

Changes to Angolan forex rules for current invisible operations

On 31 July 2013, the Angola Central Bank (*Banco Nacional de Angola*, "BNA") adopted *Aviso No 13/2013* ("Aviso") which describes the rules applying to current invisible operations involving foreign exchange. These rules apply for example to payments for services and transport contracts and salaries, and the use of foreign exchange for travel and educational purposes by Angolan residents.

The rules were published in Angola's official gazette (*Diário da República*) on 6 August 2013 and will come into force 30 days after this date.

The Aviso liberalises the currently existing rules and is therefore generally welcomed by the Angolan and international business community. It also is part of a more general revision of the Angolan foreign exchange regulations that started in 2011 (in the aftermath of the 2009 foreign exchange crisis in Angola), and were strongly influenced by the new foreign exchange regime applicable to the entities operating in the oil and gas sector (Law No 2/12). Some of the main aspects of the Aviso are described below.

Current invisible transactions

Examples of transactions (and related payments) to which the Aviso applies are those involving:

- public services
- transport services
- communication services
- construction services
- insurance
- financial services
- information and IT services
- income from intellectual property rights
- salaries
- return on capital or investments.

BNA's prior authorisation and exemptions

The above transactions are, unless otherwise stipulated in the Aviso, subject to prior authorisation by the BNA.

The Aviso extends the number of exemptions from the BNA's prior authorisation, such as, for example

- Payments under contracts for services to the Angolan oil and gas sector with a value not exceeding 300 million kwanza (equivalent to about US\$3 million).
- For services to other sectors, contracts not exceeding 100 million kwanza (US\$1 million). The previous limit for both categories was 30 million kwanza (US\$300,000).
- Invoices related to the contracts approved by the BNA.

- Technical assistance services and management contracts, considered as current invisible operations, approved under the Presidential Decree 273/11 of 27 October (as amended).
- Services contracted and income received by central government entities.

In order to determine the value of the contract, operations will be considered to be part of the same contract if they are entered into by the same entity, with the same nature and purpose, and benefit the same party during one year. In addition, transactions that are entered into for consecutive periods by the same entity, with the same nature and purpose should also be aggregated.

It is possible to make an advance payment under a contract provided that (i) this has been agreed in the contract and (ii) the advance payment does not exceed 15% of the contract value.

Private operations

The amounts that Angolan residents can take with them in foreign exchange when travelling abroad has also been increased significantly, from 6 million kwanza (US\$60,000) to 25 million kwanza (US\$250,000) per annum (and 6 million kwanza for minors). The new limit was set in order to work as global limit, by including all kind of international payments types (such as foreign currency, debit and credit cards, cheques and wire transfers). There is no longer a restriction on foreign exchange payments for health or educational purposes.

Registration of transactions and contracts in the Central Bank

All transactions and contracts must be registered in the "SINOC"- system (*Sistema integrado de operações cambiais*; the integrated system for foreign exchange operations) before its execution or for requiring authorisation by the BNA as further set out in the Aviso.

SINOC is the automated registration system for foreign exchange transactions maintained by the BNA and to which Angolan financial institutions have access and can register information, receive authorisations or further data requests. The system is now used to register import of goods and current invisible operations but will soon be extended to the capital operations (thus allowing the BNA to have a tight control on the balance of payments, including private debt).

The BNA must take a decision regarding the approval within eight working days of registration of the contract in

SINOC (or if more information has been requested by BNA, after such information has been provided). If there is no reaction from the BNA within the stipulated period, then the financial institution can execute the transaction provided that it meets the other requirements of the Aviso (notably the "know your customer" and "know your transaction" rules).

Foreign exchange operations

All foreign exchange transactions must involve one or more entities that are authorised by BNA to conduct foreign exchange business.

The amounts used by the applicant for payments in foreign exchange should originate from:

- foreign exchange available in the account of the applicant
- a debit entry in the kwanza account of the applicant at the time that the settlement of the transaction or the payment in foreign exchange abroad is made or
- the use of an international electronic payment card (debit card or credit card).

The financial institution must effect the foreign exchange transaction at the same time that it debits the applicant's account.

Furthermore, foreign exchange transactions for current invisible operations must be made within 360 days after the relevant services were provided. If this deadline is not met, then, subject to certain restrictions, the transaction will require authorisation by the BNA as a capital rather than a current invisible operation. The Aviso imposes a (strict) limit of 30 days after the end of the deadline to request a capital import licence or, otherwise, the Angolan counterparty may no longer be able to buy foreign currency and make the payment (the same restriction applies to the import of goods).

The application for a foreign exchange transaction should be made in writing to the financial institution involved in the foreign exchange transaction, together with all relevant documentation.

The Aviso (in its annex) sets out the documentation that an applicant for a foreign exchange transaction must submit to the financial institution in order to prove the legitimacy of the foreign exchange payment. The financial institution must abstain from effecting the transaction if it has doubts about the type, the basis and legitimacy of the transaction,

the financial capacity of the applicant or the identity of the beneficiary of the transaction.

The Aviso also re-emphasises the duty of the financial institutions to comply with the BNA's rules in relation to Angola's anti-money laundering and anti-terrorism financing legislation (such as "know your customer" and "customer due diligence" rules).

Contract terms

The Aviso also sets out certain conditions in respect of the contracts under which foreign exchange payments are to be made.

For example, such contracts must clearly describe the object, term, rights and obligations of the parties and the price. It should not contain:

- vague, imprecise or indeterminable objectives
- exorbitant, indeterminable, random or composite prices
- manifestly unbalanced clauses
- restrictions on the free use of technical information by the Angolan party
- automatic extension clauses
- clauses that harm the public order
- clauses that are detrimental to Angola's national sovereignty (eg, by granting diplomatic immunity to persons who, based on international rules, would otherwise not have been able to benefit from diplomatic immunity).

Prices may not be determined on the basis of percentages of deal size, return, sales or purchase, unless it is international practice that the price is determined in this manner.

If a contract provides for payment in advance, it should also describe how this advance payment is to be reimbursed if the services are not provided or if the contract is suspended.

Authors

The authors of this memorandum are Pieter van Welzen, advocaat with Clifford Chance LLP, and João Fonseca, Executive Director with BAI, Banco Angolano de Investimentos.

For any further information please contact:

Pieter van Welzen

+31 20 711 9154

pieter.vanwelzen@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Droogbak 1A, 1013 GE Amsterdam, PO Box 251, 1000 AG Amsterdam

© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571. Registered office: 10 Upper Bank Street, London, E14 5JJ. We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications. Clifford Chance LLP is registered in the Netherlands with the commercial register of the Chambers of Commerce under number 34360401. For our (notarial) third party account details, please see www.cliffordchance.com/locations/netherlands/netherlands_regulatory.html

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.