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ANGOLAN DESK | ARBITRATION

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ANGOLAN DESK | EDITORIAL

Today we publish the second Aware of Abreu Advogados' Angolan Desk.

It was our option to dedicate each Aware of the Angolan Desk to a single Practice Area and again we tried to choose a current theme that is also useful and interesting to the receivers' of this Aware.

Therefore, the Second Aware will focus on arbitration. This theme, besides being current and useful, also assumes a special interest in Angola as being a rich and in expansion country, still has some difficulties in certain areas.


Thus, arbitration has an important and decisive role in the development of Angola's economy and in the stability that the economic agents, national or foreign ones, aim in order to reduce or minimize the risk of their investments.

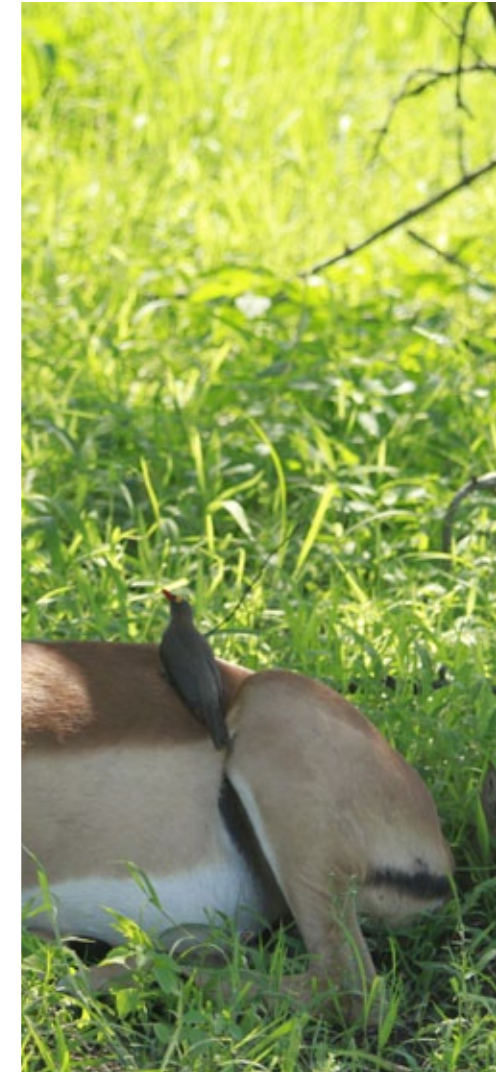
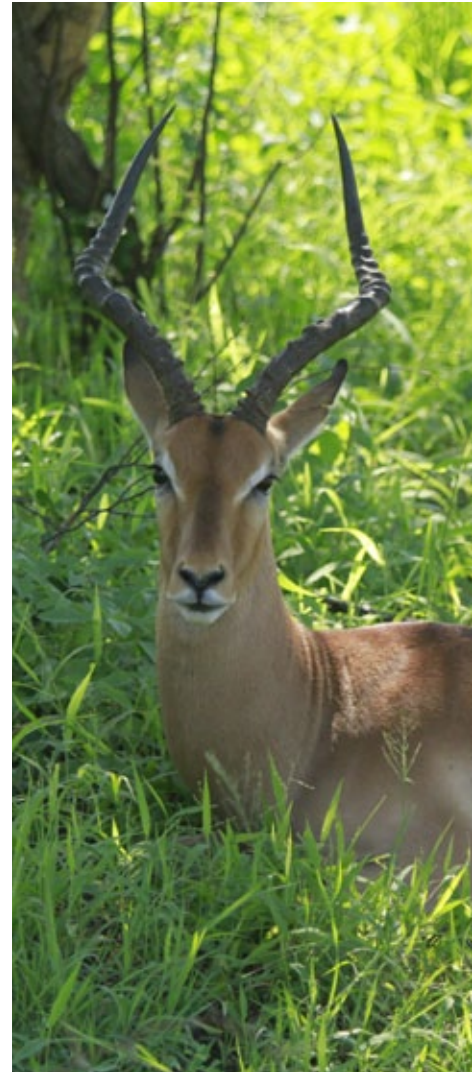
The present Aware also brings a new item on recent Angolan legislation. This new item will remain in all future Awares of our Angolan Desk.

We hope you appreciate reading the Second Aware as well as the following ones. We hope it meets your expectations and needs.

Finally, we appreciate all your comments and suggestions.

On behalf of the Angolan Desk and in particular on behalf of the team that prepared this Aware,

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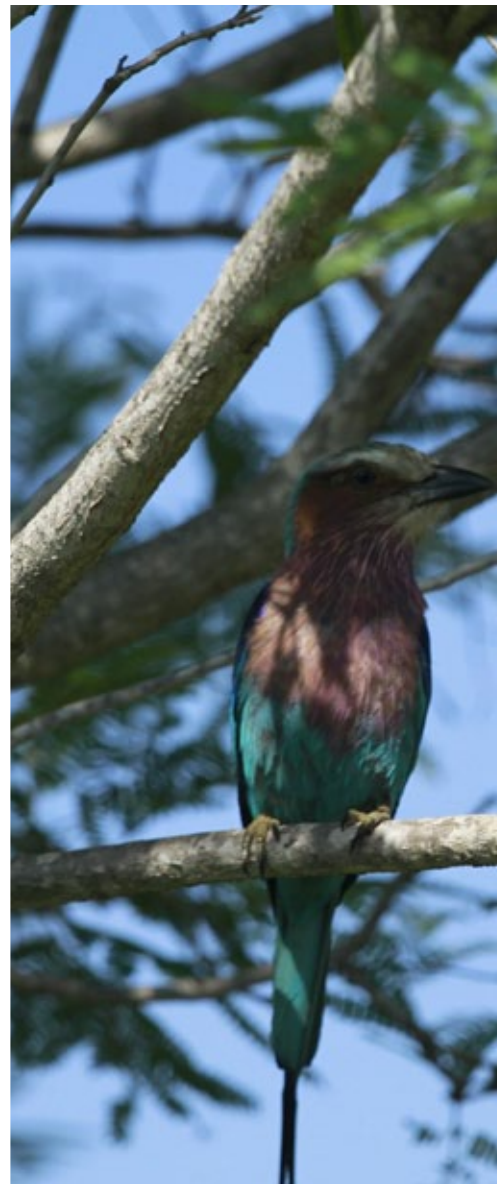


ARBITRATION IN ANGOLA

The reality of arbitration is particularly relevant in the Angolan context as, in many cases, the judicial system is one of the main constraints pointed out by investors to the development and growth of the national private sector * 1.

Furthermore, the inevitable process of political and economic opening of the country that is being witnessed, with the inherent multiplication of commercial, economic and industrial relations, stresses the need to supply the Angolan system with mechanisms that confer greater legal security, predictability and effectiveness to the dispute mechanisms resolution.

The Angolan “legislator” has not been alien to this reality, approving **Law No. 16/2003 of July 25**, which rules voluntary arbitration in Angola. One of the main goals of this diploma was to supply the Angolan system with a credible alternative to the resolution of commercial disputes that would meet the needs pointed out by private investors in the context of commercial multilateralism.



Thus, the referred Law is a fundamental mark, currently assuming itself as the main regulation on this matter, whereof it is emphasized the **admission of institutionalized arbitration**, the **opening to international arbitration**, the **autonomy of arbitration towards the judicial Courts** and still, the **direct practicability of arbitral decisions** stand out, where at its context deserves a more attentive look.

All those disposing of contractual capacity may resort to arbitration to solve disputes regarding available rights, by means of an arbitration convention, for as long as they are not submitted to Judicial Court or necessary arbitration by special law. The State (as well as legal persons governed by public law in general) can too celebrate arbitration conventions but only to settle disputes regarding private law relations, administrative agreements, and in those cases especially established by law.

Regarding the **function of the arbitral tribunal**, which is ruled by the basic principles of equality and of adversarial system, it should be referred that it can be composed by a single or several arbitrators, but they shall always be in odd numbers.

* Footnotes on **page 6**

Arbitration in Angola **(continuation)**

In this matter, the parties have broad powers of availability of the procedural elements, considering that they may agree on the procedural rules that shall rule the arbitration, notably the seat of Arbitration.

Concerning the **trial**, parties may also enjoy availability powers, considering that they can agree that the arbitral tribunal may rule under equity as well as according to certain usages and customs, whether domestic or international ones. Should there be no (written) agreement Arbitral tribunals will rule in accordance to the constituted law. In decisions based on usages or customs, the Court must always comply with the public order principles of the Angolan law².

The arbitral award has exactly the same effects between the parties as judicial decisions, being thus, also enforceable.

Nevertheless, the awards rendered by arbitral tribunals are subject to annulment by the Judicial Court if the grounds expressly referred in the law are verified³.

The appeal system has also some particular characteristics. Thus, parties may previously waive the right of appealing. Nonetheless, if they do not, the arbitral award has the same terms of the appeal as if it had been given by the Provincial Court. Moreover, if the power of the arbitration tribunal to rule accordingly to equity was exercised, this shall imply the waiving of the appeal.

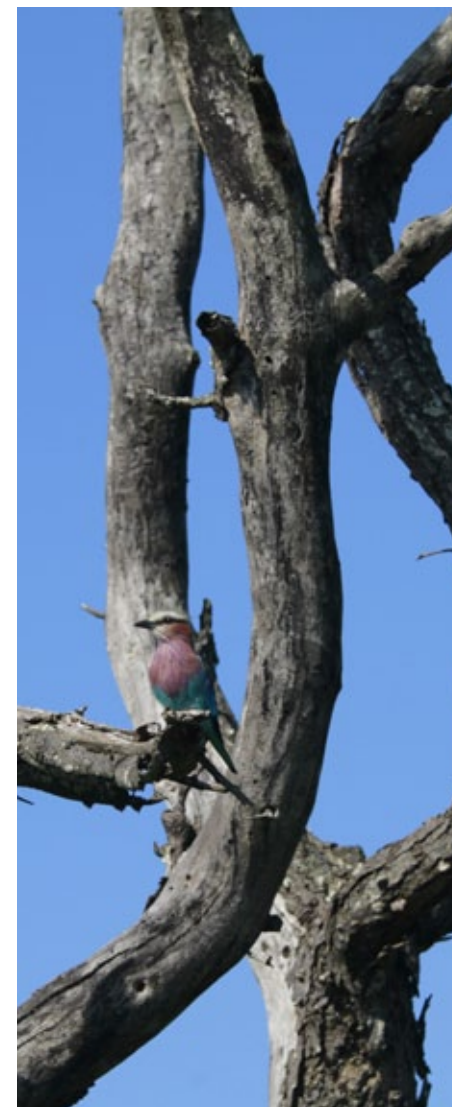
The awards rendered by arbitral tribunals shall be complied by the parties, under the terms determined by the arbitral tribunal; otherwise, the party may **enforce the award** before the Provincial Court, under the terms of the civil procedure law.

Finally, one of the most relevant innovations on the arbitration system is the express reference to a regime on **international arbitration**. This is defined under Decree-Law No. 16/2003 as "**it puts into play interests of international trade**"⁴.

Therefore, arbitrations within such type are subject to special rules introduced by Law No. 16/2003 on the determination of the applicable law, language and resources.

As regards with other aspects and in case parties have not agreed anything, international arbitrations shall be residually governed by the provisions of Law No. 16/2003, with the necessary adjustments.

Regarding this aspect, it is worth mentioning that the Court may only decide in accordance to equity or make an amicable composition when it is expressly authorized by the parties. Nonetheless, in both cases, the Tribunal shall always have to consider the usages and customs of international trade applicable to the subject of the Arbitration Convention.



* Footnotes on **page 6**.

Arbitration in Angola (continuation)

Considering the foregoing, it is possible to conclude that the Angolan legal system has already adequate mechanisms to host arbitration effectively in the country. However, there is still much work to do. Indeed, the fact that Angola is not party in International Conventions that are fundamental on Arbitration⁵ is a significant obstacle to a complete use of the potential of such system, including at multi-lateral level. The country's adherence to international treaties on this matter is thus an indispensable condition for foreign investors to have confidence in the national judicial system.

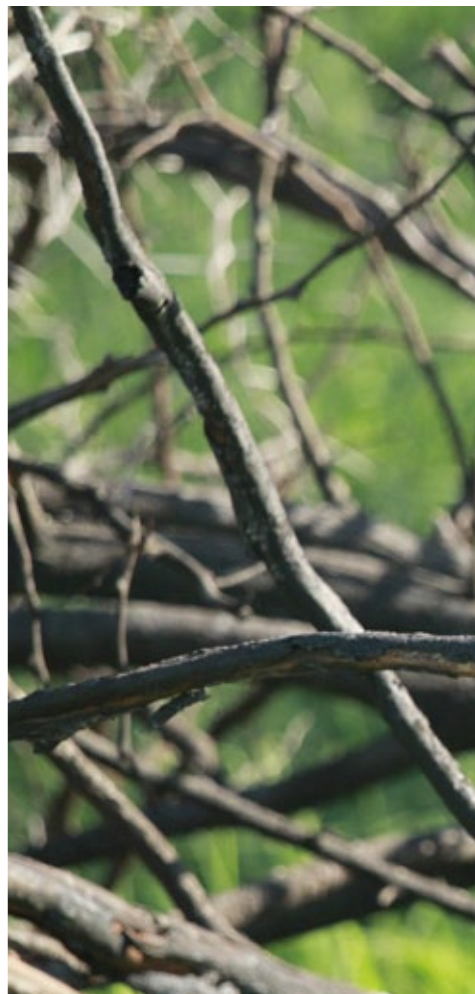
In addition, it has been understood that Decree-Law No. 16/2003 cannot be applicable to disputes on real estates located in Angola, in accordance to Law No. 10/86 in articulation with art. 99 of Angolan Civil Procedure Code, which also reduces significantly the scope of this law⁶.

Therefore, we cannot consider that the expansion of arbitration in Angola is elevated.

At least while there is no framework able to allow an effective recognition, already provided by Law No. 16/2003, of the national and international arbitrations' context, as well as while the Angolan State does not agree to submit arbitration outside Angola and submit the investment agreements wherein it is party to a different and non-Angolan law.

Arbitration in Angola is thus an emerging reality, and there are still constraints inherent to the lack of materials, information and disclosure of such mechanism, and currently there is an ignorance of the advantages of such systems by the citizens and the private institutions, not potentiating their development.

Considering the increase of foreign investment in the country, as well as the judicial courts' difficulty on settling the disputes submitted to them on a fast basis, it is necessary to reflect on the current arbitration and pointing out ways able to allow a growing attraction on the private investment in Angola.



* Footnotes on page 6.

Footnotes

¹ According to *World Bank (Doing Business - www.doingbusiness.org)* data, in Angola it is necessary to carry out 47 procedures to execute a contract (opposite to the 24 Portuguese), being that the average pendency of a trial on first instance ascends to 1011 days (2005 data) opposed to 495 days in Portugal.

² Under legal terms, arbitration award shall be given within 6 months as of the date of the acceptance of the last appointed arbitrator; notwithstanding, parties may agree to extend the agreed period.

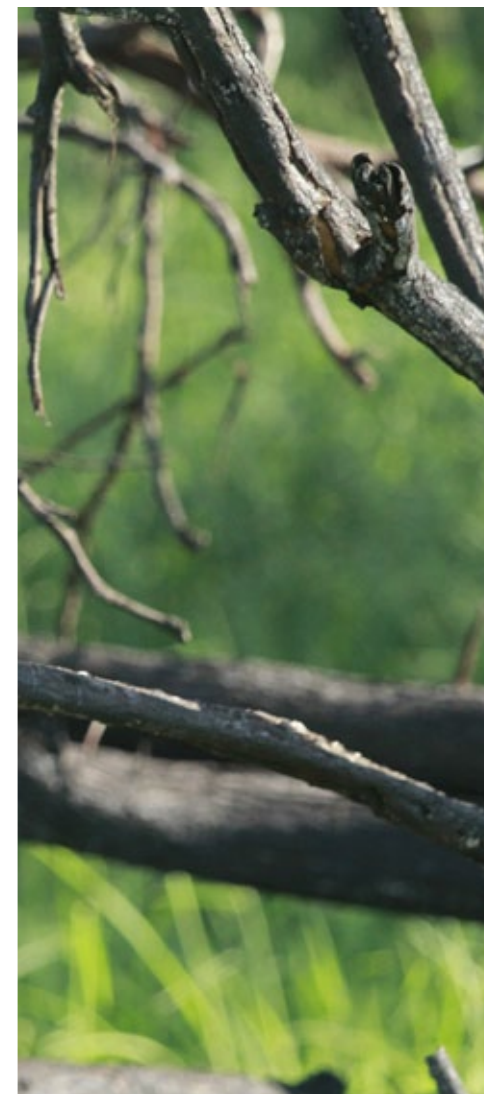
³ Art. 34, paragraph 1 of Law No. 16/2003 expressly foresees that arbitral awards may be annulled by the Judicial Court based on any of the following reasons: a) The dispute is not able to be settled by Arbitration; b) The award was rendered by a Tribunal that was not able to proceed with the case; c) Termination of the arbitration convention; d) To have been rendered by a Court improperly constituted; e) Lack of justification; f) Violation of the principles of equality and adversarial and such has decisively influenced the dispute resolution;

g) The Tribunal has ruled on known issues that were supposed not to have access or did not consider issues that should have been appreciated; h) The Tribunal whenever ruling according to equity and usages and customs, under art. 24 of this Law, has not respected the public order principles of the Angolan legal system. It should be noted that the action for annulment must be filed before the Supreme Court within 20 days from the date of service of the arbitral award.

⁴ Notably when i) in the arbitration convention, parties have their establishments in different States, in the moment of conclusion of the convention, ii) the place of arbitration, the place of execution of a substantial part of the liabilities derived from the legal relationship under which is raised the conflict, or the place where the subject of the dispute has a closer relationship is located outside the State wherein the parties have their establishment; iii) parties have expressly agreed that the subject of the arbitration convention has a connection with more than one State.

⁵ Namely the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards from 1958 which foresees the recognition of the arbitration convention and the recognition and enforcement of foreign arbitral awards.

⁶ Moreover, the Private Investment Law, as regards to the investment agreements with the State, provides that although it is admitted the settlement of disputes by arbitration, on the other hand, the arbitration shall be held in Angola, being the Angolan law the applicable law to the agreement, thus is seriously compromised the character of inter-parties availability, as denoting the arbitration system.



Legal News

Presidential Decree No. 22/11, of January 19, that approves the Regulation of Credit Cooperative Societies.

Law No. 4/11, of January 14, that approves the Law on International Treaties.

Law No. 2/11, of January 14, that approves the Law on Public-Private Partnerships.

Resolution No. 2/11, of January 14, that recommends the Executive to adopt a formal proceeding of previous discussion to the preparation of the State's Budget.

Presidential Decree No. 14/11, of January 19, that approves the organic statute of Customs National Service.

Presidential Decree No. 9/11, of January 7, that creates the Environment Fund.

Presidential Decree No. 8/11, of January 7, that regulates the judicial regime of Family Benefits.

Presidential Decree No. 11/11, of January 1, that creates the National Institute of Environmental Management.

Presidential Decree No. 5/11, of January 6, that approves the Organic Statute of the Transports Ministry.

Presidential Decree No. 2/11, of January 5, that approves the Regulation on Commercial Relations.

Presidential Decree No. 1/11, of January 3, that approves the Organic Statute of the Economy Ministry.

Executive Decree No. 180/10, of December 30, that approves the Regulation with the instructions to close the financial exercise of 2010.

Presidential decree No. 309/10, of December 29, that defines the instructions to execute the State's Budget for 2011.

Law No. 26/10, of December 28, that approves the State's Budget for 2011.

Order No. 291/10, of December 22, that determines the issuance, investment and repurchase of Treasury Bonds.

Executive Decree No. 178/10, of December 21, that regulates the interest rate of the Treasury Bonds foreseen in Presidential Decree No. 291/10, of December 1.

Presidential Decree No. 307/10, of December 20, that approves the taxes, licenses, fines and other revenue to be charged by Local State's Bodies.

Joint Executive Decree No. 172/10, of December 12, that approves the list of occupations forbidden to women.



Legal News (continuation)

Joint Executive Decree No. 171/10, of December 12, that approves the list of occupations forbidden or conditioned to underage.

Presidential Decree No. 298/10, of December 3, that creates the Public Bidding Cabinet.

Law No. 25/10, of December 3, that amends the Organic Law of the Procedure of the Constitutional Court.

Law No. 24/10, of December 3, that amends the Organic Law of the Constitutional Court.

Law No. 22/10, of December 3, that approves the Law of Political Parties.

Presidential Decree No. 292/10, of December 2, that approves the new Organic Statute of the Ministry for Youth and Sports.

Presidential Decree No. 290/10, of December 1, that approves the new Organic Statute of the Education Ministry.

Presidential Decree No. 289/10, of November 11, that approves the Regulation on the Organization, Execution and Functioning of the Wholesale Activity.

Presidential Decree No. 288/10, of November 11, that approves the Regulation on the Licensing of Commercial Activity and Supply of Trading Services.


Presidential Decree No. 265/10, of November 26, that approves the Licensing administrative Proceedings on exports, imports and re-exports.

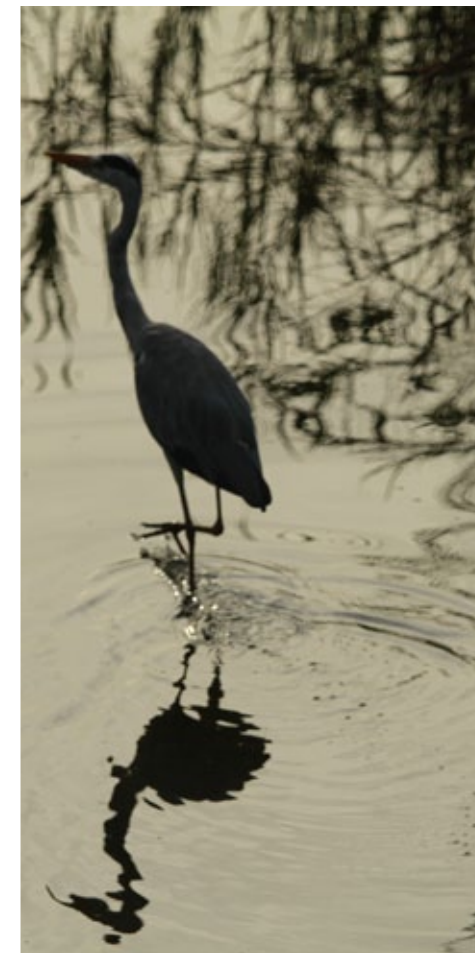
Presidential Decree No. 263/10, of November 25, that approves the Regulation on the Organization, Execution and Functioning of Retail Trade.

Presidential Decree No. 261/10, of November 23, that approves the Organic Statute of the Provincial Government of Luanda.

Presidential Decree No. 260/10, of November 19, that approves the judicial regime of hospital management.

Warning No. 6/10, of November 18, that determines rules on the share capital of exchange houses authorized by the National Bank of Angola.

Presidential Decree No. 253/10, of November 16, that creates the National Institute of Hydric Resources. 



This *Aware* is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects that are referred. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact the Angolan Desk of Abreu Advogados: angola@abreudvogados.com
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