

# New Angolan private investment law

## Introduction

On 19 April 2011, the Angolan Parliament adopted the Private Investment Law (*Lei do Investimento Privado*; the "**PIL**"). The PIL was ratified by the Angolan President on 19 May 2011 and was published in the official gazette (*Diário da República*) on 20 May 2011 as Law no. 20/11 of 20 May 2011 (*Lei No. 20/11 de 20 Maio*). It has therefore now come into force and replaces Law No. 11/03 of 13 May 2003 (the "**2003 Law**") which previously regulated private investment in Angola.

It was deemed necessary to change the 2003 Law in order to make the arrangements for investment in Angola and the investment procedures clearer and simpler. It was also necessary to change the law in order to align it with the new Angolan Constitution and to adapt the fiscal and custom incentives, which are granted to private investments to the tax reforms that are currently taking place in Angola.

Some of the changes to the investment regime as a result of this replacement are quite significant. This article describes some of the features of the PIL.

## Application

The PIL applies both to domestic and foreign private investment. Private investment is in this context broadly defined and includes new activities as well as investments in existing enterprises and projects.

The PIL only applies to investments (domestic and foreign) in Angola with a value of equal to or more than USD 1 million (or equivalent in local currency). This is a considerable increase from the 2003 Law, where these amounts were USD 50,000 for domestic investments and USD 100,000 for foreign investments. The responsible authorities have explained that this does not mean that investments of less than USD 1 million are no longer welcome. However, they will not be subject to the PIL and it is currently not clear to what regulatory regime these investments will become subject.

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

## 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 these 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.

## 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 Angolan Executive (i.e., the Angolan President) defines and nominates the investment policy.

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The Angolan Executive may favour certain investments in particular sectors or economic zones.

## Legal basis of investment

Under the 2003 Law, there were two investment regimes: a prior declaration regime for smaller projects (where ANIP could approve the project, without the terms of the investment being subject to an agreement between the Angolan State, represented by ANIP, and the investor) and a contractual regime. The PIL abandons the prior declaration regime and all investments to which the PIL applies will now be subject to a contract between ANIP and the investor that sets out the conditions for the investment as well as the incentives granted to the investor.

## Repatriation of funds

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

- dividends and other profit distribution;
- liquidation proceeds;
- indebtedness;
- indemnities (resulting from expropriation); and
- royalties.

The repatriation 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 are to be agreed as part of the investment contract between ANIP and the investor.

However, according to the PIL, repatriation of dividends will not be allowed for investments that do not meet the minimum of USD 1 million for each investor.

The repatriation of profits is further restricted in time. Depending on the value of the investment and the regional zone in which the investment is made, profits may not be repatriated earlier than two or three years after completion of the project.

## 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, contribution 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 regard, inter alia, the sector of activity<sup>1</sup>, the regional zone in which the investment is made and the value of the investment. When determining whether incentives are granted and their scope, consideration should also be given to the economic and social impact of the investment, taking into account the economic development strategy set by the Angolan Executive.

However, in deviation of the 2003 Law, 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, taking into account the elements mentioned in the previous paragraph.

## 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 in connection with the investment. The CNFI comprises representatives from the tax and customs authorities and from 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 an investment project can be summarized as follows:

1. Presentation of the complete proposal to 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 accepted the proposal (which will be the case if it has received all relevant information), it has 45 days to consider the proposal, negotiate the investment contract and submit the file for approval to the competent authorities.
4. Simultaneously, once the project has been accepted by ANIP, 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 issues 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.

<sup>1</sup> 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.

7. If the negotiations can not be concluded by ANIP within the 45 days period referred to in (3) above, the project will be rejected.
8. If the negotiations are successfully concluded, the proposal (together with the contract and the opinions from ANIP and the CNFI) is then submitted for approval to the competent body. For investments of USD 10 million or less, the board of ANIP is empowered to approve the project. For investments of more than USD 10 million this power rests with the Angolan Executive. For transactions to be approved by ANIP, the decision has to be made within 15 days. For transactions to be approved by the Angolan Executive the decision has to be made within 30 days, after receipt of the file by the board of ANIP and the Angolan Executive, respectively.
9. Following the approval, ANIP signs the contract and a certificate that confirms the approved status of the investment (*Certificado de Registo de Investimento Privado*; "CRIP") will be issued. The contract will be published in the official gazette (*Diário da República*).
10. If the project is rejected, ANIP will inform the investor, giving the reasons for its rejection.

## Implementation of the project

The investment project 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. The companies that are established to implement the project are obliged to employ Angolan nationals and to ensure that they have proper employment conditions. It is possible to employ qualified foreign nationals but there must be a training and capacity building programme for Angolan nationals so that they can progressively replace the foreign nationals.

## 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 the objects of the companies. Any change in shareholders is subject to approval requirements.

## Sanctions

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

## Transitional regime

The PIL does not apply to investment projects that had already been approved prior to its coming into force. ■

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