- the issuance of required licences (commercial, environmental, industrial); and
- the issuance of import and export licences to the company by the Ministry of Commerce (*Ministério do Comércio*).

6.6 Branch

If the investment is structured through a branch of a foreign company, then broadly the same licensing and registration requirements as described above apply. The branch should also have a bank account in which the capital allocated to the branch has to be paid.

6.7 Cross border activities

Foreign companies may also provide services to Angolan companies or public authorities by entering into an agreement for the exact duration of a project. It is generally advised to follow this route if the project has a duration of less than one year.

7. Foreign exchange

Angola has foreign exchange restrictions which are based on the Exchange Law⁴ (*Lei Cambial*). The law is supplemented by further regulations that provide for detailed rules in respect of specific transaction types. Angolan banking institutions play a key role in the settlement of transactions between residents and non-residents.

The settlement of transactions involving goods may generally only be processed by purchasing currency from a bank domiciled in Angola and providing proof of the import or the dispatch of goods to the bank. The settlement of export and re-export of goods as a rule requires the intermediation of a bank authorised to engage in foreign exchange operations in Angola.

Capital and current account transactions between Angolan residents and non-residents are generally subject to the authorisation of the BNA. Current account transactions include, for example, expenses associated with transport, insurance, travel, trade commissions, patents and trademark rights, salaries and similar transactions. No authorisation of the BNA is generally required for transfers of USD 300,000 or less in connection with current account transactions.

8. Taxation

8.1 General

Companies carrying out industrial and commercial activities in Angola are subject to the following taxes:

- industrial tax (corporate income tax);
- taxation on construction and services contracts;
- capital tax;
- personal income tax;
- consumption tax;
- custom duties;
- social security contributions;
- stamp duties; and
- urban property tax.

The Angola tax regime is currently subject to reform and the applicable tax regime is expected to change in the short to medium term.

Angola has no double taxation treaties. No relief is granted for foreign taxes paid by an Angola taxpayer.

8.2 Taxes

Below a description is given of the various taxes based on the current regime.

Industrial tax (corporate income tax)	<ul style="list-style-type: none"> ■ Due for profits derived from commercial and industrial activities carried out in Angola by companies or branches. ■ The ordinary tax rate is 35%; agricultural, forestry and cattle raising activities are subject to industrial tax at a 20% rate.
Taxation on construction and services contracts	<ul style="list-style-type: none"> ■ Withholding tax on payments made to persons and companies, carrying out, occasionally or permanently, activities in Angola. ■ Construction, improvements, reconstruction, repairs or maintenance of fixed assets: tax rate of 3.5% of the value of the contract; all other services: tax rate of 5.25%.
Capital tax	<ul style="list-style-type: none"> ■ Income derived from interest under loans and income derived from credit agreements are subject to tax if it is received in Angola or if it is paid to persons who are deemed resident in Angola. If the payer has its head office in Angola, the income is deemed to be received in Angola (and therefore taxable). ■ Income derived from dividends, interest on debentures, shareholder loans, current account and royalties are subject to taxation if they are payable by an entity which is deemed to be resident in Angola. ■ Applicable rates are 10% or 15% depending on the type of income.

⁴ Lei No. 5/97 de 27 Junho

Personal income tax	<ul style="list-style-type: none"> ■ Payable by all resident and non-resident individuals in Angola over all income received from an activity carried out in Angola. ■ The tax rates are progressive up to a maximum rate of 17%.
Consumption tax	<ul style="list-style-type: none"> ■ Applies to production and import of goods, consumption of water, energy, telecommunication services, hotel and restaurant services and similar services. ■ Tax rates vary from 2% to 30%.
Custom duties	<ul style="list-style-type: none"> ■ Rates depend on the products to be imported and vary between 2% and 35%.
Social security contributions	<ul style="list-style-type: none"> ■ The contribution is assessed at a rate of 8% for employers and 3% for employees on salaries and additional remuneration
Stamp duties	<ul style="list-style-type: none"> ■ Due in respect of contracts, title instruments and similar documents. ■ The applicable rate varies between 0.30% and 10% and the most common rate is 1%.
Urban property tax	<ul style="list-style-type: none"> ■ Due on income generated by lease contracts or by reference to the property value. ■ Tax rate of 15% to be withheld by the tenant on all lease payments to the landlord. ■ Property owners must pay annually approx. 0.5% of the property value by way of tax. ■ Current property values will be updated by Ministry of Finance (<i>Ministério das Finanças</i>) (due to outdated values).

8.3 Tax Enforcement

Recently two new regulations have been introduced in Angola intended to reinforce compliance with applicable taxation rules.

The Law 2/11 of 8 June 2011 contains the simplified fiscal execution regulation and deals with the measures that can be taken by the tax authorities to collect, through enforcement procedures, tax claims. The regulations establish the conditions and procedures for confiscation and seizure of assets and define the procedures for appeal. The regulations apply to all persons who are obliged to pay taxes in Angola, and have retro-active effect (i.e., they also apply to pending cases). In addition to enforcement measures, the regulations permit the tax authorities to apply additional punitive measures, such as the publication of a list of persons with tax arrears and a prohibition to participate in public tenders by such persons.

The Presidential Decree 66/11 of 18 April 2011 sets out further sanctions that can be taken against tax payers who fail to comply with their tax obligations. These sanctions include a prohibition on carrying out customs and exchange operations as well as a suspension of the issue or renewal of working permits.

9. Import, export, and re-export licences

The import, export and re-export of goods into Angola require an import license issued by the Ministry of Commerce (*Ministério do Comércio*). Transactions in certain goods also require authorisation from specific ministries. The Angolan import, export and re-export regulations have recently been amended. New administrative rules were established by Order 404/11 of 8 June 2011. The new rules will streamline the procedures that apply to request for licences and will now also allow, subject to certain conditions, partial shipment licences. ■

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