

Angola: New Private Investment Law

Angola adopted on 11 August 2015 a new private investment law (Law No. 14/5 of 11 August) to make the private investment regime more attractive to investors and to simplify the investment procedure. We have summarised below the key changes it introduces.

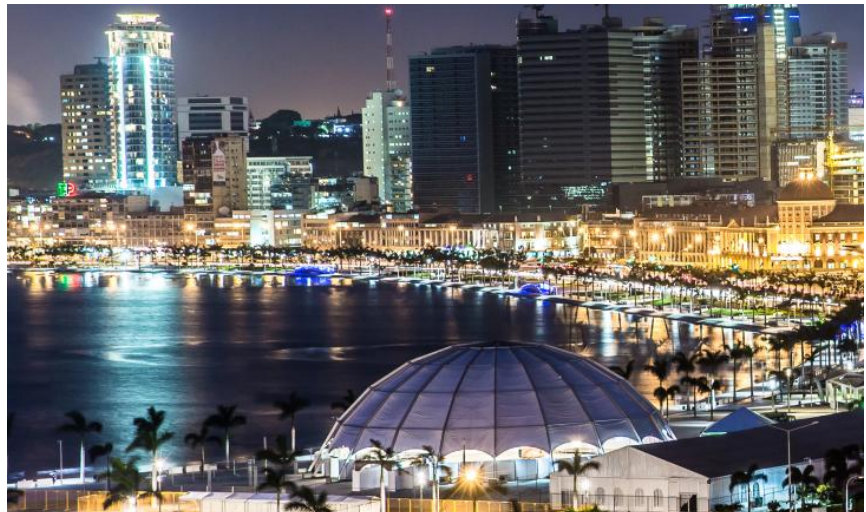
Background

The new Angolan private investment law (*Lei do Investimento privado*), approved by Law No. 14/15 of 11 August ("new PIL") was published on 11 August 2015 in Angola's Official Gazette (*Diário da República*) (1st Series – No. 115) and entered into force on the same day, repealing the previous private investment law (Law No. 20/11 of 20 May 2011).

According to its preamble, the aim of the new PIL is to make the private investment regime more attractive to investors (both foreign and domestic) by simplifying the procedures for the acceptance of eligible investments (reducing the associated red tape), and matching the tax and customs incentives and benefits scheme to the country's current economic needs and requirements.

Responsible authorities

The Angolan National Private Investment Agency - ANIP (*Agência Nacional do Investimento Privado*), has been abolished. Decisions regarding private investments are in principle now taken by the Ministers responsible for the main sector in which the investment is made or by the Angolan executive (i.e. the President). Secondary regulations provide that for investments lower than USD 10 million, the Ministers are responsible and for investments of USD 10 million or more, the Executive



is the competent authority. The Executive can delegate his powers to the relevant Minister. Furthermore, a special unit will be established to provide technical assistance to the Executive in connection with the approval process.

A new agency has been formed, called APIEX – *Agência para a promoção de Investimentos e Exportações de Angola* (the Angolan Investment and Export Promotion Agency) which, as the name suggests, will promote investments and exports. It therefore continues part of the functions of ANIP.

Scope

Another important aspect is that the new PIL no longer includes minimum thresholds for investments (under the

repealed private investment law, foreign investors were obliged to invest at least USD 1 million).

Both foreign (any amount) and domestic (if the invested amount exceeds 50 million kwanza) investments are subject to the new PIL.

This means that authorisation under the new PIL is required for each foreign investment, whatever the value. Once authorised, the foreign investor will have the right to repatriate dividends and liquidation proceeds (see also below). However, in order to be eligible for tax benefits and incentives, foreign investors must invest at least USD 1 million and domestic investors at least USD 500,000.

The regime of the new PIL will not apply to investments made by companies where 50% or more of the respective stake is owned by the State or other public entities. It will also not apply to investments in the oil and gas, mining or financial sectors (which are subject to a special regime) or any other specific sectors designated by law.

Local shareholder requirements

The new PIL designates a number of sectors where a joint venture with an Angolan party is required. This Angolan party should retain an interest of at least 35% in the joint venture. These sectors are:

- electricity and water
- hotels and tourism
- transport and logistics
- construction industry
- telecommunication and IT
- media

Similar requirements can be imposed for investments in agriculture, forestry and fisheries.

Investments

The new PIL restricts indirect investments – e.g. investments by way of loans, additional capital contributions (e.g. share premium), intellectual property, franchising - to 50% of the total value of the investments. In addition, shareholders' loans may not exceed 30% of the value of the investment made by the company that has been created for making the investments. These loans may only be repaid once three years have passed since they were included in the company's financial statements.

If the investments are effected by importing machinery or equipment, it should be noted that the value of the machinery or equipment must be registered. This value should be based on the documented price of the machinery or equipment.

Repatriation of dividends and profits

An investor can repatriate dividends, profits and royalties following the conclusion of the investment project.

However, the repatriation of dividends and profits will be subject to an additional tax for the portion of the repatriation amount that exceeds the own funds of the company through which the investments are made and on the following basis:

- a surtax of 15% if the excess is not more than 20%
- a surtax of 30% if the excess is more than 20% but equal to or less than 50%
- a surtax of 50% if the excess is more than 50%

However, the additional tax does not apply if the dividends and profits are reinvested in Angola.

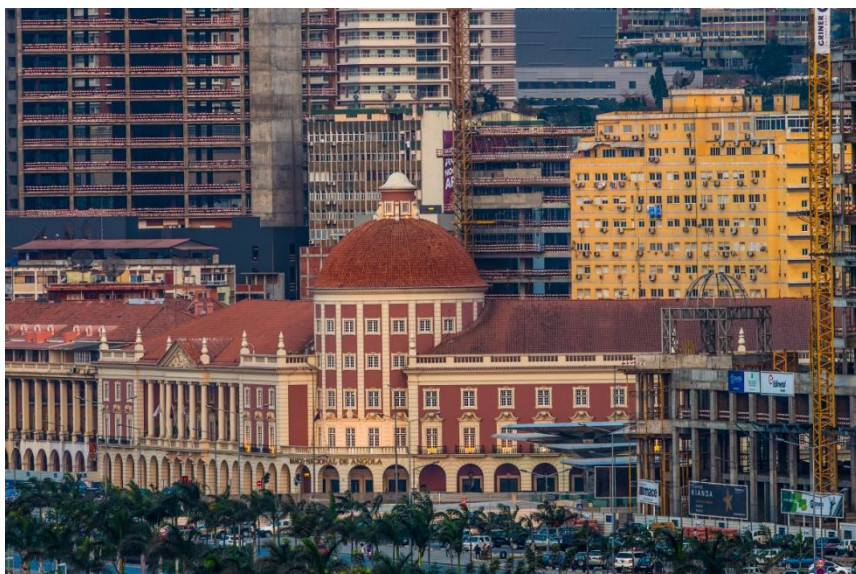
Tax investments and benefits

An investor can be granted certain tax benefits and incentives. This is no longer automatic, although the basis for determining the benefits has become more objective. The new PIL describes these benefits in a table. Based on the result of the value attributed to the various elements, the tax reduction can vary from one to ten years.

Relevant criteria for determining the duration of the tax incentives include:

- the location of the investment
- the value of the investment
- job creation
- Angolan shareholding
- focus on export activities
- local (Angolan) added value

Special tax benefits can be granted in connection with investments of at least USD 50 million, and if the investment generates a certain minimum number of jobs.



Previous investment projects

The provisions of the new PIL that deal with authorisation and incentives will not apply to private investment projects that were approved prior to its publication and that are still in the course of being implemented. These projects will still be regulated by the investment law (and the terms of the specific contracts) under which the relevant investment was authorised (unless the investors request the application of the new PIL and the competent authority approves this).

However, projects that were approved under the new PIL's predecessors, but that have in the meantime been implemented are subject to the new PIL. The surtax on the repatriation of dividends and profits therefore applies to these projects.

Conclusion

The new PIL provides a mechanism for promoting the economic diversification and competitiveness of Angola through the simplification of the relevant investment procedures, capital repatriation regime and tax benefits. However, based on the text of the law and the implementing regulations that have been published to date, there is not much guidance yet as to how the new arrangements will operate in practice.

It also remains to be seen how the authorisation process will be affected by the fact that the various ministries (or the Executive) are now responsible for the authorisation process rather than a single authority.

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