

ANGOLA'S NEW PRIVATE INVESTMENT LAW- MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS

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The enactment of a new Foreign Private Investment Law in Angola in May has introduced significant reforms to the investor regime, including raising the minimum thresholds in order to benefit from specific custom, tax and profit repatriation benefits.

Private investment alongside public investment is now a strategic goal of the state for the mobilisation of human, financial, material and technological resource, with a view to the country's continued social and economic development, the increase of competitiveness, increased employment and the improvement of living conditions.

The aim of the new law, while still open to analysis, is intended therefore to maintain and strengthen foreign investors' rights and guarantees, as well as to introduce more clear and efficient rules and procedures for the approval of foreign private investment.

The recently enacted New Private Investment Law ("NPIL") consolidates, in a single legal instrument, issues that were up until now separately regulated by the former Private Investment Law and the Law on Tax and Customs Incentives for Private Investment. The NPIL introduced various changes to the legal framework for private investment of which, given their significance and practical relevance, the following stand out:

- a. The NPIL is only applicable to investment projects with a global amount equal to or greater than USD 1,000,000.00, made in Angolan territory by nationals or foreigners. All investment projects below said threshold fall outside of the scope of the NPIL and thus will not benefit from the rights and benefits provided for therein, such as the granting of tax and customs exemptions.
- b. In the past, investors with approved projects were automatically granted the right to repatriate profits and/or dividends. This is no longer the case. Said right may now be granted following the implementation of an investment project, provided that a number of requirements are met. First and foremost, each investor must have individually invested a minimum amount of USD 1,000,000.00. Once this requirement is met, the right to repatriate profits and/or dividends by the foreign investor will still be conditioned by several factors, such as the specific amount invested, the duration of the investment, actual profits generated by the project, social and economic impact and effects on regional asymmetries and the Angolan balance of payments.
- c. The granting of tax and customs exemptions and benefits by the National Agency for Private Investment ("ANIP") was, in the past, subject to a case-by-case evaluation and, although it became increasingly difficult, it was nevertheless obtainable. Such granting has now become exceptional. The social and economic impact of the project and its contribution to the reduction of regional asymmetries also play a key role in ANIP's decision on the granting of these benefits.
- d. Procedure-wise, the most relevant change is the end of the dual system which allowed for both a simplified procedural regime and a more complex contractual regime. All approved investments now necessarily fall under the contractual regime and investors must therefore enter into a contract with ANIP. Furthermore, investment projects of up to USD 10,000,000.00 are subject to the approval of ANIP's Board of Directors, while investment projects of more than USD 10,000,000.00 must now be approved by the Angolan President.

The above are the most relevant changes arising from the NPIL. Although certain options may now be more demanding to foreign investors, it must be taken into account that, according to the Angolan authorities, the aim of this new regime is to create better conditions in order to attract "good foreign investment" and benefit the long term growth of the Angolan economy. Despite the complexity of the investment requirements and mechanisms, the new regime creates clear and precise safeguards for investors, including the mandatory execution of an enforceable contract with a public authority.

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