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**ANGOLAN DESK | PRIVATE INVESTMENT LAW**



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## ANGOLAN DESK | EDITORIAL

Finally, and after months of postponement and preparation, the much awaited new Private Investment Law in Angola has been published. Providing significant alterations regarding the minimum investment amounts and the approval process, this new instrument is expected to be bring a new phase in foreign investment in Angola, which will provide foreign investors with swift approval of their projects, greater transparency and heightened legal security, alongside a greater ease for capital movement, less bureaucracy and a facilitated process for obtaining visas for the investors' management and technicians who are transferred to Angola.

With all of the alterations introduced, we await with great expectations what will be its practical application and what will be the response of the Angolan authorities to this new regime.

Undoubtedly, there is much to be done, and the Angolan economic continues to show promise as well as great potential.

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## PRIVATE INVESTMENT LAW

The Law 20/11, of 20 May, the (new) Private Investment Law (PIL) was enacted last May 20<sup>th</sup>.

Considering that the *Agência Nacional para o Investimento Privado* (National Private Investment Agency - "ANIP") had long ago suspended all ongoing investment projects, the enactment of this new Law will at last boost all those investments that were at a standstill. However, several new questions arise with regard to such projects, and to the new regime currently in force.

In fact, one of the questions that worries investors the most is the question of knowing whether or not the requirements of the PIL, particularly the new minimum investment threshold, will be applied retroactively to the projects submitted to the ANIP prior to the publication of the PIL. We fear this will happen, but there is no certainty.

The most significant alteration to the private investment regime in Angola is the increase of the minimum investment threshold from USD 100,000.00 to USD 1,000,000.00. Still, this was not the only alteration made.



Other major alterations relate mainly to:

- a) the elimination of the prior declaration regime;
- b) a greater difficulty in exporting capital;
- c) the new concepts of domestic and foreign investment (thereby disregarding the nationality and place of place of residence of the investors, the origin of the funds now becoming the cornerstone to distinguish both concepts);
- d) The new concept of foreign reinvestment.

Together with these alterations, to which we will refer in more detail hereunder, another striking feature of the PIL is the wide margin of discretion in the approval of the projects, and the benefits and incentives to be granted, which will now have to be negotiated between the investors and the Angolan State.

## Scope of the investment

As mentioned above, in order for an investment project to be approved by ANIP and be awarded the expected benefits, it must have a minimum threshold of USD 1,000,000.00.

As regards the companies to be incorporated or to be altered within the scope of the private investment, these should preferably be single-purpose companies and with a predetermined corporate object, according to the private investment which has been authorized. If this is not possible, the authorized incentives and fiscal and customs benefits shall be restricted to the activity(ies) specified in the private investment contract. The extension of the scope of application of the fiscal and customs benefits is subject to prior authorization.

Another innovation of the PIL is the obligation of «[The] *capital of the companies incorporated under the investment must be proportional to the value of the investment, or the Private Investment Registration Certificate may be revoked and the Investment contract terminated*».

However, only experience can tell what in practice this proportionality between the registered capital of the company to be incorporated and the value of the private investment will mean. Under the previous Law 11/03, of 13 May, the Private Investment Base Law (PIBL), the registered capital followed the legal regime set forth in the Commercial Companies Law (CCL), while private investment followed the regime set forth in the PIBL. There was no such requirement of proportionality between the private investment and the amount of the registered capital of the company to be incorporated or acquired.

Another question which can only be answered with experience is the obligation to present the capital import licences (CILs), ratified by the Commercial Bank receiving the capital to be invested, upon execution of the deed of incorporation or alteration of the company under the private investment.

The requirement of CIL ratification by the Commercial Bank on the date of execution of the deed of incorporation or alteration of the company is an

innovation introduced by the PIL, since it was not provided in the PIBL. The question is now how this requirement will be applied in practice, in view of the fact that, on the date of the execution of the deed, and in the light of the 90 day period for the capital to be imported, CILs were never ratified at the time of the execution of the deed, but much later, when the capital intended for the private investment was deposited in the bank account of the incorporated or acquired company. This is another question that will only be answered as new projects are approved.

Finally, reference should be made to the economic requirements contained in the PIL in order to be eligible for private investment benefits:

«(...) **a)** *investments in the following fields of activity:*

- i. agriculture and cattle breeding;*
- ii. manufacturing industry, notably the manufacture of packages, production of machinery, equipment, tools and accessories, recycling of iron and non-iron materials, production of textiles, clothing and footwear, processing of wood and its by-products, food production, construction materials, information technologies;*



**Scope of the investment  
(continuation)**

- iii. railroad, road, port and airport infrastructure;*
- iv. telecommunications and information technologies;*
- v. fishery and by-products, including the construction of boats and fishing nets;*
- vi. energy and waters;*
- vii. social housing;*
- viii. health and education;*
- ix. hotel and tourism industry.*

*b) investments in developing areas and in the remaining investment Special Economic Zones, approved based on the criteria and priorities defined by the Government;*

*c) investments in the free trade zones to be created by the Government, in accordance with the applicable legislation.»*



**Single Procedural Regime**

Within the scope of the LBIP, two regimes coexisted: the contractual regime and the prior declaration regime. The PIL now only provides a single procedural regime, equivalent (with some changes) to the former contractual regime. The most striking feature of this change is that there will be a negotiation between the investor and the Angolan State, which implies that the benefits to be granted must always be assessed on a case-by-case basis.

The new single procedural regime comprises the following stages:

- 1)** submission of the investment proposal;
- 2)** correction of the proposal (when necessary);
- 3)** acceptance of the proposal;
- 4)** analysis and negotiation of the proposal between the investor and the *Comissão de Negociação de Facilidades e Incentivos* (Commission of Negotiation of Facilities and Incentives - "CNFI") – this stage, pursuant to the PIL, will last 30 days at most;



### Single Procedural Regime (continuation)

**5)** final opinion of the CNFI on the submitted investment proposal – not exceeding 10 days after the end of the preceding stage;

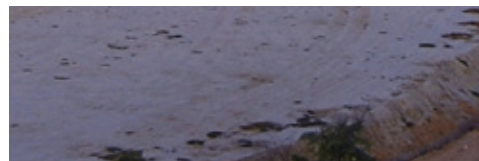
**6)** forwarding of the investment proposal and the final opinion of the CNFI to the Board of Directors of the ANIP, in case of an investment proposal of up to USD 10,000,000.00, or to the President of the Republic, in case of an investment proposals in excess of USD 10,000,000.00; it is worth noting that, in case of investment proposals in excess of USD 50,000,000.00, the President of the Republic may set up an *ad hoc* CNFI to carry out new negotiations with the investor and to prepare the final decision;

**7)** approval of the investment – within a maximum of 15 days, in case the investment proposals varies between USD 1,000.000.00 and USD 10,000,000.00; this period will be increased to 30 days for investment proposals in excess of USD 10.000.000,00;

**8)** return of the process to the ANIP for signature, registration and publication of the investment contract and for the issue of the Private Investment Registration Certificate (CRIP).

Therefore, pursuant to the PIL, an investment proposal may take from 60 to 135 days, depending on the negotiation process, the need for correction of the proposal as well as on the competent authority for approval. It should be noted, however, that several changes may occur throughout the approval process of the investment proposal, reason for which we should not consider the deadlines herein referred to as final. This is indeed a major alteration to the PIBL, since, the PIL does not provide the acceptance or the “tacit” approval of the investment, and as such, the proposal is “in the hands” of the ANIP and of the competent authority for approval.

Reference should also be made to the fact that in case of unjustified withdrawal of an investment proposal, or in case a proposal is considered, in a separate investigation, wilful and in bad faith, the relevant investor will not be given approval for an investment project in Angola for a period of up to ten years.

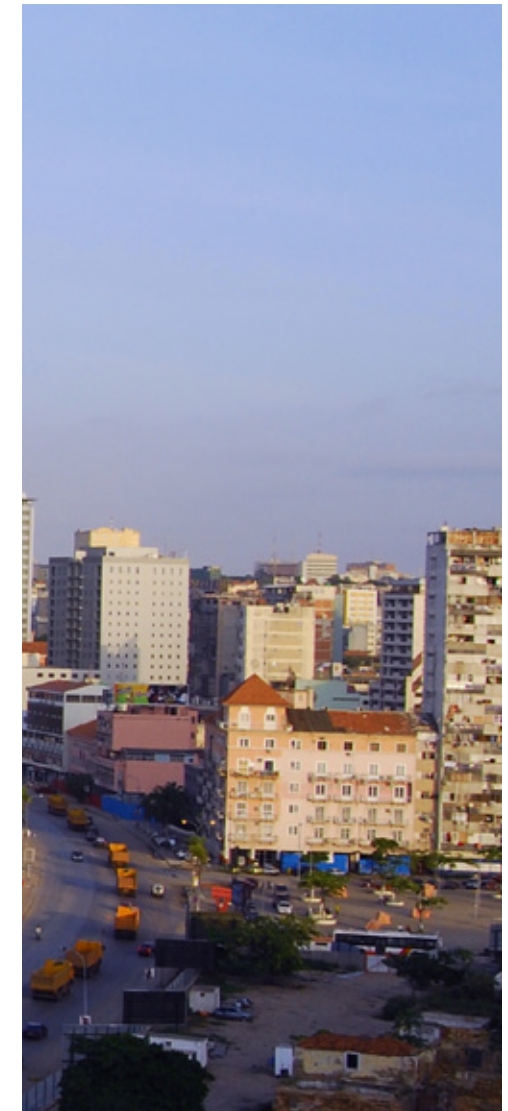


### Capital repatriation

Pursuant to the PIL, the imposition of more constraints to capital export/repatriation is apparent, in view of the fact that the same will now depend directly on the volume of capital invested and the geographic area where the investment is to be made.

### Criteria for approval of investment projects

In light of the above, the new investment law implies that each project submitted to ANIP be unique, insofar as the benefits involved will be negotiated on a case-by-case basis, and a wide margin of discretion is afforded to the competent authority for the approval of the investment proposal.



### Criteria for approval of investment projects (continuation)

However, according to Angolan authorities, there will be limits to the incentives, which will vary according to the volume of capital invested, the level of job creation, the geographical area and the economic impact of the project (production and export).

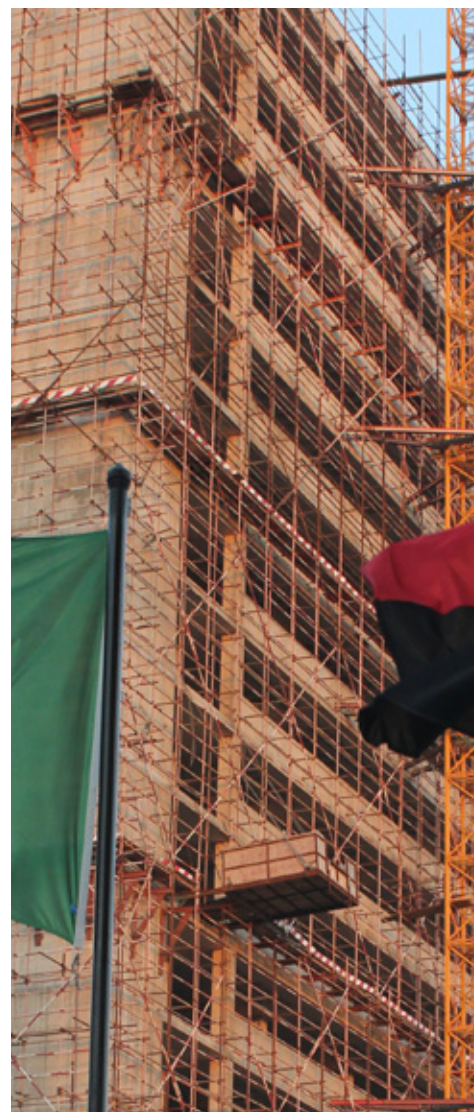
### Foreign Reinvestment

The PIL introduced a new concept, the concept of reinvestment: «(...) *an investment in national territory of the whole or part of the profits generated by virtue of a foreign investment and that, pursuant to this law, are eligible for export. Such reinvestment is subject the rules applicable to foreign investment.*»

In essence, the introduction of this concept seems to result from a clear intention of the Angolan Government to force the submission to the ANIP of the proceeds of previous foreign investments, thereby allowing a greater control of the investments made.

### Conclusion

What the impact of the PIL will be, no one yet knows. One thing we do know, however, is that in some aspects, the PIL shows a clear intention of the Angolan Government to foster its economy, generate wealth, create jobs and correct regional asymmetries. Nonetheless, the application of the PIL, in particular with regards to the investment projects which have in the meantime been suspended, as well as several other practical questions, still remains an uncertainty.



## Legal News

Law n.º 1/11, of January 14, which approves the Base Law of the National Zoning System General Regime.

Law n.º 2/11, of January 14, which approves the Public-Private Partnership Law.

Law n.º 3/11, of January 14, which approves the Law on National Statistics System.

Law n.º 4/11, of January 14, which approves the Law on International Treaties.

Law n.º 5/11, of January 21, which approves the Law on National and Provincial Mourning.

Executive Decree n.º 7/11, of January 30, which authorized the emission of Treasury bills – 2011 for the financing of the financial execution of the General State Budget 2011, up to a global amount of 570.000.000.000,00 kwanzas.

Presidential Decree n.º 28/11, of February 2, which approves the Regulation of Micro-Credit Companies.

Law n.º 6/11, of February 8, which approves the General State Budget for 2011

Presidential Decree n.º 36/11, of February 15, which authorizes the

Ministry of Finance to resort to the issuance of short term debt securities, designated as Treasury Bills, up to the amount of 570.000.000.000,00 kwanzas.

Law n.º 10/11, of February 16, which approves the Law on National and Local Bank Holidays and Dates of National Celebration.

Law n.º 11/11, of February 16, which amends the Land Registry and Notary Codes.

Law n.º 12/11, of February 16, which approves the Law on Administrative Transgressions.

Law n.º 7/11, of February 16, which approves the General Rates Regime.

Law n.º 8/11, of February 16, which approves the Law on the Judicial and Notarial Regime and amends the Employment Income Tax Code.

Law n.º 9/11, of February 16, which amends the Civil Code in the part on Voluntary mortgage on property, alienation of the property, loan agreements and horizontal property contracts.

Executive Decree n.º 28/11, of February 24, which approves the instructions for the elaboration of the General Account of the State.

Presidential Decree n.º 38/11, of March 4, which approves the reduction by half of all the charges due for the registration of the transfer of property for payment.

Presidential Decree n.º 43/11, of March 7, which approves the Management Measures of the Marine Fisheries, of Continental Fishing and of Aquaculture for the year 2011.

Presidential Decree n.º 48/11, of March 9, which creates the Petroleum Fund.

Presidential Decree n.º 49/11, of March 9, which approves the Legal Regime of the Special Economic Zone of Luanda-Bengo (*ZEE Luanda-Bengo*).

Administrative Order n.º 174/11, of March 11, which sets the value of the Tax Correction Unit (*Unidade de Correção Fiscal*, UCF) to 88,00 kwanzas.

Executive Decree n.º 30/11, of March 11, which approves the Procedures for the Opening, Operation and Closing of Bank Accounts of Public Sector Administrative Institutions.



### Legal News (continuation)

Presidential Decree n.º 50/11, of March 15, which approves the General Guidelines of the Executive Branch for the Tax Reform.

Law n.º 13/11, of March 18, which approves the Organic Law of the Supreme Tribunal.

Law n.º 14/11, of March 18, which approves the Law of the Superior Council of the Judiciary.

Law n.º 15 /11, of March 18, which approves the Law of the Superior Council of the Public Prosecutor.

Resolution n.º 9/11, of March 21, which approves the National Parliament Budget.

Presidential Decree n.º 51/11, of March 23, which approves the Legal Notarial Regime.

Executive Decree n.º 62/11, of April 14, which approves the Regulation on Biosafety.

Presidential Decree n.º 61/11, of April 15, which authorizes the Ministry of Finance to resort to the special issuance of Treasury Bonds in national currency.


Presidential Decree n.º 66/11, of April 18, which approves exceptional measures or control of taxpayers in circumstances of repeated irregularity, and derogates to Decree n.º 61/04, of September 28, which implemented the Tax Identification Number (*Número de Identificação Fiscal*, NIF).

Law n.º 16/11, of April 21, which alters the Regulation for the Settlement and Recovery of the Tax on Inheritance and Donations, the Real Estate Transfer for Payment Tax, the Stamp Duty Tax Regulation and the Stamp Duty General Table.

Law n.º 18/11, of April 21, which amends the Urban Property Tax Code and the Industrial Tax Code.

Presidential Decree n.º 82/11, of April 25, which amends the Decree n.º 10/09, of July 13, which creates the Automobile Guarantee Fund.

Presidential Decree n.º 83/11, of April 25, which amends the Decree n.º 35/09, of August 11, which regulates the Mandatory Insurance for Automobile Civil Liability.

Presidential Decree n.º 95/11, of April 28, which approves the Regulation on the Activity of Factoring Companies. 



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@abreuvadogados.com](mailto:angola@abreuvadogados.com)  
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