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Doing Business In... 2021

Angola

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1. LEGAL SYSTEM

1.1 Legal System and Judicial Order

Angola is a civil law jurisdiction with the following categories of Common Jurisdiction Courts:

- the Supreme Court;
- Appeal Courts (*Tribunais da Relação*); and
- District Courts (*Tribunais da Comarca*) – these can be divided into courts with specialised competences or minor crime courts, whenever the volume, nature and complexity of the proceedings justify it.

Law No 2/15, of 2 February 2015, which approved the Law on the Organisation and Functioning of Common Jurisdiction, includes the maps that establish the geographical competence area for each of the courts that exist in each of these categories.

The Supreme Court has jurisdiction over the whole national territory.

2. RESTRICTIONS TO FOREIGN INVESTMENTS

2.1 Approval of Foreign Investments

Investors intending to repatriate profits and dividends abroad shall undergo a foreign investment procedure before the competent authorities. Currently there is no mandatory minimum foreign investment amount.

There are certain local content requirements that apply to specific areas of business governed by a different legal framework, such as the oil and gas industry. Notwithstanding this, the Private Investment Law (PIL), amended and republished by Law No 10/21, of 22 April 2021, and its Regulation (approved by Presidential Decree No 250/18, of 30 October 2018) apply generally to all sectors.

The PIL provides for three procedural regimes: the prior declaration regime; the special regime; and the contractual regime.

In the prior declaration regime, the investor is entitled to incorporate the local company prior to the submission of the investment proposal before the competent authorities and before the Certificate of Registration of Private Investment (CRIP) is obtained. Notwithstanding this, rights and benefits can only be granted to the investor pursuant to the approval of the investment project.

The special regime applies to investment in priority sectors, which include the following:

- agriculture, food and agro-industry;
- reforestation, industrial transformation of forest resources and forestry;
- textile, clothing and footwear;
- hotel business, tourism and leisure;
- construction, public works, communications and infrastructures;
- power production and distribution; and
- basic sanitation, waste collection and waste processing.

The contractual regime is applicable to investment in all sectors and allows the investor to negotiate the conditions for the implementation of its investment project with the State, as well as the incentives applicable under the private investment agreement to its investment.

Some events (eg, share capital increases, assignment/transfer of shareholdings) must also be communicated to *Agência de Investimento Privado e Promoção de Exportações* (the Agency for Foreign Investment and Promotion of Exports, or AIPLEX).

Presidential Decree No 167/20, of 15 June 2021, created the “Single Investment Desk” (*Janela*

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Única de Investimento, or JUI), which is aimed at simplifying the contact between the investor and all the public entities involved in the approval of foreign investment projects. This new regime purports to make the JUI the only entity with which the investor has contact in all procedures for obtaining the approvals and licences required for its investment project.

2.2 Procedure and Sanctions in the Event of Non-compliance

The procedure for the preparation and approval of an investment project can be summarised as follows.

- Preparation and follow-up of a foreign investment project registration procedure with AIPEX, including the documentation preparation phase:
 - (a) preparation and drafting of the documents required, including the respective application forms that must be electronically submitted in the Portuguese language; and
 - (b) gathering, preparing and/or reviewing documentation to be submitted with the registration form.
- Submission of the investment project documents and request with AIPEX.
- Despite several changes in what was previously described as the negotiation phase, and without prejudice to the specificities of the contractual regime, there may still be room for negotiation of a few aspects with AIPEX.
- Issue of the CRIP to import the investment.

It is not mandatory to apply for an investment approval. If an investor does not wish to repatriate profits then no approval is needed, nor is there a sanction for not applying for one. The PIL encompasses a sanctioning framework that is applicable only if the presentation of an investment project took place. As such, the main consequence of non-compliance with the foreign investment regime is that foreign investors will

not be allowed to repatriate profits or dividends generated by such investment.

2.3 Commitments Required from Foreign Investors

The PIL provides for general and specific duties. Under the first category, private investors are obliged to respect the Constitution, the PIL and the remaining legislation applicable in Angola, and are especially obliged to abstain from directly or indirectly carrying out any actions that interfere in the internal matters of the Angolan State. Concerning the second category, private investors shall comply with the following duties, among others:

- observe the deadlines established for the import of capital and for the implementation of the investment project, pursuant to the commitments assumed;
- pay the taxes, fees and all other contributions that are legally due;
- constitute funds and reserves, and make provisions pursuant to the legislation in force; and
- respect the rules relating to protection of the environment, pursuant to the legislation in force.

2.4 Right to Appeal

Prior to resorting to courts, investors may challenge the decision pursuant to administrative rules of procedures, both through a claim (to the entity responsible for the decision) and through a hierarchical appeal (to the hierarchical superior of the entity responsible for the decision). The investors will then, generally speaking, be able to resort to civil and administrative courts.

Both administrative procedures and court actions are extremely bureaucratic and time-consuming. Investors exercising their right to appeal should expect decisions to take months or even years (in the case of court decisions).

3. CORPORATE VEHICLES

3.1 Most Common Forms of Legal Entities

The most commonly used Angolan companies are limited liability companies, of which there are two types: private limited liability companies (*sociedades por quotas*, or Lda) and public companies controlled by shares (*sociedades anónimas*, or SA). The choice depends on the desired corporate structure, as the first is preferred for less complex investments and structures, and the second for the confidentiality it confers to the shareholders.

The minimum number of shareholders (except in the case of a single-shareholder company) is two for an Lda, and five for an SA.

An Lda's share capital is divided into "quotas", which are unitary measures of the current or potential rights and obligations of a shareholder. Each quota has its nominal amount expressed in kwanzas, corresponding to no less than AOA1. The share capital amount is freely fixed in the company's articles of association. Conversely, an SA's share capital is divided into shares (nominative or bearer). The minimum share capital must correspond to the equivalent to USD20,000, expressed in kwanzas. The shares must have the same nominal value, which cannot be less than USD5, expressed in the national currency.

Concerning shareholders' liability, the main features for each of the companies are as follows.

- Lda:
 - (a) each shareholder is liable towards the company for the amount of its contribution, as established in the articles of association;
 - (b) each shareholder is jointly and severally liable towards the company for the capital to be invested in the company up to the

amount established in the articles of association; and

- (c) shareholders are not liable for the company's debts. Only the company's property is liable for the company's debts.

• SA:

- (a) shareholders' liability towards the company is limited to the amount of the shares they subscribed; and
- (b) only the company's property is liable for the company's debts.

3.2 Incorporation Process

The main steps for incorporating a company are as follows.

- Obtaining a certificate of availability of the chosen corporate name, issued by the entity *Ficheiro Central de Denominações Sociais*, which is part of the Ministry of Justice.
- Depositing the share capital, which must be deposited by the shareholders; documentary proof of the deposit must be produced at the incorporation deed before the notary.
- Setting up the company – a notarial deed is required to incorporate the company (certain registries now accept incorporating companies by private contract, but the main registry in Luanda still requires a notarial deed). The documents needed for this are:
 - (a) share capital deposit;
 - (b) draft incorporation deed;
 - (c) articles of association; and
 - (d) shareholder documents and those of the company's representatives at the incorporation deed.
- Registration with the Commercial Registrar.
- Official publication – the incorporation of the company must be published in Series III of the Angolan Official Gazette (*Diário da República*).

Despite efforts to reduce the bureaucracy of this process over the past few years, it remains

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quite time-consuming. Investors should expect it to take around 30 days for all steps to be concluded.

Once the company is incorporated, registration with the Tax Authority, the National Institute for Statistics and the National Institute for Social Security shall be sought, and licensing procedures (both general and sectorial) shall be initiated.

3.3 Ongoing Reporting and Disclosure Obligations

Angolan law establishes several reporting and disclosure obligations regarding the main features of commercial companies. According to the Commercial Registry Code, the following are subject to mandatory registration before the Commercial Registry Offices:

- alterations to the articles of association and appointment;
- reappointment;
- exoneration; and
- resignation of members of corporate bodies.

3.4 Management Structures

For private limited liability companies, the general shareholders' meeting (*Assembleia Geral*) is the main deciding body, gathering all the shareholders. Regarding the managing body, such companies shall appoint one or more directors (*gerentes*), who are not necessarily shareholders. Directors are appointed to undertake all necessary and convenient acts in accordance with the corporate interest and should follow the general shareholders' meeting resolutions. The appointment of a supervisory board is optional for this sort of company.

For public companies controlled by shares, the board of directors (*Conselho de Administração*) runs the activities of the company, and shareholders may only discuss and approve matters

when requested to do so by the board of directors. The general shareholders' meeting has a less stringent role than in the Lda. The public limited company is supervised by a supervisory board or a sole supervisor (a mandatory requirement).

3.5 Directors', Officers' and Shareholders' Liability

As in many other countries, referring to "limited liability companies" does not mean that companies themselves are liable in full – what is limited is the liability of the shareholders before the company and its creditors. In public companies controlled by shares, the liability of the shareholders is limited to the amounts corresponding to the shares they have subscribed, while in private limited liability companies, the liability of the shareholders may also exist in a joint and several manner with reference to the redemption of capital contributions of other shareholders.

In broad terms, other exceptions to the principle of limited liability may be found in the company's articles of association or under the law; notably, certain resolutions that focus on shareholders obtaining advantages/benefits may become void, and the shareholders that voted in favour may be held liable towards the company/other shareholders for the damages that are caused.

As far as is known, Angolan courts have not yet given judgments based upon the concept of "piercing the corporate veil" in order to make the parent companies and/or shareholders liable for actions/omissions of their subsidiaries/companies where they hold shareholdings.

In reference to directors' liability, Angola has established a very strict regime for directors that have caused harm to the company due to their acts or omissions. Generally, directors may be unlimitedly liable for the damages caused to the

company, if they act with fault. They may also incur criminal liability for their acts.

4. EMPLOYMENT LAW

4.1 Nature of Applicable Regulations

The General Labour Law (*Lei Geral do Trabalho*, or GLL), approved by Law No 7/15, of 15 June 2015, establishes that the following constitute sources of labour law:

- the Constitution of the Republic of Angola;
- international labour conventions ratified by Angola;
- laws and their regulations;
- collective bargaining agreements;
- employment contracts; and
- practices and customs, both professional and of the company (these only apply if there are no legal or conventional provisions, or if referred to by such provisions).

In any conflict between sources, the solution that appears most favourable to the employees shall apply, unless the provisions of a higher level are mandatory.

4.2 Characteristics of Employment Contracts

Pursuant to the GLL, the execution of employment contracts shall have the form chosen by the parties, unless the law expressly determines that the written form shall be used (eg, apprenticeship contract).

Generally, when in writing, employment contracts shall include the following:

- the full name and usual address of the parties;
- the professional classification and occupational category of the employee;
- the workplace;

- the weekly duration of regular work;
- the amount, manner and period of salary payment, and reference to supplementary or additional benefits, and to those granted in kind, with indication of the respective amounts and basis of calculation;
- the date of commencement of the activity;
- the place and date of execution of the contract; and
- the signature of both parties.

Contracts shall also comply with Presidential Decree No 40/17, of 6 March 2017, which approved employment contract models.

The duration of employment contracts is regulated in Angola: fixed-term employment contracts may be successively renewed for equal or different periods of time up to a maximum limit of five years. For medium, small and micro-companies, the limit is increased to ten years. Once those deadlines are surpassed, the GLL establishes that the contracts shall be deemed indefinite-term employment contracts.

4.3 Working Time

As a general rule, the GLL establishes that normal working hours shall not exceed eight hours per day and 44 hours per week. Usually, normal daily working hours shall be interrupted for a rest and meal break of a duration of no less than 45 minutes and no more than one and a half hours, to prevent employees from providing more than five consecutive hours of normal work.

Also, between the end of one working period and the start of the next there shall be a rest interval of no less than ten hours. The employee is entitled to a full day of rest per week, generally on Sunday.

Overtime hours are allowed pursuant to the provisions of the GLL, namely in cases of work provided in shifts, modulated work schedules and

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availability regimes. Overtime hours are accounted for in the remuneration of the employees.

4.4 Termination of Employment Contracts

The Angolan Constitution and the GLL enshrine employees' right to employment stability, prohibiting and severely sanctioning the termination of employment contracts based on grounds other than those referred to in law or in breach of its provisions.

The most common forms of termination of employment contracts at the initiative of the employer are termination during the trial period, dismissal for disciplinary reasons, and individual dismissal on objective grounds.

During the trial period, either party may terminate the employment contract without any requirement of notice, compensation or the presentation of justification.

Dismissal for disciplinary reasons has to be based on a serious disciplinary offence by the employee, or on the occurrence of objective and verifiable reasons that make it impossible for the employment relationship to be maintained. The law lists several examples of situations that may cause a termination for disciplinary purposes, including:

- unjustified absences exceeding three days a month or 12 a year, or, regardless of their number, that cause serious losses or risks to the company, these being known to the worker;
- failure to comply with working hours more than five times per month; and
- drunkenness or drug addiction with negative repercussions on the work.

Individual dismissal on objective grounds is based on the need to extinguish or substantially

transform jobs due to duly proven economic, technological or structural reasons, involving the reorganisation or internal conversion, reduction or termination of activities.

The compensation due to workers in the event of individual dismissal on objective grounds is calculated depending on the size of the company, under the following terms:

- large enterprises – one base wage for each year of work up to a maximum of five, plus 50% of the base wage multiplied by the number of years of work in excess of that limit;
- medium enterprises – one base wage for each year of work up to a maximum of three, plus 40% of the base wage multiplied by the number of years of work in excess of that limit;
- small enterprises – two base wages plus 30% of the base wage multiplied by the number of years of work in excess of the limit of two years; and
- micro enterprises – two base wages plus 20% of the base wage multiplied by the number of years of work in excess of the limit of two years.

All these types of dismissal must be preceded by the procedure laid down in the GLL for each of them.

Collective redundancy may occur whenever the extinction or transformation of the jobs – determined by duly demonstrated economic, technological or structural reasons involving the reorganisation or internal conversion, reduction or termination of activities – simultaneously affects the employment of 20 or more employees (if the number is smaller, the individual dismissal on objective grounds mechanism should be used).

The compensation due to workers in the event of collective redundancy is the same as that

applicable to individual dismissal on objective grounds.

4.5 Employee Representations

The Trade Union Law (*Lei Sindical*), approved by Law No 21-D/92, of 28 August 1992, grants employees, without any discrimination, the right to form trade unions and to free exercise of union activity. In the exercise of union rights, employees are entitled to form trade union associations freely, to enrol in them or not, to withdraw from the trade unions and to pay fees just to the trade union in which they are affiliated, to participate in those trade unions and, in particular, to be elected to their governing bodies, and to carry out trade union activities at the workplace.

Employee representatives are entitled to justified absences while exercising functions as union representatives or delegates, or members of the body of representation of the employees.

There are several instances where the GLL provides for a mandatory consultation/duty to inform the representative of the employees (eg, termination of employment contract procedures, when establishing the work period and when disciplinary measures are applied).

5. TAX LAW

5.1 Taxes Applicable to Employees/Employers

Income earned by individuals in the pursuit of an activity as an employed person is subject to Employment Income Tax in Angola; the income must be obtained for services rendered directly or indirectly to a person or entity domiciled or with effective management in Angola in order for this tax to apply. Accordingly, residents and non-residents are subject to taxation, despite any limits/exclusions established by double tax treaties.

Employment income consists of any remuneration earned and received as payment of wages and salaries, as well as other additional remunerations such as, since late 2014, the remuneration paid by political parties and other organisations of a political and social nature.

Social benefits paid by the Social Security National Institute under the mandatory social security system are excluded from taxable income (for example).

Generally, for Employment Income Tax purposes, employees are included in taxation Group A, which includes the salaries received pursuant to an employment relationship, whether regulated by the GLL or the regime for civil servants.

The determination of this group's taxable amount is made by deducting from the gross income of the taxpayer the mandatory social security contributions and the remuneration elements that are not subject to or are exempt from this tax.

Group A is taxed at progressive rates: a tranche of income (AOA70,000) is exempt from tax and the remaining income is subject to rates varying between 10% and 25%.

The amount of tax due shall be withheld by the employer and delivered to the State before the end of the month following the month of the payment.

Before the end of February of each year, the employer shall submit an annual tax statement containing the full name and address, taxpayer number, social security number and global amount of income paid during the last financial year of each employee.

Social security contribution rates are 8% (paid by the employer on monthly wages/any additional remuneration paid in cash) and 3% (paid

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by the employee). Foreign employees may be exempt from social security contributions if they prove to be registered in a foreign social security system.

5.2 Taxes Applicable to Businesses

Angola does not have a single tax on corporate income. There is, in fact, a Business Income Tax (*Imposto Industrial*), an Investment Income Tax (*Imposto sobre a Aplicação de Capitais*) and a Real Estate Income Tax (*Imposto Predial*). Angola also has special sector taxation (mining, oil and construction agreements). Companies are also subject to Stamp Duty in certain transactions, and to Real Estate Transfer Tax (*Sisa*) in the acquisition of real estate property. Finally, more recently, Law No 7/19, of 24 April 2019, introduced Value Added Tax into the Angolan tax system.

Business Income Tax (BIT)

Both resident companies and individuals (earning income from industrial/commercial activities) are subject to BIT on their worldwide income. A company is considered resident if it has a registered office or effective management in Angola.

Non-resident companies or individuals are taxed only on income obtained in Angola. Branches, permanent establishments or any form of representation of non-resident companies in Angola are subject to taxation on income obtained therein and on income of a similar nature to the income obtained by the permanent establishment.

The taxation is divided into two regimes: general and simplified.

The simplified regime is applicable to taxpayers who are simultaneously subject to BIT and exempt from VAT. The following entities are excluded from this regime:

- public companies and entities;
- financial institutions;
- companies subject to special tax regimes;
- telecom operators; and
- branches of companies with registered offices abroad.

In order for this regime to be applicable, there are certain revenue thresholds that may not be exceeded and that depend on the taxpayer's sector of activity.

For taxpayers subject to the general regime, BIT is levied on annual income computed based on profit and loss incurred during the year. The concept of income or gain in Angolan tax law is broad, including extraordinary gains, income from core or ancillary activities, income from foreign sources, dividends, interest and royalties.

Notwithstanding the above, the income that is generated by financial operations (such as interest, dividends, premiums on bonds, etc) is subject to this tax only if it is not liable for other tax.

The general rate is 25%, but there is a reduced rate of 10% for income generated in the context of agricultural, fish farming, poultry farming, fishing, forestry and livestock activities and a reinforced rate of 35% for sectors such as banking and insurance, and for Angolan companies operating in the sectors of telecommunications and oil.

The BIT due for the provision of services is withheld at the source, at the rate of 6.5%, regardless of the nature of the service. Specific rules are also established for taxpayers whose activity is subject to the supervision of the National Bank of Angola, the insurance supervisory authority, the supervisory body of games or the Capital Market Commission.

The tax rate may be reduced in the context of a private investment project, as mentioned in **5.3 Available Tax Credits/Incentives**.

Taxation of non-residents with a permanent establishment (PE)

A non-resident company that carries on its economic activity in Angola through any form of PE is subject to BIT, for profits attributable to the PE and for profits made by the (non-resident) company on (i) the sale in Angola of goods similar to those sold by the PE and (ii) other activities carried out in Angola in an economic activity similar to the one that is carried on by the PE.

Taxation of non-residents without a PE

The provision of services of any kind (carried out in Angola or on behalf of resident entities) by non-resident entities without a PE in Angola is taxed at a rate of 15%, payable by the resident entity responsible for the payment of the service provided.

Investment Income Tax (IIT)

This tax is levied on income derived from the “simple investment of capital”. The earnings thereof are divided into two categories.

Section A

- Objective basis of taxation – interest on capital lent, not taxed in Section B and interest resulting from the deferral of an instalment or from late payment.
- Territorial basis of taxation – owed on interest “produced in the country” or assigned to a person having domicile, effective management or PE in Angola.
- Exemptions – income of financial institutions; interest on credit sales by tradespeople and default interest on payments by tradespeople; interest on loans embedded in life insurance policies (made by insurers); and interest on financial products directed at promoting sav-

ings (approved in advance by the Ministry of Finance).

Section B

- Objective basis of taxation – interest on bonds and loan capital; profits attributable to shareholders; royalties; and capital gains, among others. The following gains are also subject to this tax:
 - (a) the repatriation of profits attributable to PEs of non-residents;
 - (b) the remuneration of bonds or other similar securities issued by any company;
 - (c) the remuneration of treasury bills and bonds;
 - (d) the remuneration of central bank securities; and
 - (e) the positive balance between capital gains and losses incurred with the disposal of shares or other instruments that generate any income that is subject to tax (only 50% of this balance is subject to tax, if such disposal is made on a regulated market).
- Territorial basis of taxation – the source of income must have a connection with Angolan territory (ie, the income shall be paid by a person with residence/effective management in Angola; made available through a PE in Angola; received by a person having residence/effective management in Angola; or attributed to a PE in Angola).
- Exemptions – dividends distributed by an entity having its registered office/effective management in Angola to a corporate or equivalent person having its registered office in Angola that has a holding of not less than 25% for a period exceeding one year prior to the distribution of profits (“participation exemption”); interest in financial instruments that encourage savings; and interest on housing-savings accounts.

The IIT rate is 5% in the following cases:

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- income earned from interest, the remuneration of bonds, equities or other similar securities, treasury bills and bonds, and central bank securities, with maturity equal to or greater than three years;
- profits attributable to shareholders of companies and the repatriated profits attributable to PEs of non-residents, when the shares of the company concerned are traded on a regulated market; and
- amounts awarded to companies or entrepreneurs as compensation for the suspension of its activity – 10% in the case of most of the income included in Section B and 15% in the case of interest and the balance of interest on current accounts, compensation for suspension of activity, game of chance prizes whatever their provenance, and any other income on investment of capital not included in Section A.

For Section B, the tax assessment is generally made by the payor of the income withholding at the source. However, the tax assessment is made by the beneficiary whenever the payor does not have a head office, effective management or a PE in Angola to which the payments are attributable. The tax assessment for Section A is generally made by the beneficiary of the income, unless the receiver of the income does not have a residence, head office or effective management or PE in Angola, or unless the income is due by people with organised accounts to individual persons.

Real Estate Income Tax (REIT)

REIT is a hybrid of income and wealth tax due from individuals and corporate entities, resident or non-resident, provided they are entitled to property rents, or due on their possession or transfer (whether gratuitous or onerous) if the properties are not rented, as follows:

- rented property – levied on the rents actually paid, with a deduction of 40%, expressed in local currency;
- not rented property – levied on the asset value or on the value stated in the property tax records; and
- transfer of property – levied on the highest of the asset value and the price.

The income of urban property rents taxed under REIT is not subject to BIT.

The tax rate is 25% for rented properties; between 0.1% and 0.5% for properties not rented (of an asset value exceeding AOA5 million); and 2% for the transfer of property.

Stamp Duty (SD)

All acts, agreements, documents, securities, books, papers, transactions and other facts set out in the table appended to the SD Code are subject to SD, including the following:

- guarantees of obligations (a variable rate between 0.1% and 0.3% of the value), which are considered accessories to the contract;
- financing operations (a variable rate between 0.1% and 1%), except when subject to and not exempt from VAT;
- acquisition of ownership of real estate (at a rate of 0.3%);
- any agreement not specifically provided for in the table (AOA1,000); and
- receipts for the actual receipt of invoices (at the rate of 0.1%), excluding receipts of rents received under a rental agreement for housing purposes if individuals enter into a rental agreement and the receipts relate to invoices subject to VAT.

Residents are responsible for the assessment, delivery and payment of SD that under the general rules would be the responsibility of non-residents.

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Value Added Tax (VAT)

The VAT Code introduced VAT in Angola and also revoked the pre-existing Consumption Tax, as well as the SD on imports and exports. Being inspired by the EU VAT Directive, it is based on an assessment of tax at every stage of the economic chain and a deduction of the same amount of tax by all agents involved, except for the final consumer.

It was expected to enter into force in July 2019 but was postponed to October 2019, when it became mandatorily applicable to registered large taxpayers and to the imports of goods. The remaining taxable persons may choose to be submitted to this regime if some requirements are met.

During the financial years of 2019 and 2020, taxable persons who reached a turnover or an amount of imports higher than USD250,000 in the previous year should be subject to a transitory VAT regime that foresees a simplified taxation method.

The VAT regime became mandatory for all taxable persons on 1 January 2021.

The taxable persons subject to VAT shall be exempted from SD on receipts for the effective receipt of credits.

As a rule, the onerous transfer of goods and the rendering of services made by a taxable person acting within the scope of its activity in Angolan territory, as well as the import of goods, shall be subject to VAT.

The following individuals or corporate entities, among others, are taxable persons for VAT purposes:

- those that perform a business activity in an independent manner – liberal professions;

extractive, agricultural and/or fishing activities;

- importers of goods under the customs law;
- those that acquire services for a non-resident entity without a PE in Angola; and
- within certain circumstances, the Angolan State and other public entities.

VAT is chargeable when the goods are made available to the purchaser, or when services are provided and when the custom duties obligations are complied with.

The VAT tax base is the value of the supply, irrespective of its nature.

There is a single VAT rate of 14%.

The Angolan VAT regime establishes full and partial exemptions.

Certain entities (eg, banks) shall withhold 50% of the amount of VAT included in invoices or equivalent documents issued by taxable persons for the supply of goods or the rendering of services. Special withholding rules are applicable to the State, other public entities and oil-investing companies.

However, the entity liable for the delivery of the VAT is generally the taxable person that performs the activity being taxed. The tax due shall be paid before the end of the month following the one for which the transactions are reported.

There is an obligation to submit a monthly VAT periodic return, before the end of the month pursuant to the one to which the transactions refer.

5.3 Available Tax Credits/Incentives

The PIL foresees tax benefits related to BIT, IIT, REIT, Sisa and SD, which may consist essentially in deductions to taxable value; accelerated depreciation and reintegration of assets;

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tax credits; exemption and reduction of taxes, contributions and import duties; and deferred payment of taxes.

According to the PIL, there are three investment regimes (prior declaration regime, contractual regime and special regime – see **2.1 Approval of Foreign Investments**) under which tax benefits may be granted.

Before its last amendment, the PIL expressly defined the key tax benefits for investments subject to both the prior declaration and the special regime. In light of the recent changes, this was replaced by a reference to the Tax Benefit Code, the approval of which is still pending.

5.4 Tax Consolidation

In 2013 the Statute of Large Taxpayers (*Estatuto dos Grandes Contribuintes*, approved by Presidential Decree No 147/13, of 1 October 2013) was created to establish a special taxation framework for entities that qualify as large taxpayers.

Under this framework, taxpayers are required to have audited and certified accounts, and to give notice of any changes in their shareholding structure, management and headquarters or place of effective management.

Only certain entities may be qualified as a “large taxpayer”, and a list of these entities shall be published pursuant to an order by the Ministry of Finance.

This regime establishes a tax group regime applicable to groups of companies and provides that these entities may opt to be taxed according to it, through the sum of their positive and negative results.

Pursuant to this framework, a group of companies exists if the parent company holds, directly

or indirectly, a participation of at least 90% in another (if this participation corresponds to at least half of the voting rights).

Additionally, the group of companies must meet the following requirements; failure to comply therewith leads to termination of the tax group option:

- all companies must have their tax residence in Angola;
- the dominant company must hold its participation in the subsidiaries for more than two years (there is an exception for subsidiaries incorporated by the dominant company); and
- the dominant company cannot be a subordinated company of any other company with tax residence in Angola.

The following companies cannot benefit from this framework:

- those that have not performed any business activity for more than one year or are subject to a pending insolvency, dissolution, liquidation or tax enforcement procedure;
- those that have registered tax losses during the preceding two financial years; and
- those that have been granted tax benefits under the PIL (through tax exemption or through nominal reduction of the BIT rate).

In order to benefit from this regime, the group of companies shall annually submit a form (Modelo 5) to the Large Taxpayers Unit, at least three months prior to the deadline for submitting the annual BIT return.

5.5 Thin Capitalisation Rules and Other Limitations

There are no thin capitalisation rules in Angola.

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5.6 Transfer Pricing

As a rule, resident entities with a “special relationship” with other entities, resident or non-resident, subject or not to BIT, shall implement conditions similar to those that would normally be agreed between independent persons.

The tax authorities have the power to make any corrections deemed necessary to determine the taxable income.

The transfer pricing regime is regulated to a more in-depth level for the “large taxpayers” category. Thus, for the purposes of this framework, the concept of associated enterprises is fulfilled when an entity has the power to exercise, directly or indirectly, a significant influence on the management decisions of the other. This is deemed to occur when:

- the directors or managers of a company (also their spouses, ascendants and descendants) hold at least 10% of the capital or voting rights in the other company;
- the majority of the members of the statutory boards – or their spouses, unmarried partners, ascendants or descendants – are the same persons;
- the entities enter into a subordination agreement;
- the entities are in a group relationship or are bound by a subordination agreement of a parity group, or other of equivalent effect, according to the Commercial Companies Law;
- the commercial relations between the two entities represent more than 80% of the total turnover of one them; or
- an entity finances the other in more than 80% of its credit portfolio.

This regime only recognises the traditional transactional transfer pricing methods (ie, the com-

parable market price method, the resale price method and the cost-plus method).

Companies reporting annual revenue in excess of AOA7 billion must prepare a transfer pricing file.

5.7 Anti-evasion Rules

The Angolan tax system does not contain any general anti-abuse clauses, nor thin capitalisation or controlled foreign company (CFC) rules. However, there are some specific anti-evasion rules, such as the transfer pricing regime noted in **5.6 Transfer Pricing**.

Moreover, the BIT Code regulates the terms pursuant to which expenses may be deducted for tax purposes, excluding the following certain categories of expenses:

- improperly documented expenses;
- non-documented expenses; and
- confidential expenses.

Costs borne with interest due to shareholders as a result of shareholders’ loans are also non-deductible for this purpose.

6. COMPETITION LAW

6.1 Merger Control Notification

The Competition Law (*Lei da Concorrência*), approved by Law No 5/18, of 10 May 2018, defines a concentration of companies as the long-lasting change in control over the totality or part of one or more companies as a result of:

- a merger between two or more companies, or parts of companies, that were previously independent; or
- the acquisition, whether directly or indirectly, of the control of the totality or of parts of share capital or of the assets of one or sev-

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eral companies by one or more companies or by one or more persons that already have control of at least one company.

Concentration operations shall be communicated to the Regulatory Authority for Competition (RAC) when they meet one of the following conditions:

- when a quota equal to or higher than 50% in the national market of a given goods or service, or in a substantial part thereof, is acquired, created or reinforced;
- when a quota between 30% and 50% in the national market of a given goods or service, or in a substantial part thereof, is acquired, created or reinforced, as long as the turnover individually accomplished in Angola in the previous fiscal year by at least two participating companies is above AOA450 million; or
- when the set of companies that participate in the concentration has accomplished a turnover of more than AOA3.5 billion directly related to these in Angola, in the previous fiscal year.

The Competition Law establishes that non-compliance with the obligation to communicate the concentration is punishable with a fine of no less than 1% and no more than 5% of the turnover of the previous year.

6.2 Merger Control Procedure

When one of the conditions referred to in **6.1 Merger Control Notification** is met, the concentration operations are subject to previous notification to the RAC, which is made through the submission of a form presented jointly by the intervening parties, or individually by the party that acquires the exclusive control of the total or part of one or more companies. Within 20 days from such submission, the RAC shall promote the publication of the essential elements of the operation in the most widely read newspaper

in the country. The RAC shall provide its opinion within 120 days, under penalty of tacit approval.

6.3 Cartels

The Competition Law establishes a list of practices that harm competition irrespective of fault by referring to their effects. Restrictive practices are those that result in:

- an abuse of dominant position;
- an abuse of economic dependence; and
- collective forbidden practices, namely competition-restricting agreements, concerted practices and decisions or resolutions of associations of companies that harm competition (these are deemed void by the Competition Law).

The Competition Law includes definitions of dominant position, abuse thereof, economic dependence, abuse thereof, and horizontal and vertical agreements. The statute also governs the cases where those agreements and practices are justifiable.

The legal framework focuses completely on the Angolan national market; the Regulation of the Competition Law (approved by Presidential Decree No 240/18, of 12 October 2018) states that concentrations of companies that do not create significant hurdles to effective competition in the national market or in a substantive part thereof are authorised. However, concentrations of companies that may create significant hurdles to effective competition in the national market, or in a substantial part thereof, are forbidden.

6.4 Abuse of Dominant Position

The Competition Law establishes that the abuse of a dominant position is forbidden.

For the purpose of the Angolan framework, there shall be a dominant position with reference to

the market of a given goods or service if a company acts in a market where it does not deal with significant competition or where it assumes a preponderant role in respect of its competitors, or if two or more companies concertedly act in a market where they do not deal with significant competition or where they assume a preponderant role in respect of third parties.

A dominance is deemed as existing when companies (individually or jointly) have a share that is higher than 50% of the relevant market.

Economic dependence is specifically regulated and occurs when one or more companies use the market power, or the ascendancy they have over another company or client that is in a state of dependence in relation to such company/ companies because it does not have an equivalent alternative for the supply of goods or provision of services at issue.

On the other hand, an abuse of economic dependence takes place when there is an unlawful use of the situation referred to above, namely in the following cases:

- the direct or indirect imposition of purchase or sale prices or other conditions in a non-equitable manner;
- the subordination of the execution of contracts to the acceptance by the counterparties of ancillary provisions that, according to their nature or agreement with normal commercial practice, have no connection with the object of such contract; and
- the unjustified rupture, whether total or partial, of an established commercial relation, considering the previous commercial relations, the normal commercial practice in such area of economic activity and the contractual conditions established therein.

7. INTELLECTUAL PROPERTY

7.1 Patents

IP is mainly governed by the Industrial Property Law (*Lei da Propriedade Industrial*, approved by Law No 3/92, of 28 February 1992) (IPL), which is somewhat outdated, and the Copyright Law (*Lei de Protecção dos Direitos de Autor e Conexos*, approved by Law No 15/14, of 31 July 2014).

As a general note, Angola does not afford protection to registrations granted abroad or under international treaties; those intending to obtain protection in Angola must register before the Angolan competent authority: the Angolan Institute of Industrial Property (*Instituto Angolano de Propriedade Industrial*, or IAPI).

The IPL defines a patent as the legal title granted to protect inventions, allowing its holder exclusive rights to explore it. Invention is defined as an inventor's idea that allows, in practice, the solving of a specific problem in the technology area, whether referring to a product or process.

An invention patent request shall be made in an application in Portuguese that includes the following:

- the name of the holder of the invention;
- the nationality and other information pertaining to the applicant;
- the title that summarises the object of the invention;
- a copy of the patent request that has been filed in another country;
- a clear and complete description of the object of the invention in a way that allows it to be executed by a person with regular competency on the matter;
- the designs (when necessary for the comprehension of the invention); and

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- a summary intended for technical information purposes.

The patent invention shall be in place for 15 years from the date of deposit of the application. Once that period ends, the patent object shall fall into the public domain.

The violation of rights conferred by the patent is punishable with imprisonment for up to six months and a fine.

7.2 Trade Marks

The IPL states that all those who adopt a trade mark to distinguish the products of their economic activity shall enjoy the property and its exclusive use as long as said mark is registered in accordance with its provisions. There are industrial, commercial and service trade marks.

A trade mark request shall be made in an application in Portuguese that includes the following:

- the name of the holder of the trade mark;
- the nationality, profession and residence of the holder;
- the products or services for which the trade mark is intended;
- the registration number that is indicated in the trade mark;
- the country where the first trade mark registration request was lodged and its date;
- a reproduction of the trade mark;
- an authorisation from the holder of the foreign trade mark that the applicant is representing in Angola; and
- authorisation from a person whose name, corporate name, portrait or insignia is included in the trade mark (if such person is not the applicant).

The registration shall last for ten years, counted from the date of deposit of the application. The

registration may be renewed for consecutive ten-year periods.

Illegal use of trade marks is punishable with a fine, which may be compounded with imprisonment for up to three months.

7.3 Industrial Design

This section applies to utility or industrial designs or models.

A utility model is defined as all new provisions or forms obtained or introduced in objects such as tools, work tools or utensils that improve or increase its utilisation or utility conditions. The protection is granted exclusively to the specific and new form.

The IPL qualifies an industrial model as all the plastic forms, associated to lines or colours (or not), that may be used in the manufacturing of an industrial or handmade product.

An industrial design is the new layout or set of lines or colours (or not) that, with an industrial or commercial purpose, may be applied in the ornamentation of a product by any process (manual, mechanic, chemical, simple or combined).

A design or model request shall be made in an application in Portuguese that includes the following:

- the identity of the applicant;
- a copy of the object or a graphic representation of the design or model;
- the novelty and utility granted to the utility model/the novelty of the design or industrial model; and
- the indication of the type or types of products for which the design or model shall be used.

The registration of a design or model shall last for five years, counted from the date of deposit

of the registration request. The registration may be renewed for two consecutive five-year periods. Once that period ends, the patent object shall fall into the public domain.

The violation of designs or models is punishable by a fine.

7.4 Copyright

Copyright refers to the right that authors of literary, artistic and scientific works have to enjoy and use these works or to authorise their use and enjoyment. Rights of an economic and moral nature are encompassed. Copyright generally belongs to the creator of a literary, artistic or scientific work. Notwithstanding this, there are special rules for how ownership is determined (eg, the case of work created under an employment or service contract, or in the performance of functional duties, in which the copyright belongs to the person who ordered its production). There are also specific rules for works created by more than one author (work done in collaboration or collective work).

The protection of the copyright and related rights occurs pursuant to the law and is not subject to registration.

As a general rule, copyright and related rights are maintained throughout the author's life and for 70 years pursuant to his or her death, counting from 1 January of the year following the death, in benefit of his or her heirs.

Infringement of copyright is subject to civil and criminal liability.

7.5 Others

The IPL was enacted in the early 1990s so is quite outdated in terms of IP rights applicable to matters such as software and databases.

Other than the matters indicated above, the IPL also includes rules governing rewards (nominative, figurative, emblematic signs granted in Angola or abroad) to people in industry or trade, manufacturers and entrepreneurs, and establishment names and insignia (the nominative sign and the emblematic or figurative sign used to design or make known the establishments where a commercial, industrial or service activity is carried out).

8. DATA PROTECTION

8.1 Applicable Regulations

The Constitution of the Republic of Angola prohibits the registration and handling of data regarding political, philosophical or ideological beliefs, and data relating to religion, party affiliation, ethnic origin and the private lives of citizens with a view to discriminate. The access to personal data of third parties is also forbidden, as is the transfer thereof from a file to another that is the property of a given service or institution, except in cases established by law or by court order. The Constitution broadly provides that the law shall establish effective guarantees against obtaining and using information relating to persons and families in a way that abuses or is contrary to human dignity.

The main statute is Law No 22/11, of 17 June 2011, which approved the Data Protection Law.

The Law establishes the legal framework applicable to the handling of personal data in order to ensure respect for civil liberties and the fundamental rights and guarantees of individuals. It applies to the handling of data protection carried out by fully or partially automated means contained in manual files or destined thereto.

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8.2 Geographical Scope

The Law applies to any person and entity of the public and the private sector.

Specifically, it applies to the handling of personal data carried out:

- by an individual responsible for such handling based in Angola;
- within the activities of the individual responsible for the handling who is established in Angola, even if not based in Angolan territory;
- outside of Angola, if Angolan legislation is applicable pursuant to public or private international law; and
- by an individual responsible for the handling that, despite not being based in Angola, resorts, for the handling of personal data, to means located in Angolan territory.

For the purposes of the fourth point, to be deemed an individual responsible for the handling of data that resorts to means located in Angolan territory, the handling operations of the personal data shall be carried out with, or the personal data shall be lodged in, means located in Angola. The Data Protection Law applies if the use of such means occurs for the purpose of retrieving, registering or transferring personal data in Angola.

Also, in the case of the fourth point, the individual responsible shall name, through a communication to the National Agency for Data Protection (NADP), a representative established in Angola who shall be a substitute for the purpose of all rights and obligations, his own liability notwithstanding.

8.3 Role and Authority of the Data Protection Agency

Presidential Decree No 214/2016, of 10 October 2016, approved the Organic Statute of the NADP. The NADP has the following main attributions:

- assisting the government with the regulation, oversight and supervision of the application of the legal provisions on data protection, and with sanctioning their non-compliance;
- assisting in drafting policies, studies, programmes and projects regarding the application and control of legislation on data protection;
- promoting the implementation of codes of conduct for data protection; and
- co-operating with other public authorities and providing them with adequate guidelines to allow them to handle data protection in accordance with the law.

The NADP initiated its activity in October 2019.

9. LOOKING FORWARD

9.1 Upcoming Legal Reforms

The Tax Benefit Code is bound to bring important changes. With the recent enactment of a new Private Investment Law, the tax benefits associated with this regime are highly anticipated. This adds to the fact that the Angolan State has been promoting relevant changes towards a more competitive, sustainable and transparent market.

Law No 11/21, which provides the legal framework applicable to the use of movable assets (including credit rights and IP rights), credit securities and financial assets (such as securities) as a guarantee for the fulfilment of obligations was published on 22 April 2021. Several aspects of the framework strengthen the position of secured creditors, particularly lenders, which are subject to the statute, thus confirming the effort that has been undertaken by the Angolan Executive to attract foreign investment, aid the financing of private projects and contribute to the sustainability of the Angolan market. This statute enters into force on 19

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October 2021 and, notwithstanding the positive advantages for lenders arising thereunder, it is expected to raise some practical obstacles. Angola is a civil law jurisdiction and the introduction of concepts modelled on common law, such as floating charges and self-help remedies, will take some time to implement and enforce from a commercial mindset perspective, as well as by the implementing entities, such as the registries and courts.

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Morais Leitão, Galvão Teles, Soares da Silva & Associados operates in conjunction with an integrated network of law firms in Angola (ALC Advogados), Cabo Verde (VPQ Advogados) and Mozambique (HRA Advogados). Through the **Morais Leitão Legal Circle** (a team based in Portugal dealing with Lusophone transactions), the firm provides a seamless service to international clients investing in Lusophone Africa. The team advises clients on both cross-border inbound and outbound investments into Luso-

phone Africa. The teams combine international experience with expert local knowledge and the support of the whole network, enabling each firm to maximise the resources available to its clients, as well as including members qualified in civil and common law jurisdictions in the most complex and large-scale deals in Portugal, Lusophone Africa and Lusophone Asia.

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ANGOLA LAW AND PRACTICE

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