

ANGOLAN FOREIGN EXCHANGE REGULATIONS

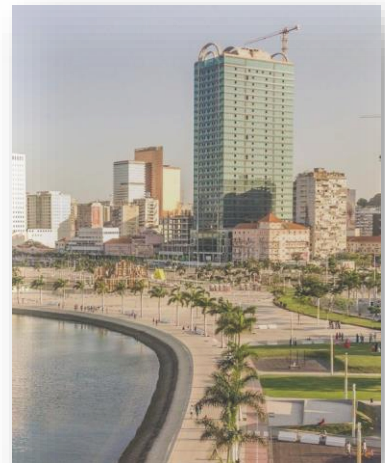
This briefing, prepared by Pieter van Welzen (Partner at Clifford Chance) and João Fonseca (Executive Director at BAI, Banco Angolano de Investimentos), describes some aspects of the Angolan exchange regulations that may be relevant for companies that invest in Angola or are conducting business with Angolan parties.

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 currency reserves. The low oil prices during the last couple of years have had a huge impact on the Angolan economy and have resulted in chronic shortages of foreign currency. This implies that even where importers and other parties, such as investors, are entitled to make payments abroad in accordance with applicable Angolan legislation, the foreign currency to do so may not be available, with resulting payment defaults, parallel foreign currency markets and high inflation rates. In the last two years the National Bank of Angola (Banco Nacional de Angola, "BNA") frequently changed regulations in order to pursue the stabilisation of the foreign exchange market while protecting its foreign currency reserves. Since October 2019 the new regulations mainly focus on exchange rate flexibility and elimination of the remaining restrictions in the foreign exchange markets in order to restore external competitiveness and to facilitate market based price formation. These actions result from the Extended Arrangement under the Extended Funded Facility originally approved by the IMF in December 2018.

Oil and diamond sector companies have special foreign exchange regimes. These regimes are not addressed in this briefing.

THE EXCHANGE LAW

The main legal source for the Angolan foreign exchange regulation is *Lei No. 5/97 of 27 June 1997 (Lei Cambial; the "Exchange Law")*. The Exchange Law regulates both foreign exchange operations and foreign exchange trade. It designates the as the competent authority.



Scope

The Exchange Law defines foreign exchange operations as:

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

Resident/non-residents

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

- (a) individuals with their habitual residency in Angola;
- (b) legal entities with their head office in Angola;
- (c) branches, agencies and other forms of representation in Angola of legal entities with their head office abroad; and
- (d) 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 persons based in Angola and those situated abroad. Given the non-convertibility of the kwanza, these transactions will typically involve foreign currency.

Operations

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 banks as well as bureaux de change. 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 BNA. Foreign exchange trade is defined in the Exchange Law as the execution (on a regular basis) of foreign exchange transactions for a party's own or a third party's account. The Exchange Law provides that such operations are subject to authorisation by 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 BNA.

FOREIGN CURRENCY MARKET¹

Currently, BNA is the most important source for banks to acquire foreign currency on behalf of their clients. The sale of foreign currency by BNA is effected by way of auction, organised in accordance with BNA's *Instrutivo No. 19/19* of 6 November 2019.

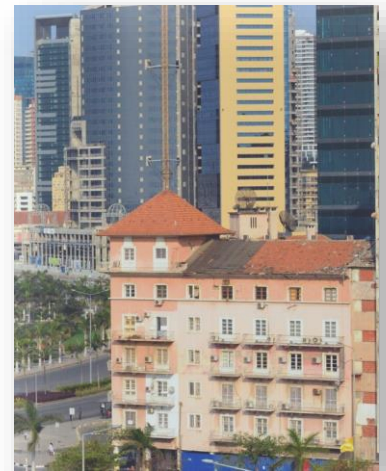
The sale (and purchase) of foreign currency is effected by BNA at such auction through an electronic system, Sistema de Gestão de Mercado Cambial ("SGMC"). *Instrutivo No. 19/19* describes how banks, through SGMC, can participate in the auction and bid to purchase foreign currency and sets out how offers are being selected. It also provides that BNA can organise special auctions in particular circumstances.

BNA can adopt alternative process of sale (i) if requested by a government institution or (ii) if and to the extent required to secure the import and provision of goods and services that are critical for the country.

BNA's *Aviso 13/19* provides that oil companies should sell foreign exchange directly to banks, starting on 2 January 2020. These companies will therefore become another source of foreign currency for the banks.

BNA's *Aviso 11/19* of 26 November 2019 describes the types and commissions relating to foreign exchange transactions and imposes limits on the percentages and amounts that can be charged in connection with such transactions.

BNA's *Instrutivo 01/20* of 10 January 2020 determines that banks must sale foreign currency to its customers within 5 days after the receipt of the request, or, if applicable, the presentation of all the relevant documents or the licence from the BNA. The bank must provide a written explanation if the transaction is not settled within this period or rejected.



FOREIGN EXCHANGE RATE DETERMINATION

BNA's *Instrutivo No. 16/19* of 24 October 2019 describes how reference rates of exchange² are established:

- the reference selling exchange rate is the result of the weighted exchange rates at BNA's auction sales³;
- the reference purchase exchange rate is calculated by deducting up to 2% of the reference selling exchange rate.

Instrutivo No. 16/19 provides further that banks and clients are free to negotiate the foreign exchange rates that apply to their transactions. Exchange rates applied by bureaux de change are also market determined⁴.

¹ A parallel market for foreign exchange has been in existence since a long time. The scarcity in the official sector and bureaucratic procedures are the most common explanations for the growth and development of the parallel market.

² The reference rates are used by companies and the public for annual financial statements, tax returns and economic analysis, for example.

³ The *Instrutivo* also provides rules to calculate the selling exchange rate on the days that there are no BNA auctions.

⁴ *Aviso No. 8/19* of 6 November 2019.

FOREIGN CURRENCY HELD BY BANKS

Aviso No. 14/19 of 2 December 2019 provides that, from 2 January 2020, the aggregate position (long or short) of Angolan banks in foreign currency may not exceed 2.5% of their regulatory capital.

AUTHORISATION FRAMEWORK

The Exchange Law provides the basis for a number of secondary regulations (issued by the government and 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 currency trading.

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 BNA describes the type of documentation (per transaction type) that needs to be submitted to the authorised bank 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 bank can authorise the foreign currency payment itself while in other cases the request needs to be forwarded to 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 the payee from a bank or transferring it from a foreign currency account held with a bank.

GOODS TRANSACTIONS

The import, export and re-export of goods ("Goods Transactions") is subject to *Decreto Presidencial No. 75/17* of 7 April 2017 that makes these transactions subject to licensing requirements. The specific foreign exchange rules in relation to the settlement of Goods Transactions are included in BNA's *Aviso No. 5/18* of 2 July 2018. *Aviso No. 5/18* describes the procedures that are to be observed. The applicable monetary limits are set out in *Instrutivo No. 18/19* of 25 October 2019.

Import transactions

General

As a general rule, the settlement of Goods Transactions has to be effected through local banks and only one bank can be involved in the same Goods Transaction. *Aviso No. 01/20* provides that a Goods Transaction with a settlement term in excess of 360 days after the date of the import/shipping documents does not require authorisation from BNA.

Aviso No. 5/18 sets out the information that certain documents, such as invoices for import transactions, need to contain. An important condition for the settlement of Goods Transactions is that the transaction is licensed by the Ministry of Commerce. There are a limited number of exemptions that are described in the *Decreto Presidencial No. 75/17* and *Aviso No. 5/18*, for example for transactions with a value of less than USD 5,000⁵.

Banks may require further documents to certify the legitimacy of the payments and must, prior to the settlement, analyse the relevant documents in order to ensure their correctness, their conformity and their consistency with the nature of the transaction.

Payments

Payments in respect of Goods Transactions involving the purchase of foreign currency can, subject to conditions as described below, be made in the form of advance payment (*pagamentos antecipados ou adiantamentos*) and payment through documentary collections (*cobranças documentarias*), documentary remittances (*remessas documentárias*)⁶ or documentary credits (*créditos documentários à importação*).

- Advance payments are permitted up to USD 50,000 per Goods Transaction, provided that a higher amount is permitted, excluding those made under a Documentary Credit, if covered by a bank guarantee of equal value issued by an international bank accepted by the importer's bank. The importer must provide the following documents to the bank from which it purchases the foreign currency:
 - (a) the commercial invoice issued by the exporter;
 - (b) if applicable, a bank guarantee, issued on behalf of the exporter;
 - (c) if applicable, the supply contract; and
 - (d) if applicable, the import licence.

The importer must within 30 days after the custom clearance of the goods, provide evidence to the bank the final *Documento Único* ("DU")⁷, but no later than 180 days after the related foreign exchange transaction was concluded. The banks are required to report to BNA those persons who failed to comply with these obligations. The banks should also refuse to enter into similar transactions with such persons, unless the reason for the delay was justifiable and the issue has in the meantime been resolved.

- Documentary remittances are permitted for Goods Transactions of up to USD 200,000. The following documents must be submitted by the importer for settlement in the form of documentary collections:
 - (a) the commercial invoice;
 - (b) the transport documents;
 - (c) the final DU;
 - (d) if applicable, the supply contract; and

⁵ The Angolan regulations somewhat confusingly use USD, Euros and Kwanzas as currencies for different limits and thresholds.

⁶ In this case, the importer receives the import documents directly from the overseas supplier without the intervention of a bank.

⁷ This is the Angolan customs document that confirms that the good have arrived in or left Angola and that the applicable taxes and duties have been paid.

(e) if applicable, the import licence.

- Documentary collections and documentary credits are permitted for Goods Transactions without any limit if UCP 600 applies (and then without a maximum amount). An advance payment of up to 10% of the transaction value is permitted. The bank of the importer must ensure that it receives from the covering bank:
 - (a) the commercial invoice
 - (b) the transport documents; and
 - (c) other import documents which are required according to applicable laws and regulations,
- and from the importer:
 - (a) if applicable, the supply contract; and
 - (b) the import licence.

The payment method is freely negotiated if the importer is also an exporter and the payment is made using deposits in foreign currency.

Export transactions

Payments

Aviso No. 5/18 also applied to foreign currency received in connection with export transactions. It states that the following methods can be used for settling such transactions:

- (a) advance payment;
- (b) irrevocable and non-transferable documentary credit with a validity of up to 180 days; and
- (c) other methods to be defined by BNA, considering the relevant market involved and international payment standards.

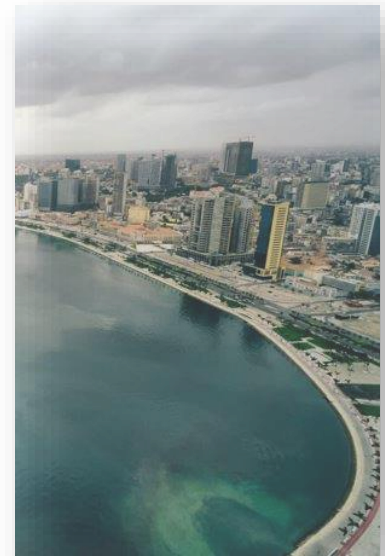
For receiving advance payments to its bank account, the exporter must provide to the bank:

- (a) the commercial invoice;
- (b) if applicable, the supply contract; and
- (c) the export licence.

In case the payment is to be effected by way of documentary credit, the exporter must inform the Angolan bank where it holds an account and through whose intermediation the documentary credit must be notified and the payments credited. This Angolan bank must conduct due diligence in respect of the creditworthiness of the issuing or confirming bank, compliance of the transaction with applicable foreign exchange laws, the ability of the exporter to comply with the conditions of the documentary credit and the correctness of the account details.

The exporter must provide to the bank that notifies the documentary credit immediately after each shipment:

- (a) the original documentary credit;



- (b) the documents that are required under the documentary credit;
- (c) the export licence; and
- (d) the final DU.

The notifying bank must ensure the shipping of the documents relating to each shipment to the insuring or confirming bank (as the case may be) within the prescribed time limits. It must also ensure the receipt of the export proceeds in Angola within the deadlines indicated in the documentary credit and registration in the relevant data base and provide a certificate relating to the receipt of the export payments.

No further approval of BNA is required for the receipt of export proceeds if they are effected in accordance with *Aviso No. 5/18*. Specific procedures apply in relation to reimbursements that may need to be made in connection with defective goods.

Application of foreign exchange

The exporter must within 5 days of receipt of the export proceeds sell 50%⁸ of the foreign currency to the bank at an exchange rate agreed with the bank. The remaining 50% can be applied for:

- (a) payments abroad in connection with its activities;
- (b) repayments of foreign currency loans and related interest and costs and expenses;
- (c) financial transactions with the bank with which the funds are held;
or
- (d) purchases of local currency to pay expenses or other liabilities to Angola residents.

Banks can only sell foreign currency to an exporter if it has extinguished its foreign currency resources.

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. BNA's *Aviso No. 13/13* of 31 July 2013 and *Decreto Presidencial No. 273/11* of 27 October 2011 (as amended by *Decreto Presidencial No. 123/13*) provides more detailed rules about the licensing procedure and the documentation that needs to be provided by the customer in order to make payments.

Commercial transactions

Commercial transactions to which *Decreto No. 21/98* applies include, inter alia, payment for technical assistance, payment for transport and insurance, interest, dividends, commissions, salaries and royalty payments.

According to *Aviso No. 02/20* of 9 January 2020 commercial transactions are not subject to BNA's authorisation. It describes the provisions which these

⁸ BNA can approve another percentage if the circumstances justify this.

contracts are required to include and a list of prohibited clauses and establishes that banks can require all the documents deemed necessary to evaluate the adequacy of the transaction. It also establishes that only transactions more than USD 25,000 require a contract.

Pursuant to *Decreto Presidencial No. 273/11* (as amended), contracts for technical assistance or management agreements with foreign counterparties and a consideration (in aggregate) in case of companies that are active in the oil and gas sector of more than 300,000,000 kwanza, or otherwise of more than 100,000,000 kwanza, 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.

Decreto Presidencial No. 273/11 further 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 its value 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 Economy. It is not necessary for these transactions to obtain a separate licence from BNA.

Private transactions

Private transactions to support expenses incurred abroad by resident individuals, for example, for travelling, medical treatment and family support, are subject to BNA's *Aviso No. 12/19* of 2 December 2019 that entered into force on 3 January 2020⁹. It provides that adult individuals can transfer per calendar year up to USD 120,000. Health, education and housing related expenses do not have a limit if they are paid directly to the relevant entity.

Aviso No. 12/19 does not require the presentation of any documentation by the client to request the payment under the limit of USD 120,000, but banks are obliged to assess the financial capacity of the client, which may imply the presentation of proof of source of funds. Regarding health, education and housing related expenses, *Aviso No. 12/19* requires furthermore the presentation of the invoice from the entity to which the payment is to be made.

Aviso No. 12/19 also establish requirements for non-resident individuals to transfer salaries abroad¹⁰, which includes the presentation of documentation and assessment by banks of the validity and consistency of all information. The transfer of salaries can be effected either by debiting the employer's or the employee's account.

Money transfers (remittances) are regulated by *Aviso No. 9/19* of 6 November 2019. These can only be sent by Angolan individuals or foreign resident individuals. Pursuant to *Aviso No. 01/16* of 8 April 2016 adult residents can freely carry up to USD 10,000 when leaving and entering the country. For non-residents, this amount is USD 5,000.

⁹ Currently, the private transactions are subject to dispersed regulations: *Aviso No. 13/13* of 6 August 2013 (specific articles only), *Instrutivo No. 1/03* of 7 February 2003 (specific articles only), *Instrutivo No. 6/18* of 19 June 2018 and *Directiva No. 15/DSP/11* of 4 November 2011.

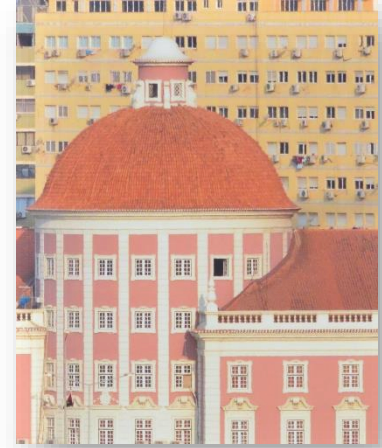
¹⁰ Defined as "Compensation of employees" by the Balance of Payments Manual (IMF).

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 *Decreto No. 23/98* 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 *Decreto No. 23/98*.

Unless BNA's *Aviso No. 15/19* of 31 December 2019 applies to the transaction (see below), the aforementioned capital transactions require a licence (*Licença de Importação de Capitais* or "LIC" for imports and *Licença de Exportação de Capitais* or "LEC" for exports).

Instrutivo No. 01/03 of 7 February 2003 of BNA sets out the conditions that apply to licence requests.



Foreign investment

BNA's *Aviso No. 15/19* deals with the import and export of foreign currency in connection with investment transactions in Angola conducted by non-residents. *Aviso No. 15/19* exempts transfers in foreign currency to Angolan banks for investments in securities that are listed on an Angolan regulated market as well as for direct investment. It also exempts transfers abroad of foreign currency to non-residents in connection with the sale of securities and the proceeds of direct investment if the acquiror is also a non-resident and the amount to be imported by the acquiror and the amount exported by the seller are both in foreign currency. The export of dividends resulting from direct investment are also exempt from authorisation requirements if the import of the funds required to make the investment has been effected in accordance with the provisions of *Aviso No. 15/19* and the export otherwise complies with the applicable investment regime.

Investments in Angola's public debt are subject to authorisation requirements as is the export of foreign currency in connection with the disposal of a non-listed investment, dissolution of the relevant entity or a reduction of capital in a non-listed company. *Aviso No. 15/19* describes the documentation that needs to be submitted and the process to be followed in order to obtain such authorisation.

OPENING AND OPERATING LOCAL AND FOREIGN CURRENCY ACCOUNTS

Banks in Angola can pursuant to the Exchange Law, *Aviso No. 3/09* of 5 June 2009 and *Aviso No. 02/17* of 16 January 2017 open accounts in foreign currency and local currency on, respectively, behalf of residents and non-residents. 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. Resident individuals (but not companies, unless they require an authorization from BNA) can open accounts with foreign financial institutions outside of Angola.

Pursuant to *Aviso No. 02/17* of 16 January 2017, resident individuals and companies can also open special accounts in foreign currency with Angolan

banks that are subject to less stringent capital control requirements than accounts under the normal regime.

SUPERVISION AND ENFORCEMENT

The foreign exchange regulations impose a heavy monitoring obligation on the Angolan banks involved in settlement transactions. They must 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, or if there are doubts about the legitimacy or purpose of the transaction. In addition, the Law against Money Laundering and Financing of Terrorism obliges the Angolan banks 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). Pursuant to *Instrutivo No. 13/18* of 19 September 2018, BNA considers the importers that deal with offshore entities and trading entities as “high risk” customers. They are, therefore, subject to enhanced due diligence procedures.

During the foreign currency crisis BNA has issued various regulations to reinforce the obligations and to require banks to create, impose and enforce more stringent internal rules and processes to secure compliance with the applicable foreign exchange regulations. In this context, BNA has, pursuant to *Instrutivo No. 07/18* of 21 June 2018, obliged each bank to establish an independent body to monitor and ensure compliance by the bank with the applicable foreign exchange rules.

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