Contracting Foreign Technical Assistance or Management Services in Angola

On 27 October 2011, Presidential Decree no. 273/11 was published in Angola's Official Gazette thus approving the **Regulation for Contracting Foreign Technical Assistance or Management Services in Angola** ("Regulation"*).

The Regulation aims to establish the terms and conditions which must be met in order to be able to enter into agreements for the rendering of foreign technical assistance or management services by privately held or mixed companies (article 1, no. 1) and under which the latter companies are the beneficiaries of such technical assistance or management services (*e.g.* article 2, a)).

Regulation's most relevant issues

Contracts with a value equal or below the USD 300,000.00 threshold

1. If the global value of the contract to be entered into is USD 300,000.00 or less and its term is of 12 months or less, the entity which will be exclusively responsible for entering into such contract is the beneficiary resident entity (*i.e.* the Angolan entity). In any event, notice of this contract must be furnished to the Ministry of Economy (article 1, no. 3).

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Contracts with a value above the USD 300,000.00 threshold

2. The contracts for the rendering of foreign technical assistance or management services whose global value is above USD 300,000.00 (it being understood, although

*Save for indication to the contrary, all provisions herein referred to shall be provisions of the Regulation.

not unequivocally, that the relevant value for these purposes should be the annual value) may only be entered into after an analysis and final (previous) decision by an evaluation committee to be created within the Ministry of Economy that shall include representatives of such Ministry (that will preside or appoint the president of the committee), of the Angolan Central Bank (*Banco Nacional de Angola – BNA*), and of the Ministry for Public Administration, Employment and Social Security (article 1, no. 4, article 9 *et seq.*).

3. The contracts for the rendering of foreign technical assistance or management services entered into by and between the same parties which the global value (for these purposes being understood as the sum of all such contracts) exceeds USD 300,000.00 require previous approval by the evaluation committee, in the aforementioned terms, since a fractioning of a higher amount is deemed to have occurred (article 1, no. 5). By virtue of said provision – which relates to the identity between parties, on the one hand, and with the global value of the contracts entered into among the same parties within each year, on the other – the entry into contracts which would not require prior approval under the provision of article 1., no. 3, will be required to have such approval.

The contracts for the rendering of foreign technical assistance or management services whose global value is above USD 300,000.00 may only be entered into after an analysis and final (previous) decision by an evaluation committee

Contracts related to companies incorporated under Private Investment Law

4. The entry into contracts for the rendering of foreign technical assistance or management services between companies incorporated under the Private Investment Law (Law no. 20/11, of May 20) and their "*respective foreign associates*" is not admitted, save for special cases, duly authorized by the National Private Investment Agency, upon prior favorable opinion by the Ministry of Economy, it being required for such contracts to have a previously established term (article 1, no. 6). This provision is extremely important for foreign investors given that from such provision stems a most relevant restriction for the entry into the contracts included under the Regulation in what relates to companies incorporated under private investment procedures. In this regard, please note that it is not clear what should be considered "*respective foreign associates*". Bearing in mind the necessary harmony within the Angolan legal framework, however, one could possibly conclude that the lawmaker is referring to the foreign investor as established in article 2, §g, of the Private Investment Law.

5. Further to the previously mentioned restrictions, the contracting of foreign technical assistance or management services is only allowed when:

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a) Due to their complexity and expertise, such services are not available (and therefore may not be contracted) in Angola;
b) There are previously determined programs which involve specialized knowledge within established terms;
c) The contracting of such services substantially benefits both the contracting party and the Angolan national economy;
d) Its scope decisively contributes to Angola's economic development (article 3).

Mandatory clauses and barred clauses

6. The Regulation also establishes the mandatory inclusion of certain clauses in the contracts to which it relates, such as the detailed description on the scope of the contract, the expected outcome, the working program, the timeline on the different stages of the performance of the contract, the necessary foreign personnel to be allocated, a final report as to the rendering of the agreed services (*i.e.*, the party rendering the services must present this report), identification of the involved technicians and the working time, provision setting forth that the Angolan law is the applicable one (article 4). Likewise, the Regulation also bars certain clauses such as, *inter alia*, clauses that establish vague and imprecise contractual scopes, exorbitant fees, or imply unbalanced reciprocal contractual obligations (article 5).

7. Concerning "the contract global fee", please note that its indication – as well as its break down – is required by the Regulation (article 6).

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Term, validity, doubts and omissions

8. Contracts are to be entered into for a term considered to be the reasonably necessary in order to achieve the full performance of the contractual scope - it being understood that a period longer than 36 months will not be deemed reasonable, save for situations in which the Ministry of Economy exceptionally authorizes longer terms (article 7).

9. All contracts which do not comply with the provisions established in the Regulation are to be deemed null and void hence producing no legal consequences (article 18).

10. Contracts that were already in force at the time the Regulation was enacted are valid until the term established in such contracts and need to be registered with the Ministry of Economy no later than 60 business days after the date in which the Regulation entered into force (article 19) – the latter having occurred upon publication of the Regulation – October 27, 2011 (article 4 of the Presidential Decree).

11. Finally, the Regulation establishes that all doubts and omissions arising from the interpretation and application of this Presidential Decree are to be settled by the President of the Republic of Angola (article 2).

The Regulation is of the utmost importance for all foreign entities that provide technical assistance or management services in Angola

Non compliance with the regulation might jeopardize all contracts in force

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In this regard, its study and legal advice concerning the practical issues regarding the provisions of the Regulation – that will become clearer as enforcement by the Angolan public authorities occurs – are fundamental for protecting foreign entities activities and interests, thus avoiding that the validity of contracts in force is questioned.

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