

Angolan foreign exchange regulations

The Angolan economy is heavily dependent on income generated by its oil and gas sector and, whilst the country is rebuilding its economy after years of civil war, it has limited (albeit growing) local production. The economy is therefore primarily US dollar based and the fluctuation in oil prices has significant consequences on the country's foreign exchange reserves. For example, the decline in oil prices in 2009 led in Angola to a rapid decrease in the net international reserves and an acute shortage of foreign currency and resulted in considerable delays in foreign currency payments. It also became clear at the time that the foreign exchange regulations had not been fully observed.

The Angolan government has therefore reinforced the strict application of its foreign exchange regulations and is also moving to an increased use of the local currency, the kwanza, as the currency for domestic payments. The kwanza is not freely convertible and may not, except in the limited circumstances described below, be exported from or imported into Angola. This means that cross-border payments need to be effected in foreign currency.

The foreign exchange regulations impose a monitoring obligation on the Angolan banking institutions involved in settlement transactions. They can refuse to comply with settlement instructions if the regulations are not properly observed or if their customers fail to comply with other legal requirements, such as their obligation to pay taxes that are due in connection with the transaction. In addition, the recent Law against Money Laundering and Financing of Terrorism (*Lei No. 34/11*) of 12 December 2011 obliges the Angolan banking institutions to take measures if they believe that the transaction to which the payment is related lacks economic substance or could be related to a criminal activity (including tax crimes).

This memorandum¹ describes some aspects of the Angolan exchange regulations that may be relevant for non-oil sector companies that invest in Angola or are conducting business with Angolan parties. Oil sector companies have a special foreign exchange regime. This regime is not addressed in this memorandum¹.

The Exchange Law

The main legal source for the Angolan foreign exchange regulation is *Lei Cambial* (*Lei No. 5/97*; the "Exchange Law") of 27 June 1997. The Exchange Law regulates both foreign exchange operations and foreign exchange trade. It designates the National Bank of Angola (*Banco Nacional de Angola*, "BNA") as the competent authority. The Exchange Law defines foreign exchange operations as:

- the acquisition and disposal of foreign currency;
- the opening and operation of bank accounts in Angola held by non-Angolan residents that are denominated in kwanza;
- the opening and operation of bank accounts in Angola in foreign currency by Angolan residents and non-residents;
- the settlement of goods, current invisible and capital transactions; and
- the acquisition and disposal of coined gold, gold bars and non-crafted gold.

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Residents of Angola for the purposes of the Exchange Law are, *inter alios*:

- individuals with their habitual residency in Angola;
- legal entities with their head office in Angola;
- branches, agencies and other forms of representation in Angola of legal entities with their head office abroad; and
- public funds, entities and bodies with administrative and financial autonomy with their head office in Angola.

Non-residents are individuals and legal entities with their habitual residency or head office outside Angola (including individuals who are abroad for more than one year). Branches, agencies and other forms of representation of Angolan legal entities that are located outside Angola are also considered non-residents. The Exchange Law (and its secondary regulations) apply to transactions involving residents and non-residents and transactions between Angola and abroad. Given the non-convertibility of the kwanza, these transactions will typically involve foreign currency.

The Exchange Law prescribes that all foreign exchange operations require the intermediation of an Angolan financial institution that is authorised to engage in foreign exchange trading. This includes authorised banking institutions as well as foreign exchange bureaux (however, the latter can only engage in a limited number of foreign exchange operations). If the settlement (in part or whole) of goods, current invisible and capital transactions is effected by way of set-off, specific authorisation is required from the BNA. Foreign exchange trade is defined in the Exchange Law as the execution (on a regular basis) of foreign exchange transactions for own or a third party's account. The Exchange Law provides that such operations are subject to authorisation by the BNA.

Finally, the Exchange Law also makes the import, export and re-export of unprocessed gold, foreign currency and certain title documents subject to authorisation by the BNA.

Foreign currency

The sale of foreign currency by the BNA to and from banking institutions is effected by way of auction. These auctions are the most important source for banking institutions to acquire foreign currency on behalf of their clients. The auction is organised by the BNA in accordance with BNA's *Aviso No. 10/03* of 22 August 2003 and is further subject to the BNA's detailed rules as set out in *Instrutivo No. 1/11* of 12 April 2011. As part of the auction process, the banking institutions are required to report to the BNA, on a weekly basis, their foreign currency

needs, by detailing all relevant transactions (on a transaction by transaction basis as well as by client and beneficiary). After the auction, banking institutions must report to the BNA the amount of foreign currency and the exchange rates it has applied in transactions with or on behalf of its clients. The BNA also publishes on a daily basis the applicable reference exchange rate² which is to be used for official purposes (such as accounting).

BNA's *Aviso No. 12/03* of 28 August 2003 provides that foreign currency received by a banking institution (from the BNA or its clients) may only be used for the settlement of transactions relating to the import of goods, capital or current invisible transactions or open (short) positions in foreign currency of such banking institution.

Authorisation framework

The Exchange Law provides the basis for a number of secondary regulations (issued by the government and the BNA) that describe the authorisation process in connection with transactions involving foreign currency and the information to be provided in connection with such authorisation. Such secondary regulations distinguish between goods, current invisible and capital transactions. All transactions involving foreign currency require the intermediation of a financial institution that is authorised to engage in foreign exchange trade.

The authorisation framework per transaction type is described in a decree that sets out, in more general terms, the procedure to be followed in order to obtain authorisation and the conditions attached to such authorisation. A regulation issued by the BNA describes the type of documentation (per transaction type) that needs to be submitted to the authorised banking institution in order to obtain the approval.

Generally speaking, the documentation must provide evidence that there is a legitimate transaction for which the foreign currency is required and also show, to the extent that the transaction for which the foreign currency is required is subject to conditions, that these conditions have been or will be met. In certain cases the banking institution can authorise the foreign currency payment itself while in other cases the request needs to be forwarded to the BNA for determination.

The authorisation is only valid for a certain period of time and during this period the foreign exchange transaction should be effected. The foreign currency can be obtained by purchasing it

² The US dollar reference exchange rate corresponds to the weighted average selling rate of an auction.

from the banking institution or transferring it from a foreign currency account held with the relevant institution. Any foreign currency purchased through the BNA's auctions and not used for the purpose requested, must be resold to an authorised financial institution within a specified time limit.

Foreign currency received must be rendered to an authorised financial institution for credit to a foreign currency account or sold to such institution against kwanzas.

The sections below describe certain matters that need to be taken into account in connection with particular transactions.

Goods transactions

General

The import, export and re-export of goods ("Goods Transactions") is subject to *Decreto Presidencial No. 265/10* of 26 November 2010 (the "GT Decree") that makes these transactions subject to licensing requirements. The specific foreign exchange rules in relation to the settlement of Goods Transactions are included in the BNA's *Aviso No. 19/2012* of 19 April 2012 (the "GT Aviso"). The GT Aviso describes the procedures to be observed in connection with Goods Transactions.

The GT Aviso provides that Goods Transaction with settlement terms that are less than 360 days after the date of the import/shipping documents do not require authorisation from the BNA, provided that the provisions of the GT Aviso are observed. This implies that the Angolan banking institutions have to monitor compliance by their customers with the applicable regulations. If the customer fails to comply with the rules, they can refuse to effect settlement transactions until the breach is remedied.

The GT Aviso also describes the information that certain documents, such as invoices for import transactions, need to contain. One important condition for the settlement of Goods Transactions is that the transaction is licensed by the relevant ministry. There are a limited number of exceptions to this requirement pursuant to the GT Decree and the GT Aviso, for example for transactions with a value of less than USD 5,000.

The Angolan institutions must check compliance with this requirement through the electronic databases for import and export licences³.

Import transactions

All settlement transaction for import transaction must be effected within 360 days of the date of the *Documento Único*⁴. If the settlement is effected later, then it is considered as a capital transaction, and the transaction should be authorised under the rules that apply to capital transactions. A request to treat it as a capital transaction must be made within 30 days after the expiry of the 360 days period. Import transactions whose terms already anticipate a payment date that is in excess of a period of 360 after the date of the *Documento Único* are also treated as capital transactions.

All settlements of Goods Transactions have to be effected through local banking institutions and only one banking institution can be involved in the same Goods Transaction. Payments in respect of Goods Transactions can, subject to conditions as described below, be made in the form of documentary credit, advance payment and payment in arrear through documentary collection or remittance collection. When determining which settlement method to use, the parties should consider, *inter alia*, best international commercial practice, the amounts and risks involved, the Angolan foreign exchange and international commerce legislation and the degree of trust between the parties involved (importer, exporter and banking institution).

The GT Aviso describes the documentation that needs to be provided to the banking institution in connection with the settlement of Goods Transaction. The type of documentation to be provided is linked to the settlement method chosen as well as the particularities of the specific Goods Transaction (eg, mode of transport), as further set out in the table below.

Advance payments for import transactions are only permitted:

- for transactions with a value of not more than USD 100,000;
- for transactions that meet each of the following requirements:
 - the goods concerned are specifically made for the importer and it is difficult to obtain the goods from alternative sources or it is industry practice to make payments in advance;
 - the goods enter the country within 180 days of the payment;
 - the beneficiary of the payment is not affiliated with the importer; and
 - the aggregate amount prepaid by the importer in connection with import transactions does not exceed 2.5 times the share capital of the importer (as appear from its recent certified accounts);

³ It is expected that the Angolan banking institution will soon also be in a position to check whether a *Documento Único* has been issued.

⁴ This is the customs document that confirms that the goods have arrived in Angola and that the applicable taxes and duties have been paid.

- if a guarantee is provided by a foreign banking institution recognised and accepted by the importer's banking institution, guaranteeing performance by the exporter; or
- for an amount of up to 20% of the value of the imported if the payment is settled through the opening of a documentary credit.

A further condition in relation to all of the above is that the importer must be in compliance with its obligation to submit the relevant documentation to the Angolan banking institution within the term prescribed by the GT Aviso, and that the importer should be in good standing with the relevant banking institution.

If an advance payment is made, then the importer must submit the relevant import documentation to the banking institution within 180 days after the payment or, if shorter, within 30 days after the goods entered Angola. If the payment is made by documentary credit, then this term is equal to the term of the letter of credit plus 30 days. The banking institution of the importer is responsible for verifying and ensuring that the importer complies with the aforementioned obligations. It must inform the importer if he fails to submit the documentation in time and take other relevant action. It must register and inform the BNA of any infractions on a monthly basis.

Special rules apply to consignment imports, goods in bonded warehouses and customs warehouses as well as temporary imports.

Goods import transactions

Documents to be provided						
	A	B	C	D	E	F
Written request from client	required	required	required	required	required	required
Pro-forma invoice	required	required	required	required		
Original commercial invoice					required	required
Transport document			required (with submission of import documents)	required (with submission of import documents)	required	required
Documento Único	required (with submission of import documents)	required (with submission of import documents)	required (with submission of import documents)	required (with submission of import documents)		required
Other documents required under the documentary credit	required	required				
Supply contract	required					
Bank guarantee			required			

A = Documentary credit with advance payment (up to 20%)
 B = Documentary credit without advance payment
 C = Advance payment with performance guarantee issued by a bank

D = Total advance payment
 E = Documentary collection
 F = Documentary remittance

Export transactions

The GT Aviso sets out the documentation that is required in connection with export transactions. For exports, the maximum settlement term for documentary credit is 360 days after the export transaction. In case of documentary collection, the relevant documentation must be submitted to the bank of the importer within 10 days after the shipping of the goods, and the maximum allowed settlement term is 90 days. The same maximum term applies to documentary remittances. The relevant Angolan banking institution has to inform the BNA about infractions in relation to these terms.

An exporter can hold all export proceeds with in a foreign currency deposit account with an Angolan banking institution. This deposit should be primarily used by the exporter for imports. If payments are to be made to Angolan residents from the foreign currency account, then the amount must first be converted in kwanza.

Specific procedures apply in relation to reimbursements that may need to be made in connection with defective goods.

Current invisible transactions

General

Decreto No. 21/98 of 24 July 1998 regulates current invisible transactions which are effected between Angola and a foreign country and between residents and non-residents of Angola. Current invisible transactions are classified as commercial, private and unilateral transfers (such as gifts, membership payments and subscriptions). The commercial transactions to which the decree applies include, inter alia, payment for technical assistance, payment for transport and insurance, interest, dividends, commissions, salaries and royalties payments.

Instrutivo No. 01/06 of 6 January 2006 of the BNA and *Decreto Presidencial No. 273/11* of 27 October 2011 provides more detailed rules about the licensing procedure and the documentation that needs to be provided by the customer in order to make the payment.

Commercial transactions

The instruction provides that transactions with a value not exceeding USD 300,000 (unless the transaction is one of more transactions with the same nature and with the same counterparty, and the sum of these transactions exceeds an annual amount of USD 300,000) do not require prior authorisation of the BNA and can therefore be authorised by the relevant banking institution itself.

Other transactions (except as stated below) require authorisation from the BNA. Such authorisation is granted pursuant to a licence (*Boletim de Autorização de Invisíveis Correntes* or "BAPIC"). This licence can be granted for specific transactions or on a more general basis. The validity of a licence is 90 days. In particular circumstances, a licence with a longer validity can be given or the validity of the licence may be extended. The maximum validity of a general licence is 180 days.

Pursuant to *Decreto Presidencial No. 273/11* of 27 October 2011, contracts for technical assistance or management with foreign counterparties and with a consideration of (in aggregate) USD 300,000 or more are subject to special regulation. They may basically only be entered into if the relevant services are not available locally, and the services are beneficial to the Angolan party requiring the services and the Angolan economy in general.

The Decree describes the provisions which these contracts are required to include and also contains a list of prohibited clauses. The term of the contract may not exceed 36 months and the value of the contract may not exceed ten times the amount of the shareholder's equity of the Angolan party. The Angolan party must, before entering into the agreement, obtain the consent of a commission especially established for this purpose by the Ministry of Economy⁵. It is not necessary for these transactions to obtain a separate licence from BNA.

⁵ Further information of the information to be submitted to the Ministry of Economy can be found on <http://www.minec.gov.ao/VerNoticia.aspx?id=13742>

DCC Directiva No. 1/2012 of 9 March 2012 of the BNA clarifies the main operations that should be authorised by the BNA or the Ministry of Economy, as follows:

Sector	Type of contract	Who authorises
Private and mixed companies (non oil, gas and diamond sectors)	Contracts for technical assistance or management	Ministry of Economy
	Technology contracts	BNA
	Individual labour work contracts	
Government and State owned companies	Contracts for technical assistance or management	BNA
Oil, gas and diamond sectors	Service contracts	

Private transactions

Private transactions (to support expenses incurred abroad by individuals for example, for travelling, medical treatment and family support) and unilateral transfers should be supported by appropriate documentation as set out in the instruction and cannot exceed USD 15,000 per person per transaction and USD 60,000 per person per year. In order to buy foreign currency for travel purposes, a person must present a valid passport with visa and e-ticket to the banking institution (or foreign exchange bureaux).

Remittances through agents (money transfers) are regulated by *Aviso No. 3/11* of 2 June 2011. Only adult residents (as defined by the Exchange Law) are entitled to transfer money abroad subject to a maximum monthly limit of USD 5,000 and a yearly limit of USD 20,000 per person.

Pursuant to *Aviso No.01/2012* of 16 January 2012 adult residents can freely carry up to USD 15,000 when leaving and entering the country. For non-residents, this amount is USD 10,000.

⁶ Equivalent to USD 500 at current secondary market exchange rate.

⁷ Please note that this memorandum does not address the regulations that apply pursuant to the Angolan Private Investment Law of 20 May 2011.

Any amount in excess needs to be declared. Residents and non-residents are also permitted to carry up to 50,000 kwanzas⁶ when leaving or entering the country.

Capital transactions

Decreto No. 23/98 of 24 July 1998 regulates certain capital transactions involving contracts and other legal arrangements between residents and non-residents as well as transfers between Angola and abroad. The transactions to which the decree applies are, inter alia, those involving (public or private) debt instruments, loans, granting of guarantees and other forms of collateral, investments in companies, acquisition of establishments and real estate, donations, life insurance payments and inheritance payments. In general, all transactions involving operations that last for more than one year fall under this Decree. It also includes foreign exchange transactions relating to the payment for goods that entered Angola more than one year before the payment (which is not uncommon).

These capital transactions require a licence (*Licença de Importação de Capitais* or "LIC" for imports and *Licença de Exportação de Capitais* or "LEC" for exports). The licence will be valid for a period of 180 days and can be extended for identical periods. Notaries and other public authorities involved in the conclusion of the contracts or transactions, as well as companies whose shares or debt instruments are the object of a transaction must register the relevant licence details and on the fifteenth day of each month inform BNA of the registrations that were made during the previous month.

The *Instrutivo No. 01/03* of 7 February 2003 of the BNA sets out the conditions that apply to licence requests. If a capital transaction corresponds to a commercial transaction or a current invisible transaction, the licence will only be granted after presentation of the documentation required for the corresponding transaction.

Dividends relating to foreign investments

The Angolan private investment regime ensures to foreign investors, subject to certain limitations, the free transfer of moneys received as dividends in connection with approved foreign investments⁷.

The BNA's *Aviso No. 04/03* of 7 February 2003 acknowledges the free transfer of dividends and profits in these circumstances but also provides that in exceptional circumstances, the governor of the BNA can suspend such transfer if it would provoke or increase difficulties for the Angolan balance of payments.

The *Aviso* provides that the BNA has to authorise the transfer and further describes what information must be provided in order to request a transfer of profits and dividends. The request must be submitted in the first quarter following the financial year to which the profits relate. The BNA must decide within 30 days after receipt of the request. The transfer must be effected within 90 days of the authorisation.

Purchase of Government securities by non-residents

The Law on Public Finance (*Lei No. 16/02* of 5 December 2002) provides that non-residents can subscribe for securities issued by the Angolan Government. Generally speaking, the subscription is subject to the rules that apply to capital transactions.

Aviso No. 04/05 of 27 December 2005 sets out the procedures that must be observed, including:

- foreign exchange transactions to buy treasury bonds must be intermediated by banking institutions that are authorised to operate in the foreign exchange market;
- transactions in foreign currency relating to the investment in treasury bonds must be paid into specific bank accounts (deposit account and custody account), in the name of the non-resident investor; and
- transactions in treasury bonds must be effected through the specific deposit account.

Opening and operating local and foreign currency accounts

Banking institutions in Angola can open accounts in foreign currency and local currency on behalf of residents and non-residents (*Aviso No. 3/09* of 5 June 2009). The general principle is that any transaction between resident and non-resident accounts, and transfers to and from abroad, are subject to the compliance with the Exchange Law and derived regulations.

Non-residents can operate accounts with an Angolan Banking institution for the following purposes:

Type of account		
Type of transaction	Foreign currency	Local currency
<i>Credit transactions</i>	<ul style="list-style-type: none"> ■ transfers from abroad; ■ deposit of revenues from activities in Angola that have been expressly authorised by the BNA; and ■ interest on deposits. 	<ul style="list-style-type: none"> ■ sale of foreign currency from the foreign currency account; ■ deposit of revenues from activities in Angola that have been expressly authorised by the BNA; and ■ interest on deposits.
<i>Debit transactions</i>	<ul style="list-style-type: none"> ■ withdrawal of funds or sale of foreign currency; ■ payment of expenses to both resident and non-resident entities; and ■ BNA authorised transfers of moneys abroad. 	<ul style="list-style-type: none"> ■ withdrawal of funds, and ■ payments of local expenses.

¹ This memorandum is an updated version of our client briefing on the same topic dated September 2011. It reflects the new rules for goods transactions, foreign technical assistance and management agreements and current invisible transactions for the private sector. It is expected that the BNA will also amend its rules in relation to capital transactions, forward transactions and current invisible transactions for the commercial sector in due course.

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